

INDEX.

	PAGE
Bill of Complaint.....	1
Schedules annexed to Bill of Complaint:	
A—Bill of Sale, Motley to Flynn, also marked Exhibit C-3 in Evidence.....	9
B—Assignment of Lease, Motley to Flynn, also marked Exhibit C-4 in Evidence..	12
Answer of Henry I. Darling.....	14
Decree <i>Pro Confesso</i>	24
Final Decree.....	25
Opinion of Vice-Chancellor Lewis.....	28
Notice of Appeal to Court of Errors and Ap- peals.....	32
Petition of Appeal.....	33
Answer to Petition of Appeal.....	36
Testimony in Chancery.....	37
Proceedings before Vice-Chancellor Lewis....	37

WITNESSES.

Complainant's.

Eugene Hayne:	
Direct.....	37
Cross.....	44
Redirect.....	55
Henry I. Darling:	
Testimony given in case of Franklin vs. Flynn.....	58
Testimony given in case of Grossman vs. Darling.....	64
Testimony given in case of State vs. Flynn.	66

	PAGE
Charles E. S. Simpson :	
Testimony given in case of State vs. Flynn .	70
John W. Warnke :	
Testimony given in case of State vs. Flynn .	72
Thomas A. Spraggins :	
Rebuttal :	
Direct	124
Cross	126

Defendant's.

Richard A. Motley :	
Testimony given in the case of State vs. Flynn	78
Testimony given in the bankruptcy case . . .	93
Testimony given in case of Franklin vs. Flynn	98
Traverse A. Spraggins :	
Testimony given in the bankruptcy case . . .	99
Charles E. S. Simpson :	
Direct	108
Cross	110
Recalled—Cross	115
John W. Warnke :	
Testimony given in case of Franklin vs. Darling and Flynn	111

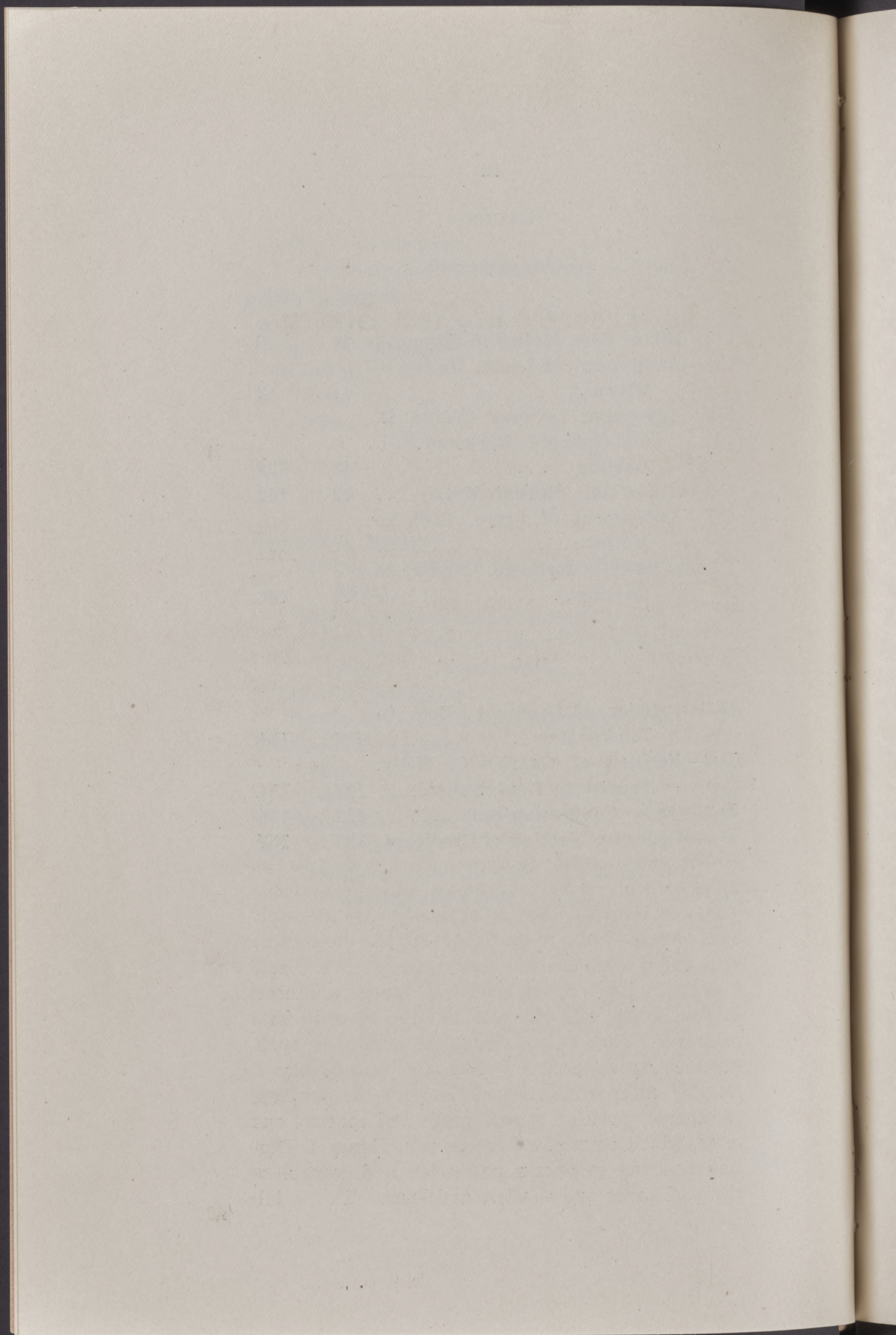
EXHIBITS.

Complainant's.

	Offered Page	Printed Page
C-3—Bill of Sale, Motley to Flynn...	41	9
C-4—Assignment of Lease, Motley to Flynn	41	12
C-5—Agreement between Cecilia D. and George L. Bock and H. I. Darling	42	139
C-6—Bill of Sale, Bock to Motley....	42	142
C-7—Assignment of Lease, Bock to Motley	42	144
C-12—Chattel Mortgage, Flynn to Darling	78	146

Defendants'.

D-1—Petition of George L. Bock in Bankruptcy	137	151
D-2—Petition of Charles C. Kelly, Trustee in Bankruptcy.....	137	154
D-3—Order Confirming Sale.....	137	155
D-4—Order for Meeting of Creditors.	137	157



In Chancery of New Jersey

Bill.

Filed November 21, 1913.

*To his Honor Edwin Robert Walker, Chancellor of
the State of New Jersey:*

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Complaining shows unto your Honor your Orator, Richard A. Motley, of Jersey City, in the County of Hudson and State of New Jersey. That your Orator had title to certain automobiles and other personal property comprising one 1912 Oakland Touring car, one Buick Touring car, one Oakland car, one Cadillac car, one Pope-Hartford car and all other goods and chattels contained in the premises No. 2395 Hudson County Boulevard, Jersey City, N. J., and your orator was also assignee of the lease of said premises No. 2395 Hudson County Boulevard, aforesaid.

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That the said personal property was in the possession and used by one Cecelia Bock, who was also in possession of said premises under said lease. That one Henry I. Darling of Jersey City aforesaid had certain dealings and transactions concerning said goods and chattels and lease with the said Cecelia D. Bock, apart from your Orator's interest in said goods and chattels and the lease of said premises. That in and about the month of April, nineteen hundred and twelve, the said Henry I. Darling entered into negotiations for the purchase or other disposition of said goods and chattels and lease, which culminated in the said Henry I. Darling desiring to obtain possession and control of the said goods and chattels and lease. That a bill

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Bill.

of sale for said goods and chattels was drawn to be executed by your Orator at the request of the said Henry I. Darling. That the said Henry I. Darling directed that the space for the name of the purchaser be left blank when said bill of sale was drawn. That accordingly a bill of sale
10 of April, nineteen hundred and twelve, wherein your Orator was named as party of the first part and the name of the party of the second part was omitted. That your orator, with his attorney, on or about the second day of May, nineteen hundred and twelve, met the said Henry I. Darling in the office of the attorney of the said Henry I. Darling. That the said Henry I. Darling, or his attorney in his behalf, directed that the name of one Charles Flynn be inserted as the
20 party of the second part, and the same was done, and your Orator executed a bill of sale for the aforesaid personal property, a copy of which is hereto annexed and made part hereof, and marked Schedule "A." That an assignment of the lease of the premises was executed by your Orator, a copy of which is hereto annexed and made part hereof, and marked Schedule "B."

