

Court of Errors and Appeals.

IN CHANCERY OF NEW JERSEY.

Between

JAMES McLAUGHLIN, and MICHAEL Mc-
LAUGHLIN, and CATHARINE his wife,
Appellants,

and

WILLIAM VANKEUREN and CHARLES
SCHULTZ,
Respondents.

} *Bill for relief, &c.*

Benjamin Williamson & Son, solicitors.

Benjamin Williamson, solicitor and of counsel for appellants.

Jacob Weart, solicitor and of counsel for respondents.

Bill of Complaint.

[Filed December 29th, 1866.]

*To the Honorable Abraham O. Zabriskie, Chancellor of the State
of New Jersey.*

Humbly complaining, showeth unto your honor your ora-
tors, William VanKeuren, of Jersey City, in the county of
Hudson, and state of New Jersey, and Charles Schultz, of
the city, county, and state of New York, partners in trade,

&c., that on the twenty-third day of August, in the year of our Lord one thousand eight hundred and sixty-six, your orator, William VanKeuren, and one Mynard G. VanBuskirk, recovered a judgment in the Hudson county Circuit Court, against one James McLaughlin, of Jersey City, for the sum of three thousand two hundred and sixty-one dollars and eighty-seven cents, damages, and twenty-six dollars and twenty-six cents, costs, and that an execution was issued thereon against the goods and chattels, lands and tenements
10 of the said James McLaughlin, returnable at the then next ensuing October Term of the said Hudson county Circuit Court, and placed in the hands of Jacob M. Merseles, sheriff of the county of Hudson, who returned said writ to the last October Term of said Hudson county Circuit Court unsatisfied, the defendant not having any goods or chattels upon which said execution could be levied to make the damages and costs due on said judgment.

And your orators further show unto your honor, that the said Mynard G. VanBuskirk assigned all his right, title, and
20 interest in said judgment to your orators, by assignment, dated October twenty-second, eighteen hundred and sixty-six; that in the recovery of said judgment, by mistake, the middle letter in the name of said Mynard G. VanBuskirk was omitted.

And your orators further show unto your honor, that shortly before the recovery of said judgment, the said James McLaughlin became insolvent, and among the other persons to whom he was indebted, was his father, Michael McLaughlin, to whom he alleged that he was indebted in about the sum of
30 seven thousand six hundred dollars; and one Dudley S. Gregory having endorsed paper for the said James McLaughlin, as the said McLaughlin alleged, to the amount of five thousand dollars, which endorsements the said Michael McLaughlin assumed as alleged, making the indebtedness of the said James McLaughlin to his father, Michael McLaughlin, about the sum of twelve thousand six hundred dollars, as the said James McLaughlin alleged.

And your orators further show unto your honor, that the said James McLaughlin, in order to secure his father, Mi-
40 chael McLaughlin, for the loans and advances made by him to

the said James, and for the endorsements of said Dudley S. Gregory, made for the said James, and assumed by the said Michael, he, the said James, conveyed to his father, Michael, by three several deeds of conveyance, the following tracts of land and premises, to wit:

By deed made by the said James McLaughlin to the said Michael McLaughlin, dated May nineteenth, eighteen hundred and sixty-six, acknowledged the same day, and recorded July 12th, 1866, in Liber 135 of Deeds for Hudson county, page 471, for the consideration of eleven thousand one hundred dollars, conveying all that certain lot of land and premises situate in Jersey City, in the county of Hudson, and state of New Jersey, which, on a map of the property of Dudley S. Gregory and David Henderson, deceased, showing the division of the same between them, made by Andrew Clerk, city surveyor, and filed of record in the clerk's office of the county of Hudson, is known and distinguished as lot numbered seventy-four (74) Montgomery street, in block numbered sixty-one (61), being twenty-five feet wide front and rear, and one hundred feet deep throughout. 10

And also, all those two lots of land and premises in Jersey City aforesaid, which, on a map of said city, made by A. Clerk and R. C. Bacot, city surveyors, A. D. 1848, are designated as lots numbered eighty-seven (87) and eighty-nine (89), in block numbered sixty-one (61), each lot being twenty-five feet wide in front and rear, and one hundred (100) feet deep throughout. 20

And also, all that lot of land and premises in Jersey City aforesaid, which, on a map of property belonging to E. B. Wakeman, in the third ward of Jersey City, made by R. C. Bacot, city surveyor, and filed in the clerk's office of the county of Hudson, is known and distinguished as lot numbered nineteen (19), in block number two (2), fronting on South Eighth street, being twenty feet wide front and rear, and eighty feet deep on each side. 30

Said lot number seventy-four (74) was conveyed subject to a mortgage for two thousand five hundred dollars (\$2500), held by the Provident Institution for Savings, in Jersey City.

Said lot number (87) eighty-seven was conveyed subject 40

to a mortgage for seven hundred and fifty dollars (\$750), held by Gerrit D. Voorhies.

And said lots numbered (87) eighty-seven, and (89) eighty-nine, were conveyed subject to a mortgage for one thousand dollars (\$1000), held by John Swartout.

By deed made by the said James McLaughlin to the said Michael McLaughlin, dated May eighteenth, eighteen hundred and sixty-six, acknowledged the same day, and recorded on the twelfth day of July, eighteen hundred and sixty-six, 10 in Liber 135 of Deeds for Hudson county, page 474, the consideration being three thousand two hundred dollars, conveying all those thirteen lots of land and premises, situate in the town of Bergen, in the county of Hudson, and state of New Jersey, described as follows: First. All those two lots, which, on the map entitled "Map of Sherwood, Hudson county, New Jersey," surveyed and laid out by Clerk and Bacot, city surveyors, are designated as lots numbered seven (7) and nine (9), fronting on the southwesterly side of Clendening street, being each twenty-five feet wide 20 in front and rear, by one hundred feet deep on each side. Second. All those four lots, which, on a map of property situated on Bergen Hights, Hudson county, New Jersey, filed in the office of the clerk of Hudson county by Charles N. Buck, are known and distinguished as lots numbered seventy-six (76), seventy-seven (77), seventy-eight (78), and seventy-nine (79), in block numbered two (2), each lot being twenty-five feet wide front and rear, and one hundred feet deep on each side. Third. All those seven lots, commencing at a point on the westerly line of Bramhall avenue, running thence, northeasterly, along the west line of Jackson 30 avenue one hundred and seventy-five (175) feet to land owned by Edwin J. Brown; thence, northwesterly, along his line, one hundred feet; thence, southwesterly, and parallel with Jackson avenue, one hundred and seventy-five feet; thence, southeasterly, one hundred feet to Jackson avenue, being the place of beginning, containing lots numbered thirty-five (35), thirty-seven (37), thirty-nine (39), forty-one (41), forty-three (43), forty-five (45), and forty-seven (47), as laid down on the aforesaid map of property, called Sherwood, 40 surveyed by Clerk and Bacot, city surveyors, and filed in the

clerk's office of Hudson county. The said thirteen lots being conveyed free and clear of encumbrances, by deed made by James McLaughlin to Michael McLaughlin, dated July ninth, eighteen hundred and sixty-six; acknowledged July eleventh, eighteen hundred and sixty-six; recorded July twelfth, eighteen hundred and sixty-six, in Liber 135 of Deeds, page 468. Consideration being eighteen hundred dollars, conveying all that certain lot, piece, or parcel of land and premises, situate, lying, and being at Jersey City, in the county of Hudson, and state of New Jersey, which, on a map entitled "Map of Jersey City, Hudson county, New Jersey, made by A. Clerk and R. C. Bacot, city surveyors, 1848," and duly affiled in the clerk's office of the said county of Hudson, is known and distinguished as lot numbered eight (8), in block number forty-six (46), fronting on Gregory street; said lot being twenty-five feet wide in front and rear, and ninety feet deep throughout, being the same premises which were conveyed to the said James McLaughlin by Daniel G. Elliott and wife, by deed, dated July 1st, 1863; recorded November 5th, 1863, in Liber 103 of Deeds, pages 503, &c.; said lot being conveyed subject to a mortgage for fifteen hundred and seventy-two dollars and fifty cents, held by one Daniel G. Elliott.

And your orators further show, that the said James McLaughlin, in order to further secure his father, Michael McLaughlin, for the advances made by him, did, on the ninth day of July, eighteen hundred and sixty-six, for and in consideration of the sum of twenty-four hundred dollars, expressed in the assignment, assign unto the said Michael McLaughlin, a certain indenture of mortgage, made by Adaline S. Clark and Charles S. Clark, to the said James McLaughlin, to secure the sum of twenty-four hundred dollars, dated May 7th, 1866, and recorded in the clerk's office of Hudson county, in Liber 38 of Mortgages, page 487; said assignment being recorded on the said twelfth day of July, eighteen hundred and sixty-six, in Liber 9 of Assignments of Mortgages for Hudson county, pages 282, &c.

And your orators further show unto your honor, that all of said three deeds, and said assignment of mortgage, were all recorded on the same day, and although said deeds are

absolute on their face, they are nothing more than mortgages to secure the debt due from the said James McLaughlin to the said Michael McLaughlin, and the assumptions of debts by the said Michael for the said James, and said deeds are to be treated in this court as mortgages, between the said James McLaughlin and the said Michael McLaughlin.

And your orators further show unto your honor, that if said three deeds from the said James McLaughlin to the said Michael McLaughlin, are not to be treated strictly as
10 mortgages between the parties, then said deeds are fraudulent as against your orators, who were creditors of said James McLaughlin at the time said deeds were made and executed as said deeds were made by the son to his father, and the considerations expressed in said three deeds, amounts, all together, to the sum of sixteen thousand one hundred dollars; when the property conveyed is worth from twenty to twenty-five thousand dollars, and would readily sell for enough over and above the encumbrances thereon to pay all of the indebtedness of the said James
20 McLaughlin to the said Michael McLaughlin, and pay the judgment debt of your orators, and leave a surplus besides; and as there is a great inadequacy of price in the conveyance of said property, said inadequacy of price is sufficient to make said conveyances fraudulent as against your orators, and the other creditors of the said James McLaughlin, and your orators are entitled to have the amount of indebtedness of the said James McLaughlin to the said Michael McLaughlin ascertained, and to a decree that the said Michael McLaughlin pay the judgment debt of your orators, and in
30 default of payment, that the same be declared a charge and lien upon the aforesaid described property, and that said property, be sold by the order of the court, and that the proceeds be applied, first to the payment of the debt of the said Michael McLaughlin, and that the surplus be appropriated to the payment of your orators debt, and any further surplus, if any there should be, should be brought into the court to be disposed of by the order of the court.

And your orators further show, that they have frequently and in a friendly manner applied to the said James Mc-
40 Laughlin and the said Michael McLaughlin, for the payment of their debt, or for a sale of the property, and that the said

Michael McLaughlin might reimburse himself for his debt and assumptions of debt, and turn over to your orators the surplus arising from said sale or enough of said surplus to pay your orators judgment debt.