That it was agreed between your Orator and the said Henry I. Darling that the purchase price of
30 your Orator's interest in said garage and lease was to be the sum of One thousand four hundred and seventy-nine dollars and forty-four cents. That two notes were drawn, payable to your Orator's order, bearing date May second, nineteen hundred and twelve; one for five hundred dollars, payable four months after date and one for seven hundred dollars, payable six months after date. The said notes were signed by Charles Flynn and endorsed by the said Henry I. Darling. That
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Bill.

the said Henry I. Darling also endorsed a note for the said Charles Flynn for the sum of three hundred dollars in order to make the account of the said Charles Flynn good at his, Flynn's, bank of deposit. That the said latter note was discounted, and a check was drawn to your Orator's order for two hundred and seventy-nine dollars and some cents; as nearly as your Orator can ascertain, forty-four cents. 10

That it was agreed between your Orator and the said Henry I. Darling that said two notes and the said check for two hundred and seventy-nine dollars and forty-four cents or some other sum for cents, should be delivered to your Orator when your Orator delivered the bill of sale for the garage and the assignment of the lease thereof to the said Charles Flynn, and the said Henry I. Darling delivered the said two notes for five hundred dollars and seven hundred dollars, respectively, to his, Henry I. Darling's, attorney, to be delivered to your Orator when the contents of the garage, and possession of the garage, and the bill of sale and the assignment of the lease should be delivered to the said Charles Flynn. That your orator and the said Charles Flynn, and one John Warnke, the attorney for Henry I. Darling, went to the garage on or about the second day of May, nineteen hundred and twelve, and the said Charles Flynn was put in possession of the garage, and its contents, and in consideration therefor, two notes, signed by Charles Flynn, and purporting to be endorsed by the said Henry I. Darling, one for five hundred dollars, and one for seven hundred dollars, and a check for two hundred and seventy-nine dollars and forty-four cents, or some other sum for the cents, were delivered to your Orator. 20 30 40

Bill.

Your Orator further shows that he endorsed the note of five hundred dollars due in four months and delivered the said note to one Traverse A. Spraggins. That said note became due on the third day of September, nineteen hundred and twelve, and was presented for payment and was dishonored, and protested for non-payment. That your orator
10 endorsed the seven hundred dollar note due in six months, and delivered the same to Traverse A. Spraggins, who endorsed the said note and delivered it to one Philip Franklin. That the note became due the fourth day of November, nineteen hundred and twelve, and was presented for payment and was dishonored, and protested for non-payment.

That suit was commenced in the Hudson County
20 Circuit Court to recover the sum of seven hundred dollars, being the principal of the note for that amount, payable to your orator's order, and endorsed by Henry I. Darling, dated May second, nineteen hundred and twelve, and payable six months after date. That in said suit the said Henry I. Darling claimed that the signatures of H. I. Darling endorsed on said note were not in the handwriting of the said Henry I. Darling, and that the said Henry I. Darling never wrote the signatures, and that the signatures were and are forgeries. That
30 it was found on said trial that the endorsement "H. I. Darling" to the said seven hundred dollar note was not the signature of the said Henry I. Darling, the defendant herein. Your orator has ascertained and charges the fact to be that Henry I. Darling obtained the notes for seven hundred and five hundred dollars, which were endorsed in the handwriting of Henry I. Darling by the said Henry I. Darling, in your orator's presence, and destroyed the
40 original notes. That in the month of June, nine-

Bill.

teen hundred and twelve, the said Henry I. Darling induced Charles Flynn to deliver to the said Henry I. Darling the notes of your Orator, having the genuine endorsement of the said Henry I. Darling. That how the said Charles Flynn obtained possession of said two notes having the genuine signatures of the said Henry I. Darling your orator does not know, other than that forged notes were substituted and delivered to your Orator for the genuine notes; and your orator charges that the substitution of such forged notes was a gross fraud upon your orator, and that your Orator on discovering the same was and is entitled to have said original notes delivered to your orator as the true consideration for the personal property delivered by your orator as hereinabove set forth. That it was likewise a fraud upon your orator for the said Henry I. Darling to obtain possession of said notes having his original endorsement thereon and to destroy the same. That the said Henry I. Darling knew that the notes bearing his original signature were to be delivered to your Orator in consideration of the delivery and as part of the purchase price of the personal property, garage and lease above mentioned, and that notes purporting to be the two notes bearing the signature of the said Henry I. Darling had been delivered to your orator and had been negotiated.

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That suit was likewise commenced to recover the amount due on the note for five hundred dollars, and after it was learned that the endorsement of H. I. Darling was a forgery, and that the note with the original endorsement of H. I. Darling was destroyed, the said suit was discontinued

That since the trial of civil suit to recover the amount due on the seven hundred dollar note, and

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Bill.

the discontinuance of the suit to recover the amount due on the five hundred dollar note, your orator has obtained an assignment to your orator of all the right, title and interest in and to said notes of the said Philip Franklin and Traverse A. Spraggins. That your orator is advised that said assignments are unnecessary, as forged notes were delivered to
10 said Philip Franklin and Traverse A. Spraggins, and the notes with the genuine endorsement of Henry I. Darling were never the property of the said Philip Franklin and Traverse A. Spraggins, and the delivery of the forged notes did not pass any claim to the right of your Orator to the notes having the genuine endorsement of H. I. Darling thereon. That your Orator was advised to obtain said assignments in order to obviate any necessity for making said Philip Franklin and Traverse A.
20 Spraggins parties to this bill of complaint.

Your Orator therefore charges that he has not at any time, nor has anyone else, received the said sums of five hundred dollars and seven hundred dollars, the principal of said two promissory notes, and that he is entitled to have delivered to him the notes for five hundred dollars and seven hundred dollars, respectively, hereinabove set forth, having the genuine endorsement of the said Henry I. Darling, and
30 established and declared to be his property, and to have the amount due thereon ascertained and a decree made that the said Henry I. Darling and Charles Flynn, or one of them, pay to your Orator the amount so found due.

That your orator has frequently and in a friendly manner applied to the said Henry I. Darling and Charles Flynn to pay the amount due on said notes to your Orator, but they have wholly refused so to do.

Bill.

In consideration whereof and for as much as your Orator is remediless in the premises at common law and cannot have adequate relief except by the aid of this Honorable Court.

To the end, therefore, that the said Henry I. Darling and Charles Flynn may, without oath, which is hereby waived, full, true and perfect answer make to all and singular the premises aforesaid, according to the best of their knowledge, information and belief, and that they set forth and discover whether two notes of the following purport and tenor were executed, to wit: 10

“\$500 00

Jersey City, N. J.

May 2nd. 1912

Four months after date I promise to pay to the order of Richard A. Motley Five hundred 00/100 Dollars at the JERSEY CITY TRUST COMPANY. 20

For value received

No. Due CHARLES FLYNN”

Endorsed:

“H. I. Darling

R. A. Motley

T. A. Spraggins”

“\$700 00

Jersey City, N. J., 30

May 2nd, 1912.

Six months after date I promise to pay to the order of Richard A. Motley Seven hundred 00/100 Dollars at the Jersey City Trust Company

For value received

No. Due CHARLES FLYNN”

Bill.

Endorsed :

“H. I. Darling
T. A. Spraggins
Richard A. Motley
Philip Franklin”;

10 and whether the same were to be delivered to your Orator, together with a check for two hundred and seventy-nine dollars and forty-four cents, or some other sum for cents, as and for the consideration and purchase price of the garage and its contents and the assignment of the lease as hereinabove set forth, and whether Henry I. Darling obtained possession of the two notes of the purport and tenor hereinabove set forth, and destroyed or caused the same to be destroyed, and that a decree may be made
20 ascertaining and establishing said two notes, and that it be decreed that said two notes were and are the property of your Orator, and that he is entitled to the same, and that it be ascertained how much is due on said two notes to your Orator, and that it be decreed that Henry I. Darling and Charles Flynn pay to your Orator the amount so found due to your Orator on said two notes, and that your Orator may have such other relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience.

30 May it please your Honor, the premises considered, to grant unto your Orator the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Henry I. Darling and Charles Flynn, commanding them, and each of them, at a certain day, and under a certain penalty, therein to be expressed, to be and appear before your Honor, in this Honorable Court, there and there to answer all and singular the said prem-

Bill.

ises, and to stand to, abide by and perform such order and decree therein as to your Honor may seem meet, and as shall be agreeable to equity and good conscience.

And your orator will every pray, &c.

JOSEPH ANDERSON, JR.,
Solicitor for and of Counsel 10
with Complainant.

Schedule A.

Annexed to Bill.

KNOW ALL MEN BY THESE PRESENTS:

That I, RICHARD A. MOTLEY, of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the First Part, for and in consideration of the sum of Fourteen hundred and seventy nine and 42/100.....lawful money of the United States, to me in hand paid, at or before the ensealing and delivery of these presents, by Charles Flynn, of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the Second Part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said party of the Second Part, heirs, executors, administrators and assigns, ALL his right, title and interest in and to the goods and chattels particularly described and mentioned, One (1) 1912 Oakland Touring Car. One (1) Buick Touring Car. One (1) Oakland Car. One (1) Cadillac Car. One Pope Hartford, and all other goods and chattels contained in the premises

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Schedule A—(Annexed to Bill).

No. 2395 Hudson County Boulevard, Jersey City,
N. J.

TO HAVE AND TO HOLD the same, unto the said party of the Second Part, his heirs, executors, administrators and assigns forever. AND I do for myself, my heirs, executors and administrators, covenant and agree, to and with the said party of
10 the Second Part, to warrant and defend his right, title and interest in the sale of said goods and chattels hereby sold unto the said party of the Second Part, his heirs, executors, administrators and assigns, against all and every person and persons whomsoever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the Twenty sixth day of April, in the year of Our Lord, One Thousand Nine Hundred
20 and Twelve.

RICHARD A. MOTLEY (L. S.)

Signed, Sealed and Delivered
in the presence of

EUGENE R. HAYNE

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SCHEDULE.

One 1912 Oakland Touring Car. All the goods and chattels consisting of Automobile Supplies, such as oils, gasoline, tools, the good will of the automobile business and the garage hereinabove sold; also one Cadillac Car. One Buick Car. One Pope Hartford. And all other goods and chattels now in the premises in which I have any interest whatever.

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Schedule A—(Amended to Bill).

It is intended hereby to sell to the party of the second part, all the right, title and interest which was conveyed to me by two certain Bills of Sale, dated January 5th, Nineteen hundred and twelve, one from Bernard J. Crowley, for all of the goods above described, except one Oakland Car, 1912, which was purchased from George L. Bock.

It is only intended by this Bill of Sale to convey such property or the title thereof as was acquired or purchased by me at the time and by reason of the above Bills of Sale; and also to assign to the party of the second part all my right, title and interest, in and to a certain Lease for said premises, which said lease was assigned to me by Cecilia D. and George L. Bock, and bears date of 5th day of January, Nineteen hundred and twelve. 10

RICHARD A. MOTLEY. 20

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss. :

BE IT REMEMBERED, That on this Twenty sixth day of April, in the year of our Lord, One Thousand Nine Hundred and Twelve, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared RICHARD A. MOTLEY, who, I am satisfied, is the grantor mentioned in the within indenture, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. 30

EUGENE R. HAYNE,
 Master in Chancery of New Jersey

Schedule B.*Annexed to Bill.*

KNOW ALL MEN BY THESE PRESENTS, That I, RICHARD A. MOTLEY, of the City of Jersey City, in the County of Hudson and State of New Jersey, for and in consideration of the sum of One Dollar (\$1.00) and other consideration, lawful money of the United States to me in hand paid before the sealing and
10 delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over and by these presents do sell, assign, transfer and set over unto CHARLES FLYNN, of the same place, a certain indenture of lease bearing date the Tenth day of August, Nineteen Hundred and Ten, made by John Nelson to Cecelia D. Bock, and all the message described therein; being the one-story building being known as premises 2395
20 Boulevard, Jersey City, New Jersey, which said lease has three years to run from the Tenth day of August, Nineteen Hundred and Ten, with the privilege of renewal of an additional five years, which said lease was assigned by the said Cecelia D. Bock and George L. Bock, her husband, to the said Richard A. Motley, by deed of assignment of lease dated January Fifth, Nineteen Hundred and twelve, with the appurtenances and also all my estate, right, title, term of years yet to come, claim and demand
30 whatsoever of, in and to, or out of the same to have and to hold the same unto the said party of the second part, his executors, administrators or assigns, for the residue of the term therein mentioned, subject nevertheless to the rents, covenants, conditions and provisions therein also mentioned, and I do hereby covenant and agree to and with the said Charles Flynn that the said assigned premises now are free and clear of and from all former or other
40 gifts, rents, bargains, sales, leases, judgments, ex-

Schedule B—(Amended to Bill).

ecutions, back rents, taxes, assessments and incumbrances whatsoever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this Second day of May, in the year of our Lord, One Thousand Nine Hundred and Twelve.

RICHARD A. MOTLEY (L. S.)
CHARLES FLYNN (L. S.)

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Signed, Sealed and Delivered
in the presence of

JOHN W. WARNKE

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss. :

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BE IT REMEMBERED, that on this Second day of May, in the year of our Lord, One Thousand Nine Hundred and Twelve, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared RICHARD A. MOTLEY, who, I am satisfied, is the individual mentioned in and who executed the foregoing Instrument; to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

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JOHN W. WARNKE,
Master in Chancery of New Jersey.

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Answer of Henry I. Darling.

Filed December 31, 1913.

The answer of the defendant, Henry I. Darling, to the bill of complaint of Richard A. Motley, complainant.

10 This defendant answering denies that said complainant had title to certain automobiles and other personal property and was an assignee of the lease of the premises 2395 Hudson Boulevard as alleged in said bill of complaint.

20 This defendant answering says that he has no knowledge that said personal property was in the possession of one Cecelia Bock, and therefore he denies the same; that this defendant denies that this defendant had certain dealings and transactions concerning said goods and chattels and lease with the said Cecelia D. Bock and denies that in and about the month of April, Nineteen Hundred and Twelve, or at any other time this defendant entered into negotiations for the purchase or other disposition of said goods and chattels and lease and denies that a bill of sale for said goods and chattels was drawn to be executed by said complainant at the request of this defendant or otherwise as alleged in the bill of complaint, and denies that this defendant or his attorney in his behalf directed that the name of one Charles Flynn be inserted as the party of the second part in said bill of sale or in any other bill of sale or made any direction or request relative thereto.

30 This defendant further answering denies that there was ever any agreement between this defendant, said Bock, or complainant in anywise, or to any effect, or concerning said goods and chattels, and denies that it was ever agreed between said complainant and this defendant that the purchase

Answer of Henry I. Darling.

price of complainant's interest in said garage was to be the sum of One Thousand Four Hundred and Seventy-nine Dollars and forty-four cents or any other sum; but this defendant admits two notes were drawn, payable to complainant's order, bearing date May 2, 1912, one for the Five Hundred Dollars, payable after date, and one for Seven Hundred Dollars, payable after date; that said notes were signed by said Charles Flynn and endorsed by this defendant, but this defendant alleges, maintains and charges the fact to be that said notes were endorsed by this defendant by agreement with, at the request and for the benefit of said Charles Flynn, and not in anywise by agreement with, at the request of, or for the benefit of said complainant or any other person except the said Charles Flynn; and admits that this defendant endorsed a note for said Charles Flynn for the sum of Three Hundred Dollars, and that the said note was discounted, but as to whether check was drawn to complainant for Two Hundred and seventy-nine Dollars and some cents this defendant has no knowledge, and therefore denies the same, and as to said note of Three Hundred Dollars, this defendant alleges that it was endorsed by this defendant by agreement with, at the request of and for the benefit of Charles Flynn, and not in anywise by agreement with, at the request of or for the benefit of said complainant or any other person except the said Charles Flynn.

This defendant denies that there ever was any agreement or transaction direct or indirect between this defendant and said complainant, or said Spragins or said Franklin or with any person or persons for them or in their behalf or for the benefit of them or any of them and denies that he was

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Answer of Henry I. Darling.

interested in any of the transactions of the said Charles Flynn either directly or indirectly, and denies that said Charles Flynn acted for this defendant in any of said transactions or otherwise, and alleges that in the transactions, if any, between said Charles Flynn and said Motley, Spraggins and Franklin, or any of them, the said Charles Flynn
10 acted solely for himself and not for or in behalf of this defendant, and that this defendant was not bound by any of the acts of the said Charles Flynn.

This defendant further answering denies that it was agreed between complainant and this defendant that said two notes and the said check should be delivered to complainant when complainant delivered the bill of sale for garage and assignment of the lease thereof to the said Charles Flynn, and
20 denies that this defendant delivered said two notes for Five Hundred Dollars and Seven Hundred Dollars, respectively, to this defendant's attorney to be delivered to complainant when the contents of the garage and possession of the garage, and the bill of sale, and the assignment of the lease, should be delivered to the said Charles Flynn; that this defendant denies that complainant and the said Charles Flynn, and the said John W. Warnke
30 (who this defendant denies was his attorney), went to the garage on or about the Second day of May, Nineteen Hundred and Twelve, and denies that the said Charles Flynn was put in possession of the said garage and its contents, and denies that in consideration thereof two notes signed by said Charles Flynn and purporting to be endorsed by this defendant, one for Five Hundred Dollars and one for Seven Hundred Dollars, and a check for Two Hundred and Seventy-nine Dollars and forty-four cents or some other sum for the cents were
40 delivered to complainant.