And your orators well hoped that the said James McLaughlin and said Michael McLaughlin would have complied with such reasonable request, as in justice and equity they ought to have done; but now so it is, may it please your honor, that the said defendants, combining and confederating with divers other persons at present unknown to 10 your orators, but whose names, when discovered, your orators pray may be inserted in this, their bill of complaint, with apt and proper words to charge them as defendants thereto, to injure and aggrieve your orators in the premises, not only refuse to pay said debt, or to sell said lands, or in any other manner to comply with such reasonable request of your orators before mentioned, but they, the said defendants, sometimes pretend and give out in speech, that said deeds were not in the nature of a mortgage to secure a debt, but absolute; and at other times they give out and pretend, that 20 there was no great inadequacy of price in the conveyance of said lands, and at other times they pretend that said conveyances were not fraudulent as against your orators and the other creditors of the said James McLaughlin; whereas your orators charge the contrary thereof to be true, and charge that at the time of the making of said conveyances and said assignment of mortgage, that the said James McLaughlin was largely insolvent; and that said deeds were executed and said assignment of mortgage made by the said James McLaughlin to the said Michael McLaughlin to 30 secure said Michael McLaughlin for his indebtedness against the said James McLaughlin, and assumptions of said James' debts, and although absolute upon their face, were and are nothing more than mortgages given to secure said debt and assumption; and if said deeds should not be determined to be mortgages, that then they were made, and said lands were conveyed for a great inadequacy of price, and said deeds are fraudulent as against your orators, who were at the time and are still creditors of the said James McLaughlin; and that said conveyances were made to secure the debt of the 40

said Michael McLaughlin, and to hold the property in trust for the said James McLaughlin, and protect the same from your orators and the other creditors of the said James McLaughlin, and to prevent the same from being applied in payment and satisfaction thereof; all which actions and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators; in tender consideration whereof, and for as much as your orators are without remedy in the premises by
10 the strict rules of the common law, and without the assistance of this honorable court, where matters of this nature are particularly cognizable and relievable—

To the end therefore, that the said defendants and their confederates, when discovered, may, upon their several and respective oaths or affirmations, full, true, perfect, and distinct answers make to all and every the matters aforesaid, and particularly to the amount of indebtedness of the said James McLaughlin to the said Michael McLaughlin, and also the amount of debt of the said James assumed by the
20 said Michael, and the nature of said debt and assumptions, and when and how said indebtedness arose; and that they answer as fully as if the same were here again repeated, and they thereunto particularly interrogated, paragraph by paragraph; and that the said Michael McLaughlin may be decreed to pay the judgment debt of your orators; and if he fail to make such payment, that your orators' debt be declared a lien and charge upon the aforesaid described lands and premises; and that the debt of the said James McLaughlin to the said Michael McLaughlin be ascertained,
30 and that said lands be sold, and the proceeds of the sale be first applied to the payment of the debt of the said James McLaughlin to the said Michael McLaughlin; and that the surplus be applied to the payment of the debt of your orators, and if there be any further surplus, that the money be brought into court to abide the order of the court; and that your orators may have such further and other relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience; may it please your honor, the premises considered, to great unto your
40 orators a writ or writs of subpoena, of the state of New

Jersey, to be directed to the said James McLaughlin, and Michael McLaughlin and Catharine his wife, therein and thereby commanding them, and each of them, at a certain day, and under a certain penalty, therein to be expressed, personally to be and appear before your honor, in this honorable court, then and there to answer the premises, and stand to, abide, and perform such decree as to your honor shall seem meet, &c.

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

JACOB WEART,

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Solicitor and of counsel with complainants.

Answer.

[Filed January 22, 1868.]

The answer of James McLaughlin, and Michael McLaughlin, and Catharine his wife, defendants, to the bill of complaint of William Van Keuren and Charles Schultz, complainants.

These defendants, now and at all times hereafter, reserving to themselves all manner of benefit and advantage of exception to the many imperfections, uncertainties, and defects in the complainants' said bill of complaint contained, 20 for answer thereunto, or unto so much and such parts thereof as they are advised is material and necessary for them to make answer unto, they answer and say, that it is true, as stated in said bill of complaint, that William Van Keuren and one Mynard G. Van Buskirk, on the twenty-third day of August last, recovered a judgment, in the Hudson county Circuit Court, against James McLaughlin, of Jersey City, one of the defendants, for the sum of three thousand two hundred and sixty-one dollars and eighty-seven cents damages, and twenty-six dollars and twenty-six cents costs, 30 and that an execution was issued thereon against the goods and chattels, lands and tenements of the said defendant, returnable at the then next ensuing October Term of said Hudson county Circuit Court, and placed in the hands of

Jacob M. Merselles, sheriff of the county of Hudson, who returned said writ to the last October Term of said court, unsatisfied, the defendant not having any goods or lands upon which said execution could be levied to make the damages and costs due on said judgment.

And these defendants further answering say, that it may be true, for anything these defendants know to the contrary, that the said Mynard G. Van Buskirk assigned all his right, title, and interest in said judgment to the said complainants, 10 by assignment, dated October twenty-second, eighteen hundred and sixty-six; and that in the recovery of said judgment, by mistake the middle letter in the name of said Mynard was omitted, but these defendants do not know anything concerning the same, except through the statements of the complainants' bill, and therefore leave the complainants to prove the same according to law.

And these defendants, James and Michael McLaughlin, further answering admit, and Catharine, wife of said Michael, the other defendant, believes it to be true, that, shortly before 20 the recovery of the said judgment, the said James became insolvent, and amongst other persons to whom he was indebted was his father, Michael McLaughlin, to whom he was indebted as hereinafter more particularly stated, and one Dudley S. Gregory, who had endorsed paper for the said James, to the amount of five thousand dollars.

And these defendants, James McLaughlin and Michael McLaughlin, answering for themselves say, and the said Catharine believes it true, that on or about the nineteenth of November, eighteen hundred and sixty-four, and in De- 30 cember, eighteen hundred and sixty-four, the said James entered into contracts with the water commissioners of Jersey City, for the construction of sewers in the said city, the contract work amounting to about eighty thousand dollars; that at the time he entered into the said contracts, the defendant, James McLaughlin, was indebted to his father, the said Michael, in the sum of three thousand seven hundred 35 and forty-five dollars, besides some interest money due on that sum, which indebtedness was all for money, from time to time lent and advanced, except the sum of one thousand 40 dollars, which was the consideration for a lot in Jersey City,

sold and conveyed by the said Michael to the said James; that soon after entering into the said contract, the price of labor and materials was greatly increased, and so as to embarrass this defendant, James, very much in carrying out his said contracts; he was also greatly hindered, delayed, damaged, and embarrassed by getting wrong grades, and also by having the streets excavated, and in other ways, by the acts of the water commissioners; but as he had given security for the performance of his contract, and his friends were responsible for its fulfillment, he was obliged to carry 10 on the work, and did carry it on, and completed his said contracts, at a loss of twenty thousand dollars; that the only resource this defendant, James, had in his misfortunes, was his father, Michael, who, from time to time, advanced him money, and on the nineteenth day of May, eighteen hundred and sixty-six, the said James owed the said Michael seven thousand six hundred and eight dollars, and on that day the conveyances, one for eleven thousand one hundred dollars, and the one for three thousand two hundred dollars, mentioned in the bill, were made and executed; that on the said 20 property there were encumbrances by way of mortgages, assessments, and taxes, amounting to upwards of five thousand dollars; that at that time these defendants valued the said property at fourteen thousand dollars, and the said conveyances were made to secure the said Michael what the said James owed him.

These defendants further say, that on or about the ninth day of July, eighteen hundred and sixty-six, the said James owed a large amount of money for debts contracted in carrying out his contracts aforesaid, and that he then made an agreement with the said Michael to make the said conveyance of the ninth day of July, eighteen hundred and sixty-six, mentioned in the said bill, and to give him an assignment of the said mortgage, made by Adeline and Charles Clark, of twenty-four hundred dollars, upon which said mortgage the said Michael agreed to raise him the money; that the said Michael should advance the further sum of five thousand dollars, and that the said two conveyances of the nineteenth day of May, eighteen hundred and sixty-six, should be absolute; and that, to carry out the said agreement, the said 40

James executed to the said Michael the said deed of the ninth day of July, eighteen hundred and sixty-six, and in pursuance of the said agreement, the said Michael, on the eighth day of October, eighteen hundred and sixty-six, paid to the said James the said sum of five thousand dollars, which he borrowed for the purpose, on bond and mortgage on other real estate of his own, of the Savings Bank of Jersey City, and the further sum of one thousand eight hundred and seventy-five dollars, which he raised by an assignment
10 of the said Clark mortgage to one N. P. Hibbler, four hundred dollars having been paid on the same to the said James.

These defendants deny, that the said conveyances were made upon any other consideration, or for any other purpose, intent, or object than what is herein before stated; they deny that they were made for the purpose of delaying or hindering the creditors of the said James, or for securing the said Dudley S. Gregory, or any one else for endorsements or otherwise, except that the said James did borrow the said money for the purpose of paying the said Gregory and his
20 other creditors.

And the said defendants further say, that all of said deeds, and the said assignment of the said mortgage, were recorded on the same day; but deny that, although said deeds are absolute in their force, they are nothing more than mortgages to secure the debt due from the said James to the said Michael, and the assumptions of debts by the said Michael for the said James, and that the said deeds are to be treated in this court as mortgages between the said James and Michael, but say they are good and valid deeds, given for
30 valuable considerations, from the said James to the said Michael, in manner and for the purposes aforesaid.

And these defendants further say, that the property was not worth more than sixteen thousand dollars, at the most; that it was mortgaged for five thousand seven hundred dollars, and was not sufficient to secure the debt owed by the said James to the said Michael and the advances made on the same, and deny that there is a great or any inadequacy of price in the conveyances of said property, or that said inadequacy of price is sufficient to make said conveyances
40 fraudulent as against the complainants in the said bill. And

the other creditors of the said Michael; and these defendants say, that the said property would not, to-day, bring more than enough to pay the said Michael the said advances he has made upon it as aforesaid.

And these defendants further answering, respectfully insist, that the complainants have no right to maintain the said bill in manner and form as the same is exhibited against these defendants; and that Mynard G. Van Buskirk is a necessary party to the suit, and they pray the same benefit and advantage to the said exception, as if it had been taken 10 by demurrer or plea.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are 20 ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained.

B. WILLIAMSON & SON,
Solicitors of defendants.

B. WILLIAMSON,
Of counsel.

New Jersey, Hudson county, ss.—James McLaughlin, Michael McLaughlin, and Catharine McLaughlin, being duly 30 sworn on their respective oaths, say, that the facts, matters, and things in the foregoing answer stated, as far as they relate to their own acts, are true; and as far as they relate to the acts of others, they believe them to be true.

JAMES McLAUGHLIN.

MICHAEL ^{his} ~~X~~ McLAUGHLIN.
_{mark.}

CATHARINE McLAUGHLIN.

Sworn and subscribed, at Jersey City, March 24th, 1867.

ISAAC ROMAINE, *M. C.*

The usual Replication filed.

Depositions.

[Filed January 22, 1868.]