Answer of Henry I. Darling.

This defendant answering, as to the doings and actings of the complainant and said Traverse A. Spraggins, and said Philip Franklin, in regard to said note, alleges that at the time aforesaid the said Traverse A. Spraggins was acting as the attorney for said Richard A. Motley, this complainant, and also for said Philip Franklin, and this defendant has no knowledge or information regarding the aforesaid allegations, and he therefore denies the same. 10

This defendant further answering admits that a certain suit was commenced in the Hudson County Circuit Court by the said Philip Franklin against this defendant and the said Charles Flynn to recover the sum of Seven Hundred Dollars, being the principal of the note alleged to be payable to complainant's order and alleged to have been endorsed by Henry I. Darling, dated May Second, Nineteen Hundred and Twelve, payable six months after date; that this defendant admits that in said suit this defendant claimed that the signature of this defendant endorsed on said note was not in the handwriting of this defendant, and that this defendant never wrote the alleged signature, and that the signature on said note was a forgery; the defendant alleges, maintains and charges that it was found on the trial of said action that the endorsement "H. I. Darling" to said Three Hundred Dollar note was not the signature of the said H. I. Darling, this defendant, but this defendant assumes and alleges that the words "Three hundred dollar note" in such allegation is a mistake and it was intended to refer therein to said Seven hundred dollar note, and defendant therefore in this answer treats said allegation as if the same referred to the Seven hundred 20 30 40

Answer of Henry I. Darling.

dollar note that was actually involved in said suit, and defendant therefore admits said allegation as referring to said Seven hundred Dollar note which was the subject of said suit. This defendant alleges that upon the trial of said suit the plaintiff therein did contend and insist that the endorsement upon the said note or notes delivered to said complainant by said Flynn were genuine, and that he, the complainant, had accepted same as genuine and the plaintiff in said suit produced evidence in support of such contention and the jury found that the alleged endorsement of this defendant to said note was not the signature of this defendant (hereby referring to the said Seven Hundred Dollar note and not to said Three Hundred Dollar note as the subject of said suit), and that thereby the issues involved in this case were adjudicated and finally disposed of and the complainant is now estopped from insisting that the said endorsement on said two notes delivered to him by Flynn are fraudulent and forged; this defendant denies that this defendant obtained the notes for Seven and Five Hundred Dollars which were endorsed by this defendant and destroyed the same; but this defendant alleges the fact to be that said Charles Flynn, the person to whom he delivered said notes, appeared with them and destroyed them in the presence of this defendant; and this defendant denies that in the month of June, Nineteen Hundred and Thirteen, this defendant induced Charles Flynn to deliver to this defendant the notes of complainant, having genuine endorsements of this defendant; but this defendant alleges the fact to be that said Charles Flynn, on his own initiative and by reason of no act of this defendant returned with said notes and which were never the property of complainant, and in con-

Answer of Henry I. Darling.

sideration of the destruction thereof, this defendant endorsed a certain other note for Five Hundred Dollars for said Charles Flynn, and which this defendant duly paid; that this defendant denies that there was any fraud with reference to the original notes or the alleged substituted notes or in the matter of the destruction of the said genuine notes or otherwise on the part of this defendant, and denies 10
that this defendant had any knowledge of the alleged substitution of the said notes with forged endorsements or the substitution or any delivery thereof to the complainant, or said Spraggins, and alleges the fact to be that he delivered the said notes to the said Charles Flynn in the regular course of business and honestly and in good faith for the benefit of said Flynn, and not otherwise; that the said Flynn induced this defendant to endorse another note for the accommodation of the said Flynn, 20
by the production and destruction of said two notes for Seven Hundred Dollars and Five Hundred Dollars which had theretofore been actually endorsed by this defendant, and that at or about the time of the production and destruction thereof, it was represented to this defendant by or on behalf of said Flynn that the said two notes, with defendant's endorsement thereon, had been returned to said Flynn by said Spraggins, to whom the complainant had delivered them, and for whom the complainant was acting, for the reason that the said Spraggins for himself and the said complainant 30
had made misrepresentations and false statements concerning the title to the said garage and its contents, and by reason of said misrepresentations and false statements, had induced the said Flynn to deliver the said notes to the complainant, and further because the said garage and its contents had

Answer of Henry I. Darling.

been taken from said Flynn under a decree or order of a court of competent jurisdiction by virtue of a title superior to the said complainant, and that said Spraggins had been compelled to return said notes to said Flynn by reason of such misrepresentations, false statements and loss of title to said chattels; that relying upon said statement made by
10 said Flynn, this defendant agreed that upon the production and destruction of said notes he would endorse a new note for said Flynn for Five Hundred Dollars, and that thereafter the said Flynn did produce and destroy said notes and this defendant did endorse and deliver to said Flynn a note for Five Hundred Dollars, which this defendant subsequently paid. That this defendant alleges and charges the fact to be as stated by said Flynn to
20 him, and that said Flynn did lose title to said garage and its contents under a decree of a court of competent jurisdiction, in a suit, in which a superior title to said chattels was established as against said complainant, said Spraggins and said Flynn, and that thereby there was a complete failure of consideration for said notes and the said Flynn had a perfect defense against the same by reason of said misrepresentations, false statements and loss of title to the chattels in exchange, for
30 which said notes are alleged to have been delivered to said complainant; that this defendant denies that this defendant knew that the notes bearing the original signatures were to be delivered to complainant in consideration of the delivery and purchase price of the personal property, garage and lease mentioned in the bill of complaint, and denies that this defendant knew that notes purporting to be the two notes, bearing the signature of this defendant, had been delivered to complainant
40 and had been negotiated.

Answer of Henry I. Darling.

This defendant further answering denies each and every allegation of fraud, misconduct and collusion with said Flynn, or with any other person in anywise alleged in said bill; that the substitution of such forged notes, as alleged in the bill of complaint, if any, was caused by the laches and neglect of the said complainant and the said Spragins and by their reliance upon the said Flynn, and that by reason of their action in accepting the same from said Flynn as alleged in said bill, they placed said Flynn in the position where he could and did induce this defendant to endorse a new note for Five Hundred Dollars in consideration of the production and destruction of said notes, and thereby they enabled said Flynn to secure said new note for Five Hundred Dollars, and by reason of said laches and neglect, said complainant is estopped in equity from asserting any claim to or concerning said notes or either of them. 10
20

And this defendant further answering says that he admits that suit was commenced to recover the amount due on the note for Five Hundred Dollars, but the reason for discontinuance of same this defendant knows not, but leaves complainant to his proof.

This defendant further answering says that as to the complainant obtaining an assignment of the right, title and interest in and to said notes this defendant knows not, but leaves complainant to his proof, and as to whether said assignment was necessary, this defendant answering says that he knows not, but leaves complainant to his proof. 30

This defendant further answering denies that the said several sums of Five Hundred Dollars and Seven Hundred Dollars have not been paid to said complainant; this defendant denies that said com- 40

Answer of Henry I. Darling.

plainant is entitled to have delivered to him the notes for Five Hundred Dollars and Seven Hundred Dollars respectively hereinbefore set forth, and having the genuine endorsements of this defendant and declared to be his property and to have the amount due thereon ascertained and a decree made that this defendant pay to said complainant the same as it is
10 due.

This defendant further answering admits that he endorsed two notes of the tenure and effect as in said bill set out, but denies that he had or has any knowledge that the same were delivered to the complainant, together with the check for Two Hundred and Seventy-nine Dollars and forty-four cents or some other sum for cents; this defendant denies that the same were to be delivered to complainant by this defendant; this defendant denies
20 that this defendant obtained possession of the two notes of the purport and tenure set forth in the bill of complaint and destroyed, and caused same to be destroyed, but alleges the fact to be that said notes were destroyed in the presence of this defendant as in equity and good conscience they should have been.

And this defendant further answering denies that said complainant is remediless in the premises at and by the strict rules of the Common Law, and denies
30 that he cannot have adequate relief in the premises except by the aid of this Honorable Court.

And this defendant further answering says that as to the matters and things alleged against this defendant, this defendant says that they were adjudicated in the several Courts when the same were tried and have been decided in favor of this defendant.

And this defendant further answering says that
40 said complainant should not have and maintain his

Answer of Henry I. Darling.

said bill, because in said suit on said Seven Hundred Dollar note judgment was given in favor of this defendant, with costs, which costs are now unpaid.

And this defendant further answering says that said complainant should not have and maintain any action against this defendant, because said complainant has not been diligent in the pursuit of his remedies, whereby this defendant has suffered great loss and damage. 10

And this defendant further answering says that the said complainant has received payment of the said several notes.

This defendant further answering says that the said complainant agreed with said Charles Flynn that in consideration of the said complainant conveying unto said Charles Flynn the goods and chattels mentioned and described in Schedule A of said bill of complaint that said Charles Flynn would deliver notes endorsed by this defendant, but this defendant says that the said complainant did not sell and convey to said Charles Flynn said goods and chattels, but that same were taken away from the said Charles Flynn by a superior title to the said complainant, whereby this defendant lost his security given by Charles Flynn to this defendant as security for the endorsement of said notes. 20 30

And this defendant submits to this Honorable Court, that all and every of the matters in said complainant's bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief in this Court; and this defendant hopes he shall have the same benefit of this defense as if he had demurred to said complainant's bill. 40

Answer of Henry I. Darling.

This defendant prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

CHAS. E. S. SIMPSON,
Solicitor for Defendant,
Henry I. Darling.

10 Replication filed January 19, 1914.

The complainant joins issue on the answer of the defendant.

JOSEPH ANDERSON, SR.,
Solicitor for and of Counsel
with Complainant.

Decree *Pro Confesso.*

20 *Filed January 2, 1914.*

This cause being opened to the court by Joseph Anderson, Sr., of counsel with the Complainant, and it appearing that process of subpoena for the appearance of the defendants hath been duly issued and returned served by the Sheriff of the County of Hudson upon Charles Flynn, one of the defendants, and that the said defendant Charles Flynn has not filed any plea, demurrer or answer to said bill within the time limited by law and such order, but has wholly failed and neglected so to do,

30 It is thereupon, on the Twenty-second day of January, in the year of our Lord one thousand nine hundred and fourteen, ordered, adjudged and decreed that the said bill be taken as confessed as against the said Charles Flynn, one of the defendants, to the end that such decree may be made against him as the Chancellor shall think equitable and just.

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E. R. WALKER,
C.

Final Decree.*Filed June 20, 1918.*

This cause coming on to be heard in the presence of Joseph Anderson, Sr., of counsel with complainant, and George J. McEwan and Charles E. S. Simpson, of counsel with the answering defendant, Henry I. Darling, and the bill having heretofore been taken as confessed against the defendant Charles Flynn, and the cause being brought to trial on bill, answer, replication and proofs in open court, and the pleadings having been read and the evidence submitted, and counsel being heard on behalf of the complainant and answering defendant, from which it appears that the notes set forth in the bill of complaint, one made by Charles Flynn to the order of Richard A. Motley, dated May 2, 1912, and endorsed by the defendant Henry I. Darling, payable four months after date for the sum of \$500, and one made by Charles Flynn to the order of Richard A. Motley, dated May 2, 1912, and endorsed by the defendant Henry I. Darling, payable six months after date for the sum of \$700, have been established by the proofs, and that there is now due to the complainant for the principal of said five hundred dollars note the said sum of \$500 and protest fees, amounting to \$1.58, and interest thereon, at six per cent. per annum, from the second day of September, 1912, to the date of this decree, amounting to \$675.87, and that there is now due to the complainant for the principal of said seven hundred dollar note the said sum of \$700 and protest fees, amounting to \$1.54, and interest thereon at six per cent. per annum, from the second day of November, 1912, to the date of this decree, amounting to \$938.31, making in all the sum of \$1614.18,

And it appearing that said two notes were destroyed before maturity by the defendants without the knowledge or consent of the complainant,

Final Decree.

And it further appearing that the defendant Charles Flynn, on July 12, 1912, paid to Charles C. Kelly, Trustee in Bankruptcy of George Bock, a bankrupt, the sum of \$900 to perfect title to the goods and chattels mentioned in the bill of complaint, which sum of \$900, with interest, amounts to \$1220.25, and that defendant should receive credit
10 for the same,

It is, on this 17th day of June, 1918, ordered, adjudged and decreed by the Chancellor, by virtue of the power and authority of this court, that the said two notes set forth in the bill of complaint, one made by Charles Flynn to the order of Richard A. Motley and endorsed by Henry I. Darling, dated May 2, 1912, payable four months after date for the sum of \$500, and one made by Charles Flynn to the order of Richard A. Motley and endorsed by Henry
20 I. Darling, dated May 2, 1912, payable six months after date, for the sum of \$700, are hereby ascertained and established as good and valid promissory notes and as existing obligations of Charles Flynn and Henry I. Darling, defendants, and that said two notes were and are the property of the complainant, and he is entitled to the same, and the same having been destroyed before maturity without the knowledge or consent of the complainant.

It is further ordered, adjudged and decreed that
30 the defendants Charles Flynn and Henry I. Darling do pay to the complainant the sum of \$1614.18, being the principal, protest fees and interest due upon said two promissory notes, less said \$900 paid by Charles Flynn to said Charles C. Kelly, Trustee in Bankruptcy of George Bock, a bankrupt, together with interest at six per cent. per annum from July 12, 1912, amounting in all to \$1220.25, leaving a balance of \$393.93 due to complainant,

Final Decree.

And it is further ordered and decreed that the defendants Charles Flynn and Henry I. Darling do pay to the complainant, or his solicitor, the sum of \$393.93 so above found to be due to the complainant from the defendants,

And it is further ordered and decreed that the defendants pay to the said complainant, or his solicitor, the costs of this suit to be taxed and a counsel fee of One hundred and fifty dollars, and that execution issue therefor, and for the sum of \$393.93 so above found to be due to the complainant from the defendants, according to the course and practice of this court. 10

E. R. WALKER,
C.

Respectfully advised. 20
VIVIAN M. LEWIS,
V. C.

A true copy.
ROBERT H. MCADAMS,
Clerk.

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Opinion.

Filed January 15, 1918.

On bill for a discovery, etc. Heard on bill, answer, replication and proofs taken in open court.

10 MR. JOSEPH ANDERSON, SR., for the Complainant.
MR. GEORGE J. MCEWAN, and MR. CHARLES E. S.
SIMPSON, for the Defendant, Henry I. Darling.

LEWIS, V. C.:

The bill in this cause was dismissed for want of equity and because complainant had an adequate remedy at law. An appeal was taken to the Court of Errors and Appeals, and the decree of this Court was reversed (*Motley v. Darling*, 86 N. J. Eq., 185).

20 The bill is for a discovery as to the execution of two notes which were to have been signed by defendant, Flynn, and indorsed by defendant, Darling, and were to be delivered to the complainant as the consideration for the sale and delivery by him, the complainant, of certain personal property, but which notes were not so delivered, and in view of the fraudulent destruction of the notes by the defendants, or one of them, for a decree establishing the same and directing the payment of the moneys payable thereunder.

30 The essential parts of the bill are sufficiently enumerated in the opinion rendered by the Court of Errors and Appeals. The bill, however, alleged that the contract for the sale of the garage was between Motley, as vendor, and Darling, as vendee. The proofs, however, establish the fact that Flynn was the vendee. But I can draw no other conclusion from the evidence than that Motley was in-

Opinion.

duced to part with his property upon the understanding that Darling would pay if Flynn did not. The evidence proves that Darling was trying to secure himself from impending loss. Darling was present at the conference when the bill of sale and the assignment of the lease from Motley to Flynn, and the notes from Flynn, indorsed by Darling, and the chattel mortgage from Flynn to Darling to secure Darling for his indorsements were drawn. He admits that he received notice that an outsider had bought one of the notes, and yet when Flynn came to him and offered to destroy both the notes on consideration that Darling would indorse a note for \$500, he agreed and did so, and Flynn thereupon destroyed the notes made to Motley for \$700 and for \$500. Darling says he thought it was "awfully strange." His counsel, however, was present at the time, and he does not seem to have suspected that Flynn had given forged notes to Motley, so that if a skilful lawyer did not suspect the trick that Flynn had perpetrated on Motley, it is fair to assume that Mr. Darling was not guilty of any wilful wrong-doing.

I am unable to reach any other conclusion than that there was a privity of contract between Motley and Darling, however; in any event, Darling's action in indorsing the notes, in pursuance of this agreement between all the parties, in Motley's presence, and delivering them to Flynn to be delivered to Motley, knowing that Motley was relying thereon, would estop Darling from denying the privity of contract. The chattel mortgage to Darling was made at the same time and was a further step in the carrying out of the agreement between all the parties, and, of course, furnished the consideration to Darling for his endorsements.