Depositions of witnesses, taken in the above cause, before me, J. Fleming, a master and examiner in chancery, at my office, Jersey City, September 28th, 1867, at 10 o'clock A. M., in presence of J. Weart, esq., counsel for complainants, and B. Williamson, esq., counsel for defendants.

10 Depositions taken before me by consent.

William Harney, a witness produced on part of complainants, being by me duly sworn, on his oath saith—I reside 81 Grand street; I am a real estate agent, and am of the age of fifty years and a few months; I have been doing business in real estate as an agent, for the past four or five years; my principal business is in selling real estate for others, and for myself; I know Mr. Van Keuren, and both defendants; I know the property, second house west of Van Vorst street, 20 in Montgomery, by seeing it from the outside; I have been in the store.

1 *Quest.* What is the value of that piece of property?

Ans. I don't know the size of the lot, but if a full lot, would judge it to be worth—well, if it were mine, I would not want to sell it less than ten thousand dollars. There is a good deal of guess work about the value of real estate, any how; I know the two lots in the same block, a little above this, where the carpenter shop is.

2 *Quest.* What do you consider those two lots worth?

30 *Ans.* Well, I should consider the two lots to be worth,

with the buildings on, to be worth between \$8000 and \$9000.

WILLIAM HARNEY.

Subscribed and sworn, before me, this 28th day of September, 1867, at Jersey City.

JAMES FLEMING, M. C.

William Van Keuren, one of the complainants, being by me duly sworn according to law, on his oath saith—[Defendants' counsel objects to the swearing of this witness, and evidence to be given by him, as he is not competent under the statute.] I am one of the complainants; Mr. Van Buskirk and I obtained a judgment in the Hudson Circuit against James McLaughlin; the full amount of principal of said judgments and interest is still due and owing to plaintiffs; the consideration of that judgment was for brick furnished on a sewer, and some cement, principally, brick; Mr. McLaughlin failed before we got the full amount of our money, before we got judgment; Mr. James McLaughlin called a meeting of his creditors at Mr. Williams' office, last July a year ago, I think; I attended that creditors' meeting; I was a little late, fifteen or twenty minutes after they opened the meeting; I heard a portion of his statements; whether I heard the whole of them I do not know.

Quest. Please give in the statements made by James McLaughlin in relation to his indebtedness, and the payment of the same, made at the creditors' meeting, after you came in?

Ans. He stated that he owed about so much money—I think it was \$26,000 or \$27,000—I think his indebtedness was, I can't positively tell—he owed \$7600 and something, to his father, \$5000 to Mr. Gregory; the balance he owed 30 to different ones; he had made a deed of his different property to his father, to secure the debt of his father and Mr. Gregory; then he showed wherein he had debts due him, to the amount, I think, of \$6000 or \$7000; this \$6000 or \$7000 he wanted it fixed so that he could settle with his creditors, and there were propositions made the way he would settle; the creditors proposed to take fifty cents on a dollar in cash, or his father's notes, or his father's endorse-

ment for three months; the other fifty cents they were to take his notes for, to be paid inside of five years; he said he had transferred this property to his father for less than its supposed value, but he didn't want to have the property sacrificed. He thought if he had time to sell the property it would bring more money; perhaps it would bring money enough to pay the whole debt. The reason for giving him time on the three months was to give him time to sell the property. The creditors thought that had the lots been
 10 given at less than their value, they would take them at their value towards their claim. He thought by having time that he would realize more out of the property than he had sold it for or made the deed for.

1 *Quest.* Did James McLaughlin assent to this arrangement at the time?

Ans. He did, providing that Mr. Chilvers would come in; Mr. Chilvers was not there.

2 *Quest.* What was the reason the compromise did not go through?

20 *Ans.* I believe Mr. Chilvers would not come in.

3 *Quest.* When you speak of Mr. McLaughlin, stating that he might be able to sell the real estate to pay the whole amount of the claims, which do you mean—the whole amount of the claim, or the fifty per cent. which was to be paid in three months?

Ans. The whole amount of the claim; he showed where he had money enough coming to him to pay fifty per cent.; the object of giving him the three months to pay the first fifty per cent., was to give him time to collect the money;
 30 it was money due him, or some of it was due on the sewer; it was due him from different parties; he had a statement of it; I cannot tell now, exactly.

4 *Quest.* Are you somewhat acquainted with the value of real estate in Jersey City?

Ans. Yes, sir.

5 *Quest.* What valuation do you put on the Gregory street lot?

Ans. I think it is worth between \$5000 and \$6000.

6 *Quest.* What valuation do you put on the brick store on
 40 Montgomery street?

Ans. I should value it at \$10,000.

8 *Quest.* What do you value the two lots on Montgomery street, with the carpenter's shop?

Ans. I should value them, with the improvements, at \$9000.

9 *Quest.* What value would you put on the South Eighth street?

Ans. Now, as near as I can locate it, I should value it at \$800—between \$700 and \$800.

Witness being cross-examined—

There was only one meeting of the creditors; there was 10 ten or fifteen, perhaps, present, but I don't know, exactly; Mr. Williams was present; it was in the day time; we were about an hour together.

WILLIAM VAN KEUREN.

Subscribed and sworn, before me, this 28th day of Sep-
tember, 1867, at Jersey City.

JAMES FLEMING, *M. C.*

William H. Bumsted, a witness for complainants, being sworn, on his oath saith—I reside in the town of Ber-
gen; am a builder by occupation; I am considerably en- 20
gaged in real estate transactions; I am acquainted with the
property in Bergen; am acquainted with the property laid
down on the Sherwood map.

1 *Quest.* What value would you put on lots 7 and 9, on
Clendening street?

Ans. They are worth \$500 a piece.

2 *Quest.* What are lots worth on map of property of C. N.
Buck, No's. 76, 77, 78, and 79, in block number two?

Ans. [Witness refers to map, and says,] they are worth
about \$600 a lot; that is what they have been sold for in 30
that neighborhood lately.

3 *Quest.* What is the value of the seven lots on Jackson
avenue, on map of Sherwood?

Ans. \$500 or \$600 a lot; that is what Mr. Clerk has sold
some for; I think that the value of all the lots have in-
creased within the last year; the lots on Jackson avenue
were worth, a year ago, \$450; that is what the Newark
Railroad paid this spring for lots much lower; these lots are
higher, and would bring a higher price; the four lots on

Buck's map have not increased much the last year; there has been more improvements on this side of the hill; that was the value about a year ago; I don't think there is any difference in the value of the lots on Clendening avenue now and a year ago.

WILLIAM H. BUMSTED.

Subscribed and sworn, before me, this 28th day of September, 1867, at Jersey City.

JAMES FLEMING, *M. C.*

- 10 *John Pringle*, a witness produced on the part of complainants, being by me sworn, on his oath saith—I reside in South Bergen; am an old resident of Jersey City; by occupation a plumber; I am a creditor of James McLaughlin—I am a creditor now—I have not got all my money yet; I put in my claim under the assignment; I took my dividend. [This examination objected to by defendants' counsel.] He has not become indebted to him since then; I attended the creditors' meeting last summer; it was either in June or July, 1866, at Mr. Williams' office, corner of Hudson and
20 York streets, Jersey City; I was present when the meeting opened; I was present all the time.

1 *Quest.* Please give us Mr. McLaughlin's statements in relation to his property, and what disposition he had made of it, the amount of indebtedness which he owed his father and Mr. Gregory, and generally how he proposed to marshal his assets, and pay his creditors?

- Ans.* The first proceedings were to take a list of all the debts; they were all handed in with the exception of Van Keuren and Campbell's, and he knew them and handed
30 them in; he was requested to stand up and give a statement of his affairs; at first he said he wasn't worth \$5 in the world; that he had lost \$20,000 on the sewers; that he had borrowed money from his father and Mr. Gregory; he said he was bound to see his father paid, and had sold him some property; he mentioned a house on Newark avenue, and lots on Montgomery street, and some lots in Bergen; that he had sold them to his father to make him secure; he gave a statement of the price he put on them—he remarked it was a low figure; he thought he could sell them to better

advantage if he had more time; the creditors made a proposition that we would take fifty cents on the dollar, give him three months, with his father's endorsement—the balance of fifty cents on the dollar in five years or less—five years was the outside.

2 *Quest.* Did this proposition to take fifty per cent. come from the creditors, or was it made by Mr. McLaughlin?

Ans. It was made by the creditors.

3 *Quest.* Did Mr. McLaughlin accede to it, provided all the creditors would come in?

Ans. Yes, sir; Mr. Chilvers stood out—Mr. McLaughlin told me so.

4 *Quest.* How much did James McLaughlin state he owed to his father?

Ans. Seven thousand some odd dollars to his father.

5 *Quest.* Please state whether Mr. McLaughlin made any statement in relation to an indebtedness to Dudley S. Gregory, and if so, what was the amount, and what was said about the securing the debt, if anything?

Ans. He said he had borrowed \$5000 from Mr. Gregory, 20 and he was bound to see him paid; if there were any deeds given, I didn't hear it.

6 *Quest.* Please state, if anything, what was said about the sale of this real estate, which was conveyed by James McLaughlin to his father?

Ans. He just said he had given it to him to secure his debt—there were no particulars given.

7 *Quest.* Do you know the value of real estate in Bergen?

Ans. Yes; I bought and sold these four lots on Clenden-
ing and Lexington avenues.

8 *Quest.* What was the value of these four lots about a year ago?

Ans. I should say the front lots on Lexington avenue were worth \$550 a piece; those on Clendenning \$450 a piece; 76 and 78 are on Clendenning, and 77 and 79 are on Lexington avenue.

9 *Quest.* What were lots on Sherwood map on Clendenning avenue worth a year ago?

Ans. About \$500 a piece.

10 *Quest.* Do you know the Gregory street lot, what value do you put on it?

Ans. I should think from \$3500 to \$4000.

JOHN PRINGLE.

Subscribed and sworn, before me, this 28th day of September, 1867, at Jersey City.

JAMES FLEMING, *M. C.*

Adjourned to Wednesday, October 2d, 1867, at ten o'clock, before J. R. Hardenburgh, esq.

10

Complainants' Testimony.

[Filed January 22, 1868.]

Examination of witnesses on part of the complainants in the above entitled cause, taken at my office, in Montgomery street, in the city of Jersey City, county of Hudson, and state of New Jersey, in the presence of Jacob Weart, esq., counsel for complainants, and Benjamin Williamson, esq., of counsel for the defendants.

J. R. HARDENBERGH, *M. C.*

Charles H. O'Neill, of full age, of the city of Jersey City, 20 county of Hudson, and state of New Jersey, being duly sworn, on his oath deposeth and says—I am acquainted with complainants, and also defendants; I was a creditor of James McLaughlin; I put in my claim under the assignment—took the divided; the balance was discharged.

Quest. Did you attend a creditors' meeting of the creditors of James McLaughlin—if so, who called the meeting—where was it held—when was it held—and state, as near as you can, what transpired there?