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Opinion.

10 Immediately after Flynn had been placed in possession of the garage, the Bocks went into bankruptcy, and the receiver in bankruptcy held that the bill of sale given by the Bocks to Motley was only an equitable mortgage. The bill of sale from Motley to Flynn, which was the consideration for the notes, merely conveyed the right, title and interest of Motley to Flynn, and Darling, who had taken a chattel mortgage from Flynn at the time he indorsed the notes made by Flynn to Motley, may be assumed to have been very much perturbed when he found out the condition of affairs. Flynn, however, bought in the title from the trustee in bankruptcy.

A decree *pro confesso* has been taken against Flynn, but he is not worth anything.

20 Mr. Darling seems to be a rather unsophisticated man, and I have no idea that he meant to be dishonest in any way when he endorsed the note for Mr. Flynn for \$500 in consideration of the destruction by Mr. Flynn of the two notes in suit. He made a mistake in backing Mr. Flynn, and there is no one to blame but himself. There can be no doubt that Darling had sufficient notice to put him on inquiry.

30 Darling says that when Flynn destroyed the note in his presence he, Darling, "thought it was awfully strange." He knew that Motley had delivered the conveyance and possession of the property to Flynn, and he obviously knew that Motley had not received the two notes which it had been agreed he should receive. He had no business, therefore, to participate in the destruction of these notes without making inquiry.

If the notes were still in existence, there can be no doubt that a decree would lie requiring the

Opinion.

delivery of these two notes to Motley, subject to an adjustment being made by Motley for the amount which Flynn was required to pay to the trustee in bankruptcy to perfect the title which Motley had agreed to deliver to Flynn. The notes are not in existence, however, and inasmuch as the due dates thereof are long since past, it would be idle that new notes should be made to replace those which have been improperly destroyed. 10

If, therefore, specific performance could be decreed in case the notes were in existence, surely Darling could not avoid his obligation to pay by securing their destruction. Such a doctrine would be inequitable. He endorsed a note for \$500 in order to have them destroyed, but to my mind that does not help him to avoid his obligation.

Darling's contract by his endorsements was to pay these notes if they were dishonored by Flynn at maturity. Darling, of course, was entitled to notice of such dishonor if it took place. Darling in fact did have notice that the amounts of these notes were not paid by Flynn to Motley at maturity, because it appears that he received notice of the protest of the two forged notes which Flynn gave to Motley instead of the originals. 20

I will, therefore, advise a decree against Flynn and Darling for the amount of the notes plus interest, less the amount paid by Flynn to the trustee in bankruptcy to perfect title, plus interest from the date of such payment, provided proof as to the amount so paid by Flynn be made before me, on notice, within a reasonable time, otherwise the decree will be for the full amount of the notes and interest. 30

Notice of Appeal.

Filed August 20, 1918.

10 The complainant hereby appeals from so much of
the final decree made in this court in the above
stated cause on the 17th day of June, 1918, as de-
10 declares that the defendant Charles Flynn, on July
12th, 1912, paid to Charles C. Kelly, Trustee in
Bankruptcy of George Bock, a bankrupt, the sum
of Nine hundred dollars to perfect the title to the
goods and chattels mentioned in the bill of com-
plaint, which sum of Nine hundred dollars, with
interest, amounts to Twelve hundred and twenty
dollars and twenty-five cents. That defendant
20 should receive credit for the same and as declares
that said Nine hundred dollars paid by Charles
Flynn to Charles C. Kelly, Trustee in Bankruptcy
of George Bock, a bankrupt, together with interest
at six per cent. per annum, from July 12, 1912,
amounting in all to Twelve hundred and twenty
dollars and twenty-five cents, should lessen to that
extent the amount to be paid to complainant and
that said sum of Twelve hundred and twenty dol-
lars and twenty-five cents should be deducted from
30 the amount to be paid to the complainant, and
from every other part of said decree which declares
that any sum whatsoever should be allowed to the
defendants and deducted from the amount to be
paid to the complainant, or that the defendants
should be allowed any credit, payment, or set-off
whereby complainant is not paid the full sum of
Sixteen hundred and fourteen dollars and eighteen
cents, ordered, adjudged and decreed to be due
and owing from the defendants to the complain-

Notice of Appeal.

ant, to the Court of Errors and Appeals, in the last resort in all causes.

Dated August 10, 1918.

JOSEPH ANDERSON, SR.,
Solicitor for and of Counsel
with Complainant.

I conceive there is good ground for appeal in 10
the above stated cause.

JOSEPH ANDERSON, SR.,
Of Counsel with Complainant.

Petition of Appeal.

Filed August 20, 1918.

*To the Honorable Court of Errors and Appeals in 20
the last resort in all causes:*

The petition of Richard A. Motley, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery of New Jersey by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the 17th day of June, 1918, wherein the said Richard A. Motley was complainant and the said Henry I. Darling and Charles Flynn were defendants, in this respect, to wit: The said decree adjudges that the defendant Charles Flynn on July 12th, 1912, paid to Charles C. Kelly, Trustee in Bankruptcy of George Bock, a bankrupt, the sum of Nine hundred dollars to perfect the title to the goods and chattels mentioned in the bill of complaint, which sum of Nine hundred dollars, with interest, amounts to Twelve hundred and twenty dollars and twenty-five cents 40

Petition of Appeal.

and that defendants should receive credit for the same and as declares that said Nine hundred dollars paid by Charles Flynn to Charles C. Kelly, Trustee in Bankruptcy of George Bock, a bankrupt, together with interest at six per cent. per annum from July 12th, 1912, amounting in all to Twelve hundred and twenty dollars and twenty-five cents, should lessen to that extent the amount to be paid to complainant and that said sum of Twelve hundred and twenty dollars and twenty-five cents should be deducted from the amount to be paid to the complainant, and by every other part of said decree which declares that any sum whatsoever should be allowed to the defendants and deducted from the amount to be paid to the complainant, or that the defendants should be allowed any credit, payment or set-off whereby your petitioner is not paid the full sum of Sixteen hundred and fourteen dollars and eighteen cents, ordered, adjudged and decreed to be due and owing from the defendants to your petitioner.

Your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that said decree should have adjudged that the defendants Charles Flynn and Henry I. Darling do pay to your petitioner the sum of Sixteen hundred and fourteen dollars and eighteen cents, being the principal, protest fees and interest due upon two certain promissory notes in said final decree set forth, and not the sum of Three hundred and ninety-three dollars and ninety-three cents so decreed by said decree to be due to your petitioner from said defendants, and said decree should not have ordered, adjudged and decreed that the defendant Charles Flynn on July 12th, 1912, paid

Petition of Appeal.

to Charles C. Kelly, Trustee in Bankruptcy of George Bock, bankrupt, the sum of Nine hundred dollars to perfect the title to the goods and chattels, mentioned in the bill of complaint, which sum of Nine hundred dollars, with interest, amounts to Twelve hundred and twenty dollars and twenty-five cents, and that the defendants should receive credit for the same and should not have declared that the said sum of Nine hundred dollars paid by Charles Flynn to Charles C. Kelly, Trustee in Bankruptcy of George Bock, a bankrupt, together with interest at six per cent. per annum from July 12, 1912, amounting in all to Twelve hundred and twenty dollars and twenty-five cents, should lessen to that extent the amount to be paid to your petitioner, and that said sum of Twelve hundred and twenty dollars and twenty-five cents should be deducted from the amount to be paid to your petitioner, and that no other part of said decree should declare that any sum should be allowed to the defendants and deducted from the amount to be paid to your petitioner, or that the defendants should be allowed any credit, payment or set-off whereby your petitioner is not paid the full sum of Sixteen hundred and fourteen dollars and eighteen cents, ordered, adjudged and decreed to be due and owing from the defendants to your petitioner.

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

JOSEPH ANDERSON, SR.,
Solicitor for and of Counsel
with Appellant.

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Answer to Petition of Appeal.

Filed October 1, 1918.

The answer of the above-named respondent Henry I. Darling to the petition of appeal of the above-named appellant.

10 This respondent, not acknowledging all, or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was, on the 17th day of June, 1918, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, except such part thereof as decrees that the defendant pay to the complainant counsel fee and costs, for that this defendant in his answer heretofore filed in said cause, set up and maintained that the title agreed to be given to the said goods and chattels mentioned in said bill of complaint by said complainant had failed, which contention was allowed by the said Court, therefore it is inequitable that counsel fee and costs should be taxed against the defendant Darling, and he therefore prays that the same may be affirmed except as to the aforesaid 20 counsel fee and costs, in which regard he prays that the said decree may be reversed, with costs to be 30 adjudged to this respondent.