Ans. I did attend the meeting of creditors; I don't know 30 who called it, unless it was James McLaughlin or his counsel; the notice I received was signed by McLaughlin, or his counsel; it was held at the office of William B. Williams, in

Hudson street, Jersey City; I don't know the date, exactly; I think it was in July, 1866; well, I assembled there with pretty much all the creditors of McLaughlin; James McLaughlin stated that he could not pay his debts, and submitted a schedule of assets, which amounted to about six or seven thousand dollars, I think, and the claims, I think, were upwards of twenty thousand; submitted that statement to the meeting for their consideration; I asked Mr. McLaughlin what became of his real estate; he said he had some property in Montgomery street; I think it was a house and lot 10 and two lots, which he valued at twelve thousand dollars; I asked him what he did with that property; he said he deeded it to his father, to indemnify him for seven thousand dollars in cash, advanced to him; and also to pay five thousand dollars to D. S. Gregory, senior, for his note advanced him for that amount; Mr. Gregory was then in Europe; I asked Mr. McLaughlin when his father loaned him that money; this seven thousand dollars he said at various times he received from him and his mother, which was taken from the savings banks; I asked him, also, if that property was 20 not worth more than twelve thousand dollars, and he said he thought it was; I submitted to the creditors that we take the property at twelve thousand dollars, and pay off the claims, which we considered would realize to the creditors at least two thousand dollars above the twelve thousand dollars, to which McLaughlin had no objections; I made an estimate of the assets, and found we could realize about ten thousand dollars; I submitted to Mr. McLaughlin a proposition that we should take his note at three months, interest added; said notes to be endorsed by his father for fifty cents 30 on the dollar, and to take his own note, without any endorser, time unlimited, for the other fifty cents, to which he agreed, provided he could get all the creditors to sign an agreement to that effect; the compromise did not go through, for the reason that all agreed to it but one creditor.

Quest. In your computation for a surplus of two thousand dollars over and above the amount of indemnity to Michael McLaughlin, did you embrace any other property, except the store and lot on Montgomery street, and the two lots and carpenter shop on Montgomery street? 40

Ans. I did not; the indemnity included not only Michael McLaughlin, but D. S. Gregory, senior.

Quest. Was or not this estimate of the value of this property fixed upon by you hastily, at the creditors' meeting, and without your having an opportunity to give it much consideration?

Ans. Yes, sir.

Quest. Upon further examination, what do you think about the ability of raising two thousand dollars, or more,
10 out of the property, over and above what it had been put in at?

Ans. To answer that question, *first*, the creditors were willing to allow the five thousand dollars due Mr. Gregory on his note; and also, after becoming satisfied of the correctness of the claim of his father—seven thousand dollars, or thereabouts—the creditors were willing to allow them as preferred creditors; my opinion is, we could have taken all of the real estate and personal property of Mr. McLaughlin, and could have realized, probably, from seventy-five to eighty
20 per cent. of the claims, after paying this twelve thousand dollars; to this arrangement, Mr. McLaughlin did not appear to have any objections.

Quest. Do I understand you to mean, then, that the difference between the fifty per cent. and the seventy-five or eighty per cent., consisted in the real value of the real estate, over and above the value for which it had been turned over to Michael McLaughlin, or in what other way do you make it up?

Ans. My opinion is, that we could have realized the amount out of the real estate, to make up the difference be-
30 tween the fifty and seventy-five or eighty per cent.

Quest. Please state what was said at that meeting, if anything, by James McLaughlin, in relation to that being a *bona fide* sale to his father, or as a security for the payment of his debt.

Ans. I think he said he sold the property to his father—deeded it to him; the creditors did not seem to question the matter, as they thought it beyond their control; he said he owed his father and Mr. Gregory, and had deeded or conveyed the property to secure the indebtedness.

40 *Quest.* Did or not James McLaughlin say or intimate, at

the creditors' meeting that he could control the sale of the property, and turn the proceeds, over and above the debt of his father and Mr. Gregory, unto them?

Ans. He stated that the creditors could have the property and realize out of it what they could, but whether through himself or his father, he did not state.

CHAS. H. O'NEILL.

Subscribed and sworn before me, at my office in Jersey City, this nineteenth day of December, A. D. 1867.

J. R. HARDENBERGH, M. C. 10

Richard C. Washburn, of full age, being duly sworn according to law, on his oath deposeseth and says—I reside at Jersey City, county of Hudson, and state of New Jersey; I am a dealer in masons' materials—brick, lime, &c.; I know the parties to this suit; I was a creditor of James McLaughlin; I attended the creditors' meeting; a notice was left at our office the latter part of July, and the meeting was, I think, from the first to the tenth of August, A. D. 1866.

Quest. Please state what transpired at the creditors' meeting, and particularly, what James McLaughlin said in relation to the disposition of his real estate. 20

Ans. Well, after we got there, he was asked to make a statement of his assets; he made a statement, saying six or seven thousand dollars in personal property; then he was asked, by Mr. Charles H. O'Neill, what he done with his real estate, and he said he had given that to his father, to secure his father for money loaned by him, and for endorsement of a note by Mr. Gregory.

Quest. Give us a statement of his indebtedness, as he stated it. 40

Ans. Well, his creditors, outside of his father and Mr. Gregory, amounted to about fourteen thousand dollars; theirs was about twelve thousand five or six hundred.

Quest. What disposition or use did McLaughlin propose to apply the real estate conveyed to his father, in settlement with his creditors?

Ans. It was suggested, by some of the creditors, that they

take some of the lots on Bergen Hill, and McLaughlin appeared to be willing to do anything.

Quest. What valuation do you put upon the lot on Gregory street?

Ans. I should judge it was worth from forty-five hundred to five thousand dollars; Mr. James McLaughlin, some time along in May, 1866, said to me he had a lot in Gregory street he wanted to get forty-five hundred dollars for; four thousand or forty-five hundred, I will not be sure which; he had
10 been offered within two hundred dollars of his price, and if he could sell it, he would pay the notes we held against him—they were past due then.

Quest. Were you acquainted with the house and store and lot on Montgomery street, second lot west of Van Vorst street, and if so, what was its value in the summer of 1866?

Ans. I should consider it worth from ten to eleven thousand dollars—would consider it cheap at ten thousand dollars.

Quest. Did you know the two lots on Montgomery street, with the carpenter shop erected thereon, and if so, what was
20 their value in the summer of 1866?

Ans. Yes; I know where they are—they were worth at that time from eight to nine thousand dollars—lots and buildings.

Quest. Please state what James McLaughlin said in relation to the disposition of his real estate, for the purpose of settling with his creditors, if he could get a compromise?

Ans. Well, there was not so much said about his real estate; there was some lots at Bergen the creditors were willing to take.

30 And witness being cross-examined, says—

I am a creditor of McLaughlin—me and Mr. Campbell; McLaughlin owes us about twenty-two hundred dollars.

RICHARD C. WASHBURN.

Subscribed and sworn, before me, this nineteenth day of December, A. D. 1866, at my office.

J. R. HARDENBERGH, M. C.

Adjourned, by consent of counsel, Jacob Weart and Benjamin Williamson, until to-morrow, Friday, at nine and a half o'clock A. M., at request of Benjamin Williamson.

December 12th, 1867.

Lewis Leavens, a witness produced on part of the complainant, being duly sworn according to law, on his oath says—I was book-keeper for Van Keuren and Van Buskirk; that I was salesman and assisted at the books; Mr. Van Buskirk had a middle letter in his name, "G," I believe—Mindert G. Van Buskirk; I think I gave you the names for 10 obtaining the judgment against James McLaughlin; I omitted putting in the "G" in Van Buskirk—it is the same person; Van Buskirk sold out his interest in the business to Van Keuren and Shultz—I think it was in the fall of 1866; I met Mr. McLaughlin in the fall of 1866; after his failure; in October, I think it was; he had a map in his hand and a bank book; he said he had been making a deposit of some funds, and had some lots on the hill which were clear, which, when sold, he would be able to pay his indebtedness, or something to that effect; I don't know that this is the exact 20 words—it is the substance of it; he intimated that he would come out all right, and pay everybody; I think this was after the meeting of the creditors in October.

Cross-examination by Benj. Williamson.

This conversation was in Jersey City, I think in Grove street; no one was with Mr. McLaughlin; I met him—he was coming down Grove street, and I was going up—on the side walk; I could not say what time of day it was—I think it was in the forenoon; I don't know which spoke first, McLaughlin or myself; I generally spoke to him when I 30 met him; we talked from three to five minutes, not longer than that; I don't know of anything that called up the conversation about his, McLaughlin's, indebtedness; I have continued to think of that conversation; I reported it to Mr. Van Keuren at the time, on the same day; I conversed with Mr. Van Keuren afterwards whenever the McLaughlin matter was talked about—at times when it was talked about—not at all times.

Re-direct.

Quest. When you met Mr. McLaughlin what was your salutation, and what did you say to him?

Ans. I don't know that I can answer that; my general custom in speaking to him is, how are you, James? and how are you getting along? that is my custom; I reported this conversation to the counsel of Mr. Van Keuren.

LEWIS LEAVENS.

Subscribed and sworn, before me, this 20th day of December, A. D. 1867, at my office, in Jersey City.

J. R. HARDENBERGH, *M. C.*

The complainants called upon the defendants for the three deeds, from James McLaughlin to Michael McLaughlin, the defendants produced them and complainants here offer them in evidence; one dated May 19th, A. D. 1866, recorded July 12th, A. D. 1866, in Liber 135, pages 474, &c.; another dated May 19th, 1866, recorded July 12th, 1866, Liber 135, page 471; and the third dated July 9th, 1866, recorded July 12th, 1866, in Liber 135, page 468; and I have marked them with 20 initials J. R. H., Dec. 20th, 1867.

Complainants produced and offered in evidence an assignment from Mindert G. Van Buskirk to William Van Keuren and Charles Schultz, of all the interest of said Van Buskirk in the partnership property, assets, evidence of indebtedness, of which said paper writing is marked *Exhibit A*, on part of complainants.

Testimony on part of complainants is declared to be closed.

The counsel for defendants request the examination be considered as adjourned from day to day, to be proceeded 30 in upon giving one day or more notice, which counsel for complainants consents to, and does not insist upon having ten days notice.

J. R. HARDENBERGH, *M. C.*

Depositions.

[Filed February 23, 1868.]

Depositions of witnesses taken before me, the undersigned, a master and examiner in chancery, of New Jersey, at my office, Jersey City, on the first day of February, A. D. 1868, at 10 o'clock A. M., in the presence of Jacob Weart, esq., counsel for complainant, and B. Williamson, esq., counsel for defendants.

J. R. HARDENBERGH, *M. C.*

Alexander Wilson, a witness produced on the part of the 10 defendant, being duly sworn according to law, deposeth and says—I reside at Bergen; am a real estate broker, and have been for about fifteen months; I know the lot number one hundred and thirty-three Montgomery street, Jersey City, where the brick house is on; property in Jersey City is a little higher than it was in eighteen hundred and sixty-six.

Quest. What value would you put on that lot in 1866?

Ans. I think seven thousand dollars, and that would be a good price at that time.

Quest. What value would you put on lot number eight 20 Gregory street, in 1866?