CHAS. E. S. SIMPSON,
Solicitor for and of Counsel with
Defendant-Respondent, Henry I.
Darling.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between

RICHARD A. MOTLEY,
Complainant,

and

HENRY I. DARLING, *et al.*,
Defendants.

On Bill, &c.

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Transcript of testimony taken before Hon. Vivian M. Lewis, Vice Chancellor, at the Chancery Chambers, Jersey City, on December 12th, 1916.

APPEARANCES:

JOSEPH ANDERSON, for the Complainant.

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CHARLES E. S. SIMPSON, for the Defendant.

EUGENE HAYNE, sworn in behalf of the complainant, testified as follows:

Direct examination by Mr. Anderson.

Q. Are you a practicing lawyer of the State of New Jersey? A. I am, yes.

Q. Mr. Hayne, do you know Henry I. Darling? 30

A. Yes, sir.

Q. Do you know Richard A. Motley? A. Yes, sir.

Q. Do you know Mr. Charles E. S. Simpson? A. Yes, sir.

Q. On the 2nd of June, 1912, did you have occasion to attend at Mr. Simpson's office—the 2nd of May, I mean? A. Yes, sir, the 2nd of May, 1912.

Q. And in whose behalf did you go there? A. I

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Eugene Hayne—Direct.

went there representing Mr. Motley, Rev. Richard A. Motley, for Mr. T. A. Spraggins.

Q. Was Mr. Spraggins Mr. Motley's attorney?

A. Yes, sir.

Q. Now, whom did you meet at Mr. Simpson's office on that day? A. The Rev. Mr. Motley, Mr. John Warnke, Charles Flynn, Mr. H. I. Darling, and I was there, of course.

Q. Why were you present on this occasion at Mr. Simpson's office; what was the purpose of this meeting? A. In order to have executed a bill of sale and to receive certain notes and a check in exchange therefor.

Q. Were any notes drawn on this occasion? A. They were there—drawn—but who drew them I don't know.

Q. Now, do you recall the signing and endorsing of notes on this occasion? A. I recall the endorsing.

Q. State what you know about the endorsing of these notes at that time? A. I arrived at Mr. Simpson's office some time around about four o'clock that afternoon; Mr. Simpson was not there; Mr. John Warnke was there; I stated to Mr. Warnke my mission, saying I was there with Rev. Motley in the matter of Mr. Flynn; and he invited me into a private office immediately to the right, off from the reception room. We went in; Mr. Warnke sat on the east side of a very long table, near the south end of the table; I sat immediately in front of Mr. Warnke; and to my left Mr. Motley sat. Mr. Darling was at the north end of the table. Mr. Flynn did not sit; he stood up on the east side of the table, between Mr. Warnke and Mr. Darling. Mr. Warnke wanted to know did I have the bill of sale; I told him "Yes, I have it," it has not as yet been exe-

Eugene Hayne—Direct.

cuted. Mr. Warnke said something with reference to a lease of these premises, and we all agreed that the lease was not there present—I did not have it, and Mr. Flynn said he did not have it, and Mr. Warnke did not have it; and Mr. Warnke said that there would have to be drawn an assignment of this lease; Mr. Warnke dictated to the stenographer this formal assignment. While that was being done, 10
Mr. Henry I. Darling and Mr. Flynn went out of the room; I don't know whether they went out of the reception room or not after that, but in a short time Mr. Darling and Mr. Flynn returned. Mr. Darling continued muttering something to himself and sat down at the head of the table; he shook his head several times, with two notes, which had been handed to him in my presence, before him; he shook his head, endorsed the two notes, handed 20
them back to Mr. Warnke; they were shown to me by Mr. Warnke; then it was said by either Mr. Warnke or Mr. Flynn, I cannot say which one—

Q. And in the presence of Mr. Darling? A. Yes, sir, and also of myself and Mr. Motley—that I should keep the executed bill of sale, which I executed then and there; had Rev. Motley to sign; inserted in the bill of sale the name of Charles Flynn and a few other words; I was to keep the bill of sale and the assignment of lease; Mr. Warnke 30
was to retain the two notes endorsed by Mr. Darling.

Mr. Simpson: I object; this witness is testifying to a conclusion.

The Court: Strike that out then, in that form—all right.

Q. At any rate you kept the assignment of the lease and the bill of sale? A. Yes, sir.

Eugene Hayne—Direct.

Q. Is that right? A. Yes, sir.

Q. What was the next step you were to take after that; what did you do after that? A. Mr. Warnke stated to me that the two notes and a check for \$279.42 were to be retained by him, and that the exchange of the notes and check for the bill of sale and the assignment of lease was to be made at the
10 garage by George L. Bock at the corner of Communipaw Avenue and the Hudson Boulevard. We then left the room; Mr. Flynn, Mr. Motley, Mr. Darling, Mr. Warnke and I went downstairs, went into the street, and about two doors away from the building in which Mr. Simpson's office then was was a saloon—Hofbrau, run by Flynn; we went in there; Mr. Flynn gave out refreshments; we had Bass' Ale and lobster, and we stayed around
20 awhile. Mr. Darling not indulging in the lobsters, he drank the ale. We then got into an automobile. Mr. Flynn, Mr. Motley, Mr. Warnke and another man, I don't know his name, I and the chauffeur were in this automobile; this was pretty near on to seven o'clock; it might have been a little before or a little after; we drove down to Communipaw Motor Company Box Garage; all of us got out and walked into the garage. I proceeded to hand Mr. Warnke the bill of sale and the assignment of lease.
30 At that time Mr. Boch—either Mr. Boch or Mrs. Boch—came up, and asked, "What is all of this," and I said, "I don't know, Madame, you will have to see Mr. Spraggins; I am here to carry out the transfer of this property." Mr. Boch and Mrs. Boch were there present; I handed Mr. Warnke the bill of sale and the assignment of lease; I handed Rev. Motley the bill of sale and assignment of lease and he passed it over to Mr. Flynn; Mr. Warnke handed me two notes and a check for

Eugene Hayne—Direct.

\$279.42; I took the two notes and check and handed them to the Rev. Motley. Then Mr. Motley said to Mr. Flynn, "I put you into possession of this place"; and Mr. Flynn said immediately, "I am in possession of this place." The man who came down in the automobile, as to him Mr. Flynn said, "Take charge of everything around here, and see that nobody takes anything out of here." Then there began a wordy war, and I do not recall the exact words that passed. I and Mr. Motley left, Mr. Motley having the two notes and the check; we got into an automobile; the chauffeur drove Mr. Motley to his home and left him, and carried me to my home. 10

Q. I show you two notes, two papers purporting to be promissory notes, one for \$700 and one for \$500, dated May 2, 1912, and I ask you if these are the notes that you received on that occasion? 20

A. Yes, sir.

Mr. Anderson: I offer them in evidence.

Mr. Simpson: No objection.

Marked Exhibits C-1 and C-2.

Mr. Anderson: I offer in evidence the bill of sale of Richard A. Motley to Charles Flynn mentioned by the witness.

Mr. Simpson: No objection.

Marked Exhibit C-3. 30

Mr. Anderson: I offer in evidence the assignment of the lease.

Marked Exhibit C-4.

Mr. Anderson: I offer in evidence a memorandum of agreement made the 25th of April, 1912, between Cecilla D. Bock and George L. Bock, and Henry I. Darling; and it has been agreed between counsel that it is not necessary to call the subscribing witnesses. 40

Eugene Hayne—Direct.

Mr. Simpson: I object to the introduction of that agreement on the ground that it is incompetent, immaterial and irrelevant.

The Court: I will receive it at present; if it is not relevant or material I will deal with it on the final issue.

Marked Exhibit C-5.

10 Mr. Anderson: I offer in evidence a bill of sale made by George L. Bock and Cecilla D. Bock to Richard A. Motley.

Mr. Simpson: No objection to that.

Marked Exhibit C-6.

Mr. Anderson: I offer in evidence assignment of lease by Cecilla D. Bock and George L. Bock, her husband, to Richard A. Motley.

Mr. Simpson: No objection.

Marked Exhibit C-7.

20 Mr. Anderson: I offer in evidence bill of sale by Bernard J. Crowley to Richard Motley.

Mr. Simpson: No objection.

Marked Exhibit C-8.

30 Mr. Anderson: I offer in evidence, bottom of page 4 of the testimony, in the case of Philip R. Franklin v. Charles Flynn *et al.*, in the Hudson County Circuit Court, at the bottom of page, in which Mr. Simpson admitted the protest and notice of dishonor of these two alleged forged documents.