Ans. Worth about two thousand dollars—consider that a fair price at that time; I have examined the two lots and carpenter shop on Montgomery street.

Quest. What price would you put upon them in 1866?

Ans. I value them at five thousand five hundred dollars.

Cross-examined by Jacob Weart.

Quest. What would you consider the brick store on Montgomery street worth now?

Ans. Between seven and eight thousand dollars; the lots 30 on Gregory street are worth now in the neighborhood of twenty-five hundred hundred dollars; I consider the two lots and shop in Montgomery street worth now in the neighborhood of six thousand dollars—between fifty-five hundred and that.

Quest. Do you know of any lot in Montgomery street, east of Henderson street, that could be bought for \$4500?

Ans. No, I don't know of any that could be bought for that.

Quest. If you owned a lot on Montgomery street east of Henderson street, would you be willing to sell it for \$4500?

Ans. That would depend upon circumstances—I could not say exactly.

Re-direct.

10 I have lived in Jersey City, about thirty-one years; have not dealt in real estate until lately; I have bought and sold, myself, during all that time.

ALEXANDER WILSON.

Subscribed and sworn before me, this 1st day of February, A. D. 1868, at Jersey City.

J. R. HARDENBERGH, M. C.

William Atcheson, of full age, a witness produced on the part of the defendants, being duly sworn according to law, on his oath deposeth and says—I have resided in Jersey City
20 since eighteen hundred and forty-six; I have dealt considerably in real estate within the last eight years; I have examined the two lots and carpenter shop on Montgomery street; I would value those two lots now, at five thousand five hundred dollars cash; I don't think they would have brought over four thousand dollars in 1866; I know the lot and house number 133 Montgomery street, but have not examined it; I value that house and lot, if the building is all brick, at seven thousand dollars, and consider that a good price for it to-day; think it was worth from fifty-five hundred to six
30 thousand dollars in 1866; I know, I think, where lot number eight Gregory street is, a vacant lot; I should think that two thousand dollars would be a big figure for it now, in 1866 it would not have brought over from sixteen to eighteen hundred dollars; I know where South Eighth street is.

Quest. What is the value of lot nineteen, block two, South Eighth street?

Ans. Six hundred dollars is a big price for it to day—the

street has been improved, flagged, and &c. I filled in this lot last August, August or September. In 1866 this lot was worth from \$350 to \$400—I could buy some to-day in that street for less.

10 Cross-examination by Jacob Weart.

10 My dealing in real estate has not been very great; at the same time I have been very fortunate at what I have put my hand to.

Quest. Do you know of any sale of a lot on Montgomery street, east of Henderson, for the last five years? 10

Ans. I rather think not—for it's owned by parties who do not want to sell.

Quest. If you owned a lot on Montgomery street, east of Henderson, would you be willing to sell it for less than four thousand five hundred dollars?

Ans. I would rather take that money and put in property on Newark avenue—as I could make more money there, than on that street, Montgomery street.

Quest. Do you not think that a vacant lot anywhere on Montgomery street east of Henderson, would readily sold in 20 1866, for four thousand five hundred dollars?

Ans. I think not, sir.

Quest. This lot on Gregory street, fronts out to within a few feet of Montgomery street—if you had the Montgomery street front, do you not think the lot would readily sell for \$6000, or \$7000?

Ans. If you had it on Montgomery street it would fetch what you ask for it, but as it isn't there you must get what it will fetch; if you had a Montgomery street front it would fetch \$6000 or \$7000. 30

Quest. The three lots that you have spoken about on Montgomery street, are in the next block west—what would be the difference in value between these two blocks?

Ans. Well, I should consider there would be a material difference in the value of the property as now located.

Quest. What is the last sale of property on Montgomery street, or Newark avenue, east of Henderson street, that you are acquainted with in the last three years, and how much did it bring?

Ans. I could take you to one that sold on Newark avenue, belonged to Louis Brooks, for \$7000, this is west of Henderson street; I know of a lot sold east of Henderson street on Newark avenue, within three years, for less than \$6000, and a house on it.

Quest. Do you know what Warner & Causcallion paid for their lot, purchased about two years ago?

Ans. No, I do not know of my own knowledge what Stelle paid for his lot on Newark avenue, I could not settle
10 my mind on any figures as I have not paid any attention to it.

Quest. Has the lot on Newark avenue, which sold for \$6000 or less, anything more than a shanty on it?

Ans. Yes, it has a store, and that brings \$1000 a year; they are all shanties when you come to that. It is a two story buildings.

WILLIAM ATCHESON.

Subscribed and sworn before me, this first day of February,
A. D. 1868, at Jersey City.

J. R. HARDENBERGH, *M. C.*

20 *Alexander F. Burlew*, a witness produced on part of defendants, being duly sworn according to law, on his oath deposed and says—I have lived in Jersey City and vicinity since 1852; I am a real estate agent, and have been four years; during that time I have been buying and selling real estate for other persons.

Quest. What value do you put on the two lots and shed on Montgomery street, where the carpenter shop is?

Ans. Fifty-five hundred, I suppose you could probably get that; six thousand or sixty-five hundred dollars; there has
30 been an increase in value of property in that neighborhood within the last year or eighteen months, of about twenty per cent. or twenty-five per cent.; in 1866 I would value the house and lot number one hundred and thirty-three Montgomery street, at \$6000, and lot number eight Gregory street, in the summer of 1866, about \$1700 would be a fair price.

Cross-examination.

Quest. What do you consider the improvements worth on the two lots where the carpenter shop is?

Ans. I think five hundred dollars.

Quest. Do you think they could have been put there in 1866 for less than fifteen hundred dollars?

Ans. Yes, sir.

Quest. What would you have put them there for in 1866?

Ans. That is a question I have not estimated upon; I think I could have put them up there for one thousand dollars. 10

Quest. Your highest estimate is \$6500; deduct the buildings, one thousand dollars; take off twenty per cent. brings them down in 1866 to two thousand two hundred dollars per lot; do you believe that you could have bought a vacant lot at that time, anywhere on Montgomery street east of Henderson street, for that price?

Ans. I don't know that I could at that time; I could have bought lots for less on the block above, near Grove street—near the middle of the block.

Quest. Who offered lots for sale in 1866 on next block 20 above, and what price were they offered for?

Ans. Mr. Erwin bought a lot adjoining Mr. Clark's building for \$2000; he came to me and told me to sell it again for him for \$2800; he stated that was what he gave for the lot—that is all I know about it.

Quest. Was it a full lot?

Ans. Yes; twenty-five by one hundred feet.

Quest. How long ago was this?

Ans. I think it will be two years this June or July, as near as I can recollect. 30

Quest. Do you not think there is a great difference between lots where Mr. Erwin's are located, and those of Mr. McLaughlin's?

Ans. Yes, sir; there is a difference in the value.

Quest. Do you believe that you could have purchased a lot on Montgomery street, east of Henderson street, any time within the last two years, for less than \$4000 or \$4500?

Ans. I think I could if any was offered for sale—if anybody was willing to sell.

Quest. What would you consider it would cost in 1866 to 40

build an ordinary brick building, twenty-five feet wide, thirty-five or forty feet deep, consisting of a cellar, store, two stories above the store finished fit for families to live in, built of brick?

Ans. I have never estimated on a building of that kind; I can give an opinion; I think \$4000 might put it there—some where in that neighborhood; I have not been through this building to get at its value; I have been in the store, but not up stairs.

10 *Quest.* If the Gregory street lot fronted out on Montgomery street, what do you consider it worth?

Ans. I should think \$4000 a fair valuation.

Quest. Is this little gore on Montgomery street, between McLaughlin's lot and the street, of any value by itself?

Ans. Yes, sir; it is of value by itself, very important value.

Re-direct.

The map I have been looking at, shows the position of the lot as it is on the ground, and the little gore I have spoken of.

Map offered in evidence, and marked *Exhibit No. 1*, on
20 part of the defendants.

A. F. BURLEW.

Subscribed and sworn, before me, this first day of February, A. D. 1868, at Jersey City.

J. R. HARDENBERGH, M. C.

Henry P. Post, a witness produced on the part of the defendants, being duly sworn according to law, on his oath deposeth and says—I live in South Bergen; I am a builder; I have dealt considerably in real estate in Lexington avenue; I have bought and sold thirty-one lots in Lexington, Clenden-
30 dening, and Oxford avenues.

Witness being shown map, says—it shows the avenue I have spoken of. Map offered in evidence, and marked *Exhibit No. 2*, on part of defendants.

Lots on Lexington avenue are worth \$400 per lot now, and Clendening avenue \$300, at this present time—on the south side of the street; I did own four lots on Lexington avenue near seventy-six and seventy-eight; I sold them one

year ago last July for three hundred and twenty-five dollars a lot; I sold lots on Clendening avenue for two hundred and fifty dollars each; I bought six lots on Lexington avenue in the first place, within the last two years—I paid two hundred and fifty dollars a lot, cash; I bought four on Clendening avenue, for seven hundred and fifty dollars; I bought four more lots for myself; then I bought eight lots for my brother; the highest price I paid for any of those lots was two hundred and fifty dollars; these avenues are beyond Mill creek, in the town of Bergen, past the old Bergen church, south of the plank road on Bergen Hill, west of the old main road to Bergen Point; the lowest I bought lots on Lexington avenue was two hundred and thirty-five dollars, and on Clendening avenue, the lowest I bought for was one hundred and eighty-seven and half dollars; lots on Jackson avenue, in 1866, I would not be willing to give over \$175; I think that would be a big price—the ground is wet; I know there are lots there fenced in; I have been told they belong to Mr. McLaughlin.

Witness being shown map with Clendening street and Jackson street on it, which is marked *Exhibit No. 3*, on part of defendants, is asked, what are the value of lots No. 7 and 9, on Clendening street, in 1866? says, they were worth two hundred to two hundred and twenty-five dollars; I did not know lots to sell at that price in that neighborhood; I have not known any sale of lots in that neighborhood at that price; I have bought lots on Clendening, one hundred feet from Passaic street; three lots last spring, last May, for two hundred dollars each, cash.

Cross-examined.

Quest. Are not these last lots on lower ground than Mr. McLaughlin's?

Ans. No, they are not; it is dryer ground.

Quest. Are not McLaughlin's lots farther up on the side of the hill, and yours down in the hollow?

Ans. They are both down in the hollow; McLaughlin's are down in the swamp.

Quest. Are not McLaughlin's lots considerably elevated above yours on the hill?

Ans. Yes; they are higher than the last ones I bought.

Quest. How much farther are they up on the slope of the hill than the last lots you bought—I mean the elevation?

Ans. I can't tell; the ground descends pretty rapidly there.

Quest. Are not the lots near Bergen street of greater value than those near Passaic street?

Ans. Of course they are—they are worth a great deal more.

HENRY P. POST.

Subscribed and sworn before me, this 1st day of February,
10 A. D. 1868, at Jersey City.

J. R. HARDENBERGH, *M. C.*

William Mitchell, a witness produced on part of the defendants, being duly sworn according to law, on his oath deposes and says—I bought lots in Lexington avenue, in the latter part of January, 1866; four in number—No's 77, 75, 73, and 71, on block No. 1; I gave three hundred dollars each; I paid for them in trade and painting, except two hundred and twelve dollars I gave in cash; in my opinion, lots in Lexington avenue are worth more than lots 20 on Jackson avenue.

Cross-examination.

Quest. After you bought in January, in 1866, was there not a rapid rise in property on Lexington avenue during the next nine months?

Ans. No; I had a bill on mine for sale, but no one wanted them—could not sell them; I ask three hundred and fifty dollars each.

Re-direct.

I offered the four lots for \$1350; I don't remember of 30 offering them for \$300 a lot—I may.

WM. MITCHELL.

Subscribed and sworn before me, this first day of February, A. D. 1868, at Jersey City.

J. R. HARDENBERGH, *M. C.*

Patrick Mannion, a witness produced on part of the defendants, being duly sworn according to law, on his oath deposes and says—I am the assessor of the Second ward of Jersey City; the lots and carpenter shop and No. 8 Gregory street are in the Second ward; I think the two lots and carpenter shop in Gregory street were worth, in 1866, between five thousand and five thousand five hundred; the house and lot No. 133 Montgomery street, in 1866, was worth about five or six thousand dollars; the street has been greatly improved since—paved with Belgian pavement; the vacant lot No. 8 Gregory street, in 1866, was worth between fifteen and eighteen hundred dollars; that would be a good price for it. 10

Cross-examined.

The value I put on it is a fair valuation, to the best of my judgment.

Quest. Do you put on an assessor's valuation, or selling valuation?

Ans. What I consider a cash valuation, at that time.

Quest. Have you bought and sold much real estate? 20

Ans. Not a great deal; I have bought some and owned some.

Quest. Have any improvements been put upon Montgomery street within the last eighteen months?

Ans. I think they paved that street within that time with Belgian pavement.

PATRICK MANNION.

Subscribed and sworn before me, this first day of February, A. D. 1868, at Jersey City.

J. R. HARDENBERGH, M. C. 30

Thomas Gafney, a witness produced on the part of the defendants, being duly sworn according to law, on his oath deposes and says—[Witness being shown map marked *Exhibit No. 1*, on part of defendants, says]—I know the Gregory street lot; think two thousand dollars a very fair price for it; the two lots and carpenter shop on Montgomery street, in 1866, I should say three thousand dollars a lot a

fair price for them, without the building; if I should purchase the lots, the building would be of very little value to me.

Cross-examined.

Quest. What is your business?

Ans. Livery stable.

Quest. Have you ever dealt in real estate?

Ans. Yes, to the amount of \$20,000—may be more than that.

Quest. Have you ever dealt any in real estate in Jersey City—in Montgomery, east of Henderson street.

Ans. Yes, sir.

Quest. Have you dealt any in real estate in Montgomery street, since it was opened?

Ans. I have not dealt in real estate since the two portions of Montgomery street were connected by opening from Warren to Van Vorst.

THOS. GAFNEY.

Subscribed and sworn before me, this first day of February, A. D. 1868, at Jersey City.

J. R. HARDENBERGH, M. C.

20 *John B. Drayton*, a witness produced on part of defendants, being duly sworn according to law, on his oath deposes and says—[Witness being shown *Exhibit No. 1*, is asked, are you part owner of this gore on Montgomery street? says]—Yes, I am interested—belongs to the estate of my father; the lot of Mr. McLaughlin would be of greater value if it extended through to Montgomery street; the cash value of that lot, in 1866, was \$1800 to \$2000; the two lots on Montgomery street, without buildings, in 1866, was worth about two thousand dollars a lot.

30 Cross-examination.

Quest. What would that lot on Gregory street be worth, with a Montgomery street front?

Ans. About four thousand five hundred dollars.

Quest. Do you know of any lot on Montgomery street,

east of Henderson, that could have been bought, in 1866, or since, for \$4000?

Ans. I do not; I do not know of any being offered for sale.

Quest. In your opinion, could you have bought a lot for that price during that time?

Ans. I don't know, from the fact of not knowing of any for sale.

Quest. Are you a real estate dealer?

Ans. No, sir.

JOHN B. DRAYTON.

10

Subscribed and sworn before me, this first day of February, A. D. 1868.

J. R. HARDENBERGH, *M. C.*

Jersey City, February 24th, 1868. Examination resumed.

Jonathan Fitch Mallory, a witness produced on part of the defendant, being duly sworn according to law, on his oath deposeth and says—James McLaughlin made an assignment to me for the benefit of his creditors. Witness being shown a paper writing, which purports to be deed of assignment, and marked *Exhibit 4* on part of defendants, says—that is the deed of assignment; I have executed that assignment; I paid $66\frac{1}{4}$ per cent., about, to the creditors; the claims put in were about sixty-five hundred dollars.

J. FITCH MALLORY.

Subscribed and sworn before me, this 24th, day of _____ A. D. 1868, at Jersey City.

J. R. HARDENBERGH, *M. C.*

Jersey City, February 25th, 1868. Examination resumed.

Edward W. Kingsland, a witness produced on part of the 30 defendants, being duly sworn according to law, on his oath deposes and says—I am secretary and treasurer of The Provident Institutions for Saving of Jersey City; Michael McLaughlin borrowed from our institution; the last loan he got from us was for five thousand dollars; it was in October,

A. D. eighteen hundred and sixty-six; he gave the institution as security a bond and mortgage on property corner of Henderson and York streets, Jersey City. [Counsel for complainant objects to the above testimony, as the same is irrelevant.]

E. W. KINGSLAND.

Subscribed and sworn before me, this 25th, day of February, A. D. 1868.

10

J. R. HARDENBERGH, *M. C.*

James McLaughlin, the defendant, being duly sworn according to law, on his oath deposeseth and says—

1 *Quest.* Did you become embarrassed in your circumstances, and when?

Ans. I did, some time in May, 1866.

2 *Quest.* What was the occasion of your embarrassment?

Ans. Occasioned by debt contracted for materials, principally material—borrowed money—the materials was used in
20 building sewers upon contracts from the Water Commissioners of Jersey City; the money was for the same purpose; used for the same purpose, partially; the balance of it was money I had borrowed to assist me in my business prior to taking those contracts.

3 *Quest.* What was the amount of your contract work?

Ans. In the neighborhood of eighty thousand dollars, from the water commissioners.

4 *Quest.* Were you successful or otherwise in carrying out your contract?

30 *Ans.* I was successful in carrying out the contract with water commissioners?

5 *Quest.* What do you mean by being successful?

Ans. I mean that I finished my work according to the stipulations of the contract.

6 *Quest.* Did you make or lose money by your contract?

Ans. I lost a large amount of money.

7 *Quest.* What was the reason of your loss?

Ans. The raise of material and labor, disappointment, and delays caused by the officers of the board of water commis-
40 sioners.

8 *Quest.* Were you obliged to borrow money for the purpose of enabling you to carry out your contract?

Ans. I was, sir.

9 *Quest.* At the time you entered into the contract, were you indebted to your father?

Ans. I was.

10 *Quest.* For what, and how much?

Ans. For borrowed money, between three and four thousand dollars, and the consideration of a lot, being one thousand dollars, being part of that sum? 10

11 *Quest.* Did you give security for the performance of your contract, to the commissioners?

Ans. Yes, sir; they were F. Francis Storekin, sen., Wm. O. Davey, James McLaughlin; of the firm of R. & J. McLaughlin, tinsmiths.

12 *Quest.* How much did you lose by the contract?

Ans. I should think in the neighborhood of twenty thousand dollars.

13 *Quest.* How old a man is your father?

Ans. About sixty years of age. 20

14 *Quest.* Did you borrow any of him for the purpose of enabling you to carry out your contract?

Ans. Yes, sir.

15 *Quest.* On the 19th day of May, A. D. 1866, how much did you owe your father?

Ans. About seven thousand six hundred dollars, and some interest.

16 *Quest.* When you made the conveyances to him on that day, what encumbrances were there on the property embraced in the two deeds? 30

Ans. Between five and six thousand dollars.

17 *Quest.* Besides the mortgages on the property, what other encumbrances were there upon it?

Ans. City taxes, back taxes, water rents, and assessment for the connecting of the two parts of Montgomery street; I think another assessment for grading the street—I am not positive.

18 *Quest.* At that time, what estimate did you make of the value of the property? [Objected to, as we are not bound by his estimate.] 40

Ans. In the neighborhood of twelve thousand dollars—I cannot say positive.

19 *Quest.* After those conveyances, did you borrow any money of your father? [Objected to as not responsive to the bill.]

Ans. I did, sir.

20 *Quest.* When you made the conveyance to your father, of the 9th day of July, A. D. 1866, did you make any agreement with him?

10 *Ans.* I did, sir; I agreed with him, if he would pay me the sum of five thousand dollars, I would make a deed of that property to him, the deeds made previous to that, dated May 19th, to be considered final.

21 *Quest.* Did he advance you the further sum of five thousand dollars?

Ans. He did.

22 *Quest.* Where did he get that money from?

Ans. Jersey City Savings Institution.

23 *Quest.* Did you have a bond and mortgage of Adeline
20 and George Clark, for \$2400?

Ans. I did, sir.

24 *Quest.* What were there due on that bond and mortgage when you assigned it to your father?

Ans. Twenty-four hundred dollars.

25 *Quest.* What did your father do with that bond and mortgage?

Ans. He agreed with me, at the time the assignment was made, to dispose of the mortgage; let me have the proceeds for the purpose of extricating me from my difficulty; he realized the money from the mortgage; he sold it to Nelson
30 S. Hibblee, of Jersey City.

26 *Quest.* When he realized the money, did he pay it to you?

Ans. He did, sir.

27 *Quest.* Do you remember of ever having said to any person or persons, that you executed the conveyances to your father, to secure endorsements made for you by Dudley S. Gregory?

Ans. No, sir.

40 28 *Quest.* Do you remember of stating the fact, in Mr.

Williams' office, in the presence of your creditors, that Dud-
S. Gregory had endorsed for you to the amount of five thou-
sand dollars?

Ans. I do, sir.

29 *Quest.* At that same time, you remember of having
stated the fact, that you had made these conveyances to your
father, for money advanced by him?

Ans. Yes, sir.

30 *Quest.* Did your father, in any way, ever assume or
agree with you, to assume the debt due by you to Mr. Gre- 10
gory?

Ans. He did not.

31 *Quest.* Did you ever ask him to do it?

Ans. I did not.

32 *Quest.* Did you ever have any conversation with your
father about the debt due to Mr. Gregory at the time of the
conveyances, or any negotiation about, or in any conversation
between you, in reference to the conveyances?

Ans. No, sir.

33 *Quest.* Did you make the conveyances to your father 20
for any other purpose, or upon any other consideration, than
those expressed in your answer? [Objected to as leading.]

Ans. I did not, sir.

Cross-examination by Jacob Weart.

34 *Quest.* How much did you receive from the water com-
missioners for the construction of the sewers?

Ans. I don't know, sir.

35 *Quest.* How much money did you expend in the con-
struction of the sewers?

Ans. I never could tell how much, sir.

30

36 *Quest.* How do you know how much you lost or made
on the contracts?

Ans. I judge from the state of my finances at the time of
the commencement; the property I was compelled to dis-
pose of to realize money for construction of the sewers.

37 *Quest.* Did you keep any set of books which would show
the state of your accounts?

Ans. No, sir.

38 *Quest.* While you were constructing these sewers did you lose money in any other way or manner?

Ans. I think I did, sir.

39 *Quest.* Please state how, and in what amounts?

Ans. Could not state, sir.

40 *Quest.* Question thirty-nine repeated.

Ans. I can't state, sir.

41 *Quest.* If you know how you lost your money, please state it?

10 *Ans.* I can't state how I lost it.

42 *Quest.* Did you lose any money at play or gaming?

Ans. Yes, sir.

43 *Quest.* What did you with the money received from your father when the mortgage given by George Clark and wife was sold?

Ans. I used part of it to pay some little debts of honor, and part of it for my own purposes.

44 *Quest.* Did you use any of it to pay your creditors who furnished labor and materials for the construction of sewers?

20 *Ans.* I think I did, sir.

45 *Quest.* Who did you pay, and how much?

Ans. I don't remember.

46 *Quest.* At the time you delivered the deeds to your father, and he agreed to grant you the further sum of five thousand dollars, was that agreement verbal or in writing?

Ans. Verbal, sir.

47 *Quest.* When did he agree to advance it, as to time?

Ans. As soon as he would be able to raise it on bond and mortgage, on property of his own.

30 48 *Quest.* At the time of the conveyance, what did you tell your father that you wanted to do with the money?

Ans. I wanted to use it for the purpose of helping me out of my trouble.

49 *Quest.* Did you use it for that purpose?

Ans. No, sir, I don't think I did.

50 *Quest.* Have you that money now?

Ans. No, sir.

51 *Quest.* What did you do with it?

Ans. Spent it.

40 52 *Quest.* How did you spend it?

Ans. Can't tell, sir.

53 *Quest.* Did you use any of it to pay your creditors who sold you materials for the construction of sewers?

Ans. A small portion.

54 *Quest.* Who did you pay, and how much?

Ans. Couldn't tell.

55 *Quest.* Can you name a single person?

Ans. Yes, sir—Thomas S. Shaw.

56 *Quest.* How much did you pay him?

Ans. Don't know.

57 *Quest.* Who else did you pay?

10

Ans. I disremember, now.

58 *Quest.* When did your father pay this five thousand dollars to you?

Ans. I think it was on the eighth of October, A. D. 1866.

59 *Quest.* How did he make the payment?

Ans. He gave me a check for the amount that he received from the savings institution.

60 *Quest.* Was that amount large enough to pay the complainants' claims?

Ans. Yes, sir.

20

61 *Quest.* Why did you not pay it?

Ans. I intended, at the time, to use it for the purpose of settling with my creditors.

62 *Quest.* Did you use it for that purpose?

Ans. No, sir.

63 *Quest.* Did you return any of that money to your father?

Ans. No, sir.

64 *Quest.* Can you give us the amounts and times on the loans by your father to you prior to the execution of the deeds?

30

Ans. I have not got the dates of the different amounts with me.

65 *Quest.* State the manner in which the sum of seven thousand six hundred dollars, was made up by being the amount of your alleged indebtedness to your father, at the time of the execution of the deeds?

Ans. Made up of various sums, at times when I wanted money; I used to go to my father and mother and get what I required, or what they had; sometimes they did not have what I wanted, and would give me all they had.

40

66 *Quest.* Can you give us any idea of the amounts and times, when this \$7600 was loaned?

Ans. Loaned from time to time, between October, 1863, and May, 1866.

67 *Quest.* Did you give them any note, bond, mortgage, or other evidence?

Ans. No, sir.

68 *Quest.* Did you and your father, to your knowledge, keep a book account of these loans?

10 *Ans.* Any account of them, that was kept, was kept by my mother; my father did not know so much about them.

69 *Quest.* Are you the only child of your father and mother?

Ans. Yes, sir—the only living child.

70 *Quest.* Do you all live together, as one family?

Ans. Yes, sir; I live at home.

71 *Quest.* What does the store on Montgomery street, second door west of Van Vorst street, let for, last year and this year?

20 *Ans.* Before the first of last May, I think it let for \$400—am not positive; this year, \$560.

72 *Quest.* What did the whole building let for, including the store, during those periods?

Ans. I don't know what rents were realized from it last year, previous to May; don't know how much this year.

73 *Quest.* Did you not state to complainants' counsel, that that building was now let for \$1100 per year?

Ans. I do not know that I stated positively; it might have been about that amount, for I do not know how much
30 the upper part is let for.

74 *Quest.* Who collects the rents?

Ans. Father collects the upper part, and I do of the store, by request of father, because he disagreed with the tenant, and wished me to collect it.

75 *Quest.* How much of the rear of the lot on Gregory street is rented?

Ans. Don't know, sir.

76 *Quest.* Is twenty feet let, in depth?

Ans. I think there is more than twenty feet—I don't know
40 —I have nothing to do with it.

77 *Quest.* How much does the rear let for?

Ans. I don't know.

78 *Quest.* Did your father, at the time he let you have the money, receive from the Clark mortgage sold, and the five thousand dollars, know that you were indebted to the complainants and other persons?

Ans. He knew that I was embarrassed, and required money to help me out.

79 *Quest.* Did he know that you were indebted to William Van Keuren & Co., for this debt? 10

Ans. I don't know, sir, that he did.

80 *Quest.* Had you been sued by Van Keuren before you got the five thousand dollars?

Ans. Think I had, sir.

81 *Quest.* How was the summons served upon you?

Ans. No recollection, sir.

82 *Quest.* Was it served personally, or at your father's house?

Ans. I could not say.

Re-direct. 20

83 *Quest.* Did your father lend you this money for the purpose of enabling you to pay the debts which you had contracted in carrying out your contract with the water commissioners?

Ans. I suppose that was his intention—I do not know.

84 *Quest.* For what purpose did you tell him you wanted the money?

Ans. I told him I wanted it for the purpose of assisting me in paying my debts and settling my business, so that I could go to work and do something, as he had shown a disposition and inclination from the commencement of my embarrassment to assist me in any manner that I required of him. 30

85 *Quest.* Are you a single man?

Ans. I am; I am thirty-six years old, twenty-sixth of next May.

JAMES McLAUGHLIN.

Subscribed and sworn before me, this 25th day of February, A. D. 1868, at Jersey City.

J. R. HARDENBERGH, M. C. 40

Opinion.

The complainants bring this suit to have conveyances made by the defendant, James McLaughlin, to his father, the defendant, Michael McLaughlin, declared void as against a judgment held by them against James McLaughlin.

The judgment of the complainants was entered on the twenty-third day of August, 1866, in the Circuit Court of the county of Hudson, the county in which the lands in question lie, for three thousand two hundred and eighty-
10 eight dollars. An execution against lands and goods was issued upon it, to which a return was made that no goods or lands of the defendant could be found.

The defendant, James McLaughlin, had, by three deeds, conveyed all his real estate to his father. Two of these deeds were dated and acknowledged on the nineteenth day of May, 1866; the third was dated on the ninth of July, and all three were recorded on the twelfth day of July, 1866. The consideration stated in the first deed was eleven thousand one hundred dollars, and the lands were subject to three
20 mortgages, amounting to four thousand two hundred and fifty dollars. The consideration in the second deed was three thousand two hundred dollars, and the lands were subject to no mortgage. The consideration in the third deed was one thousand eight hundred dollars, and the lands were subject to a mortgage of one thousand five hundred and seventy-two dollars. The complainants allege that these deeds were given by way of mortgage to secure to Michael McLaughlin a debt of about seven thousand dollars, which
30 James owed his father, and to indemnify his father from a note of five thousand dollars which D. S. Gregory had endorsed for James as surety, and for which Michael McLaughlin has become responsible; and that they were made in the form of absolute deeds to defraud the complainants and his other creditors; and they ask to have them set aside as against their debt in such a manner that they may be paid by the sale of these lands, after first paying out of the proceeds the amount really due to Michael McLaughlin, and

the amount for which he was liable on his assumption of the note endorsed by Gregory.

The defendants, by their answer, admit that the lands in the first two deeds were conveyed only to secure to the father seven thousand six hundred and eight dollars, due to him from his son, and deny that they were conveyed for any other purpose, or to indemnify Dudley S. Gregory, or any one else, for endorsements or otherwise. But they answer that on the ninth of July, a new agreement was made by which the son agreed to convey to the father another lot of land, and to assign to him a bond and mortgage for two thousand four hundred dollars, and to give up the right to redeem the lands before conveyed as security. And in consideration of this the father agreed to pay the son five thousand dollars, and to negotiate for him a sale of the bond and mortgage. That thereupon, the son conveyed to the father the lot described in the third deed, and assigned to him the bond and mortgage, and the deeds were recorded as absolute deeds on the twelfth of July; and the father on his part on the eighth of October, paid to the son the five thousand dollars, and one thousand eight hundred dollars, for which he had sold the bond and mortgage.

James McLaughlin, on the twenty-second day of August, 1866, the day before that on which the judgment was entered, made a general assignment for the equal benefit of his creditors. The five thousand dollars, and one thousand eight hundred dollars, due from the father to the son, were not claimed by or paid to the general assignee, but were paid as above stated nearly two months after the assignment by the father to the son, who used no part to pay his legal debts, but squandered them away.

It is satisfactorily shown that the son owed the father seven thousand six hundred and eight dollars; it was just to secure to him that amount, and the conveyances, so far as they are security for that sum, are not seriously disputed. In fact, the complainants supposed, and stated in their bill, that these conveyances were also security for five thousand dollars, beyond that amount, for which they supposed the father had become liable to Mr. Gregory, but this was denied by the answer, and disapproved by the evidence of James McLaughlin.

The complainants contend, that the property was conveyed to the father at prices far below its real value; that this was done to defraud them and other creditors of the son, and whether done for that purpose or not, it did, in fact, defraud them, and defeat the recovery of their debt.

The defendants contend, that the property was not worth more than eighteen thousand or nineteen thousand dollars; and that the debt to the father, with five thousand eight hundred and twenty-two dollars of encumbrances, and the
10 five thousand dollars paid in cash, being eighteen thousand four hundred and fifty dollars, was the fair value. The complainants, on the other hand, claim, that the property was worth thirty thousand dollars, and that the parol agreement of the ninth, offering to make these deeds absolute, and to record them as such, was made to defraud creditors so as to enable the father to hold the lands free from the operation of the judgment and assignment, and to hold the price for the use of the son, and pay it over to him.

There is much conflict between the witnesses as to the
20 value of the land; those of the complainants place it at about thirty thousand dollars; those of the defendants at eighteen thousand or nineteen thousand dollars. I have no doubt but that some of the complainants' witnesses place the value too high, and as little doubt but that those of the defendants place it too low. It would be mere arbitrary determination on my part to fix it at twenty-five thousand dollars, or any definite sum, as a mean between the witnesses; but I am satisfied, that the lands subject to the encumbrances were worth more than the eighteen thousand four hun-
30 dred and fifty dollars by a considerable amount—at least, equal to the claim of these complainants.

The circumstances of the case are such that it is impossible to avoid the conviction, that the father knew of the situation of the son under which this transfer was made and the money paid him. The son was an only child, unmarried, and lived with his father and mother, by both of whom the amount of his debt to his father was advanced in small sums at different times, for which no notes were given, and of which no account appears to have been kept; the parents
40 appear to have advanced whatever the son asked. James

testifies that his father knew of his embarrassments, but does not know whether he knew of the judgment of the complainants or the pendency of their suit, or where the summons was served on him, and, in general, manifests or pretends an ignorance about his own concerns that is surprising, and must shake all confidence in the accuracy of his memory, or the truthfulness of his evidence. The father has not been sworn; he might, perhaps, have recollected the facts, and testified to them in a manner which would have commanded belief. As the case stands, it is impossible not to believe that the father, on the ninth of July, knew of the claim on which the complainants' judgment was obtained, and, perhaps, of the pendency of the suit; that he knew of the making of the assignment and of the entry of the judgment at or soon after their respective dates; that with this knowledge, he took the conveyance of the property and retained the price in his hands for the use of his son, knowing that this would defeat the claims of creditors, and enable his son to delay them and put them at defiance; and although his object may not have been directly to defraud the creditors, he permitted himself to be made a tool for that purpose, under circumstances which should have opened his eyes to his true position. I feel compelled to conclude that, while the transaction of May was for the honest purpose of securing his father a fair debt, that of the ninth of July was done by James McLaughlin to delay and defraud his creditors, under circumstances that must affect his father with knowledge of his object, and its effect upon his creditors. 20

But if the circumstances of this case did not show sufficient to substantiate as to Michael McLaughlin's fraud in the purchase as against creditors, yet the the two deeds of May nineteenth cannot have had any effect beyond that for which they were made and delivered, as admitted in the answer; that is, as security for the debt due from James to his father, of seven thousand six hundred and eight dollars. The bill charges, and the answer, in response, expressly says, that "the said conveyances were made to secure the said Michael what the said James owed him;" and denies "that the said conveyances were made upon any other consideration, or for any other purpose, intent, or object." And it 30 40

states, that on the ninth of July, an agreement was made, that the deeds should become absolute, and that Michael should pay James five thousand dollars, which was not paid until the eighth of October ensuing.

From this it is clear that these deeds were delivered by way of security only, and were nothing but mortgages. It is well settled that a deed, absolute on its face, given to secure the payment of money is only a mortgage. The act to register mortgages expressly declares that where it appears
10 by writing that a deed, absolute on its face, was intended by way of mortgage, it shall be considered as a mortgage, and registered as such. And in this case these two deeds must be regarded as mortgages, and subject to the rules applying to mortgages, which are so by the terms of the instruments themselves. James McLaughlin had, until the ninth of July, the right to redeem his lands by paying off these mortgages, he could give subsequent mortgages so as to bind the property, and judgments against him would be a lien upon
20 his estate in the lands; that estate was an equity of redemption. The question then comes up, whether the parol agreement made on that day, that these deeds should be absolute, and that he should be paid five thousand dollars as the consideration of that agreement, would be sufficient to release the equity of redemption and relieve the land from the lien of the judgment of the complainants, entered between the agreement and the payment of the money.

The rule in equity is, "once a mortgage always a mortgage," and an instrument that by its own provisions, or an agreement made at its execution, conveys property as security for a debt, cannot be converted into an absolute deed
30 except by such means as would have been adequate to convey the absolute estate in the first instance. And besides this wise and well settled doctrine of the equity courts, the statute of frauds would prevent a clear and valid legal estate, such as the equity of redemption, from being conveyed or released, except by writing. And if there is any case that calls more than another upon the courts to insist upon the salutary provisions of this useful statute being enforced, it is the case of the release of an equity of redemption.

40 In the case before the court, there was an equity of re-

demption worth at least five thousand dollars, and I have no doubt double that sum ; after a judgment was obtained that would be a lien upon it, a payment was made to the judgment debtor, said to be by virtue of a parol agreement made before the judgment, by which the land was released from the judgment. In this case the agreement is proved only by the oath of the debtor, for as to this the answer is not responsive. And this witness, judging from his conduct as disclosed in the cause, and the residue of his own testimony, is one upon whom little reliance can be placed. I fear a doctrine that permitted this would open a door for more frauds and perjuries than have been shut out by the other provisions of that statute.

In a case like this, where the grantee of the land has a *bona fide* claim for a large amount which the conveyance was honestly made to secure, and the whole fraud is in the subsequent transaction, the grantor will be allowed to retain his priority to the amount of his debt, and the property will be sold by order of the court to pay him, in the first place, the amount of his claim, and next, the complainants the amount due on their judgment, with interest and costs. This proceeding is based upon the principle and practice established by this court in the cases of *Beekman v. Montgomery*, 1 *McCarter* 106 ; *Smith v. Vreeland*, 1 *C. E. Green* 198 ; *Bedford v. Crane*, 1 *C. E. Green* 265 ; and also in the courts of New York, *Boyd v. Dunlap*, 1 *J. C. R.* 478.

Interlocutory Decree.

[Filed June 25, 1868.]

This cause coming on to be heard and debated in the presence of Jacob Weart, of counsel with the complainants, and of Benjamin Williamson, of counsel with the defendants, in the Term of February, in the year of our Lord one thousand eight hundred and sixty-eight, before his honor the chancellor, whereupon, and upon reading the pleadings and proofs in this cause, and the chancellor having taken time to advise thereon until this day, and now due examination

of the said pleadings and proofs being given, and due deliberation being thereupon had—it is declared, that the said two deeds, dated May nineteenth, eighteen hundred and sixty-six, and one dated July ninth, eighteen hundred and sixty-six, all made by James McLaughlin to Michael McLaughlin, are securities to secure to Michael McLaughlin the sums of money due from James McLaughlin to the said Michael McLaughlin, prior to the nineteenth day of May, eighteen hundred and sixty-six, and said deeds appearing to be absolute upon their face, are declared to be mortgages for the security of money. It is therefore, on this twenty-fifth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, by his Honor Abraham O. Zabriskie, Chancellor of the state of New Jersey, ordered, adjudged, and decreed, and the said chancellor, by virtue of the power and authority of this court, doth order, adjudge, and decree, that the said three deeds above recited from James McLaughlin to Michael McLaughlin, two dated May nineteenth, eighteen hundred and sixty-six, and one dated July ninth, eighteen hundred and sixty-six, and all recorded in the clerk's office of Hudson county, on the twelfth day of July, eighteen hundred and sixty-six, be declared to be securities for the purpose of securing to Michael McLaughlin the amount due to him from James McLaughlin on the nineteenth day of May, eighteen hundred sixty-six, and that they be declared mortgages for that purpose, and for every other purpose, that they be declared fraudulent and void as against the complainants, who became judgment creditors of the said James McLaughlin, on the twenty-third day of August, eighteen hundred and sixty-eight, to the amount of three thousand two hundred and sixty-one dollars and eighty-seven cents, for damages, and twenty-six dollars and twenty-six cents, costs, with the interest from the date of the judgment, which amount is decreed to be a lien upon the real estate described in said three deeds, next in order of priority to the claim of the said Michael McLaughlin. And it is ordered and decreed, that the complainants are entitled to have the premises conveyed by said three deeds, and particularly described in the complainants' bill, sold, and that out of the proceeds of sale, the said Michael McLaughlin is entitled to have the sum of seven

thousand six hundred dollars, the debt due to him from James McLaughlin, on the nineteenth day of May, eighteen hundred and sixty-six, first paid and satisfied, and that out of the surplus the complainants are entitled to have the amount of their judgment, with costs and interest, paid; and the said Michael McLaughlin, being in possession of the land, and receiving the rents, issues, and profits, is liable to account for the same. It is ordered that it be referred to Thomas W. James, esquire, one of the masters of this court, to take an account of the amount due from James McLaughlin to Michael McLaughlin, on the nineteenth day of May, eighteen hundred and sixty-six, to take an account of the rents, issues, and profits received by Michael McLaughlin from the premises in question, since the twelfth day of July, eighteen hundred and sixty-six, with which amount the said Michael McLaughlin is to be charged; and to take an account of the amounts paid by Michael McLaughlin for necessary repairs, insurance, water rents, taxes, or assessments on the premises, and interest paid upon the mortgages upon the premises, for which said Michael McLaughlin is to have credit, and after allowing interest to said Michael McLaughlin on his claim against James McLaughlin, from the nineteenth day of May, eighteen hundred and sixty-six, to report to this court the balance due to Michael McLaughlin after the account shall have been adjusted. And to calculate the interest upon the judgment and costs of the complainants, and report the whole amount due upon said judgment at this time, according to said calculation. And until the coming in of the master's report all further equity and directions are reserved. And that this decree be entered as of the twentieth day of May, in the year of our Lord one thousand eight hundred and sixty-eight.

A. O. ZABRISKIE, C.

Appeal.

[Filed July 3, 1868.]

IN CHANCERY OF NEW JERSEY.

Between

William Van Keuren and Charles
Schultz,

Complainants,

and

James McLaughlin, and Michael Mc-
Laughlin, and Catharine his wife,
Defendants.} *Appeal.*

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The complainants hereby appeal from so much of the final decree in the above stated cause, as declares the deeds made by James McLaughlin to Michael McLaughlin, dated May 19th, 1866, and July 9th, 1866, to be mortgages only for the security of money, and for every other purpose fraudulent and void, as against the said complainants.

And that the said deeds are securities only to secure to Michael McLaughlin the amount due to him from the said James, on the 19th of May, 1866, and for every other purpose fraudulent and void.

And that the complainants' judgment is a lien, having priority over the deed made and executed by the said James to the said Michael, and dated July 12th, 1866.

And that the complainants are entitled to an account.

And so much of said decree as declares that the same shall be entered as of the 20th day of May, A. D. 1868, to the Court of Errors and Appeals.

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B. WILLIAMSON,
*Solicitor.*B. WILLIAMSON,
Counsel.

I consider there is good cause for appeal in the above cause.

B. WILLIAMSON,
Of counsel with complainants.

July 3, 1868.

Appeal

(1841-1842)

In Chancery on New Year's

Between
The Earl of Lincoln and Charles
Complainants

And
The Earl of Lincoln and Charles
Defendants

The complainants pray that they may be restored to the possession of the lands and tenements therein mentioned in the bill and that they may be granted such other relief as the court shall think fit to give. And they pray that the costs of the bill may be awarded to them. And they pray that the bill may be decreed to be good and valid in all respects. And they pray that the bill may be decreed to be good and valid in all respects. And they pray that the bill may be decreed to be good and valid in all respects.

WILLIAMSON

WILLIAMSON

WILLIAMSON

WILLIAMSON

Jan 1, 1842