Mr. Simpson: That is all right. We admit protest and notice of dishonor of these particular notes, C-1 and C-2.

Further direct examination by Mr. Anderson.

40 Q. I show you the bill of sale marked Exhibit C-3 and I ask you if you know in whose handwrit-

Eugene Hayne—Direct.

ing the interlineation is in dark ink, as follows—being the words as follows: “his right, title and interest in and to”? A. It is in the handwriting of Mr. T. A. Spraggins.

Q. Was that on that paper before that was signed by Mr. Motley? A. Yes, sir.

Q. And likewise a similar interlineation in the covenant of warranty, being the words “his right, title and interest in”; was that there also? A. That was also there. 10

Q. Now, at the time you took this to Mr. Simpson’s office, was there any part of the paper blank; in other words, were there blank spaces in the paper when you took it up to Mr. Simpson, and before you had the paper executed, calling your attention particularly to the writing of the words “\$1479.42” and Charles Flynn, and the words “city” and “Jersey City” and the word “Hudson” and the words “New Jersey”? A. All the typewritten matter was written in the paper when I took it to the office. The words in the recital in the bill of sale, “\$1479.42,” are in the handwriting of Mr. Warnke. 20

Q. Was that put there in your presence? A. It was inserted in my presence.

Q. Anything else? A. “Charles Flynn” in Mr. Warnke’s handwriting; the words “city,” “Jersey City,” “Hudson,” “New Jersey” are in the handwriting of Mr. Warnke and were written before the execution in my presence. 30

Q. In Mr. Simpson’s office? A. Yes, sir, immediately following the habendum clause the word “his” is in the handwriting of Mr. Warnke, and inserted and written in my presence before execution.

Eugene Hayne—Cross.

Cross-examination by Mr. Simpson.

Q. Mr. Hayne, at whose direction did you go to my office on this particular day—Mr. Motley's or Mr. Spraggins'? A. Mr. Spraggins'.

Q. Where was Mr. Spraggins at that time? A. I left him in the office attending some matter.

10 Q. Had you had any conference with Mr. Spraggins before you left to go to my office that day, concerning this transaction? A. Yes.

Q. What time of day was that? A. That was almost immediately before 4 o'clock; at least immediately before the time that I left the office and went at once to your office.

Q. Did you put yourself in telephone communication with Mr. Spraggins at all after you left him at his office until the time that you left my office? A. I don't think I did; I don't recall having done so.

Q. Where did you meet Mr. Motley that day before you went to my office? A. I met Mr. Motley up at your office, I think.

Q. So that when you reached there Mr. Motley and Mr. Flynn were already at the office? A. Yes, sir, I think so.

Q. How soon after did Mr. Darling come? A. Mr. Darling was almost immediately there after I arrived.

Q. He came afterwards? A. That is to my knowledge; I don't know whether he had been up before.

Q. I mean up to the time you got there; he was not there when you got there? A. I don't recall his being there before.

Q. Do you recall his coming in after you got there? A. He either came there simultaneously upon my arrival or he came a little after; I won't state that positively.

Eugene Hayne—Cross.

Q. Now, you saw Mr. Darling come in, and he sat down at this long table that you have described, where Mr. Warnke and Mr. Motley and yourself were sitting? A. Yes, sir.

Q. And you saw him endorse two notes? A. Yes, sir, I did.

Q. You did not retain those notes or keep those notes in your possession, did you? A. No, sir. 10

Q. So that the two notes that you have identified here to-day are not the notes which you saw him endorse that day, are they?

Mr. Anderson: We admit that, if it is in point.

A. I say this, if your Honor please, it is going to call for a conclusion of mine whether they are identical or not in face of the fact that there has been adjudication by the Court that they were not— 20

Q. Don't you recall yourself whether they are or not? A. I do not.

Mr. Anderson: These are not the notes; we admit that.

Q. You remember testifying in the trial of the indictment of the State vs. Charles Flynn on February 4, 1913? A. Yes, sir. 30

Q. Do you remember this question being put to you at that trial (p. 99), sixth line from the bottom: "Q. Did you have a conversation at that time with Mr. Warnke in regard to this case? A. Yes, shortly after a suit was brought by Mr. Spraggins, whom I represented, on the two notes. Q. Did he say in whose handwriting they were? A. He told me he thought they were in Mr. Simpson's hand-

Eugene Hayne—Cross.

writing." Do you remember testifying to that?
A. Yes, sir.

Q. Do you remember who drew those notes that day? A. I do not.

Q. Now, do you recognize in whose handwriting the notes are that are before you, constituting Exhibits C-1 and C-2? A. I cannot say.

10 Q. Will you look at Exhibit C-3, you recognize some handwriting in that, don't you? A. Yes, sir.

Q. Whose handwriting do you recognize there?
A. There are three different handwritings here, one by Warnke, one by Spraggins and one of Mr. Motley's.

Q. What is the handwriting that is in Mr. Warnke's? A. The statement of the consideration—the name of Charles Flynn, the grantee, and the words "city," "Jersey City," "Hudson," "New Jersey," "his."
20

Q. Had you ever known Mr. Darling before this day? A. I had known him.

Q. Personally? A. From my viewpoint I knew him to be Mr. Darling.

Q. Now, while you were there, and before Mr. Darling came into the room, had you had any conversation with Mr. Flynn? A. I don't know that I had any; I don't recall having any particular conversation with Mr. Flynn except possibly passing the day, and I may have said something when I was speaking to Mr. Warnke about the execution of these papers.
30

Q. Did you talk to Mr. Darling at all? A. No, sir.

Q. Now, what conversation did you have with Mr. Warnke from the time you went into that office until you left it? What was the first thing you introduced yourself with? A. I told Mr. Warnke
40

Eugene Hayne—Cross.

I was there; I said, "I am here now, Mr. Warnke, in the matter of Mr. Motley's garage"; he said, "Well, I have charge of it—Mr. Simpson is not here, and he has left me in charge of it," and he invited me and the others who were there into this private office. The next conversation was with reference to where the lease was, and none of us knew, that is, those who were there said they did not know. 10

Q. Did Mr. Flynn raise any question about the possession of the lease? A. I don't recall that he did.

Q. Did Mr. Flynn have anything to say at all at the time? A. Mr. Flynn had considerable to say; just what he did say I don't recall.

Q. As a fact, Mr. Flynn had more to say than everybody else put together? A. That is true.

Q. Now, what was that volume of talk about? 20
A. I only have a vague recollection of the facts that Mr. Flynn did considerable talking around there; he spoke to Mr. Warnke a good many times; just particularly what it was I do not recall; but I do recall, however, that when Mr. Darling came back into the room, after he and Mr. Flynn had gone out—either in the hall or in a room beyond this—that Mr. Darling after sitting at the table, and the notes were passed, I remember Mr. Flynn stood 30
some little distance away from him, and the exact words I do not recall, but it was in the way of goading on to do the thing, and not crawfish; just the words I don't recall.

Q. Did he use the word crawfish? A. No, sir.

Q. Who was urging this transaction, was it Mr. Flynn? A. Which one of the transactions?

Q. Why, this crawfishing. A. Do you mean the signing of the notes at that time?

Eugene Hayne—Cross.

Q. Yes. A. Mr. Flynn apparently was urging Mr. Darling to go ahead and do the thing.

Q. Now, do you know anything about a conversation between Motley and Flynn before you came into my office? A. No, sir, I do not.

10 Q. Do you know anything about a conversation between Mr. Spraggins and Mr. Motley before you came to my office—I mean Spraggins and Motley and Flynn—before you came to my office? A. No, sir.

Q. Did you know, or did not Mr. Spraggins tell you, that you were to go up to my office to close a transaction between Flynn and Motley and that you were to receive two notes which were to bear the endorsement of Mr. Darling; were not those the instructions you received from Mr. Spraggins? A. Well, whether the transaction was to be directly
20 with Mr. Flynn or not I don't know, and I don't recall; I do know that I was sent there with this bill of sale and that certain instructions were given me with reference to this bill of sale.

Q. (By the Court) Who was to give you the notes? A. And I was to receive the notes.

Q. From whom? A. From Mr. Simpson's office.

Further cross-examination by Mr. Simpson.

30 Q. Answer the question I put to you. A. (No answer.)

By the Court.

Q. Were not you to look over the papers? You were representing Mr. Spraggins. A. There must have been something said; I don't recall it. I will willingly recall it if I can any time later.

*Eugene Hayne—Cross.**Further cross-examination by Mr. Simpson.*

Q. Now, when you got down to the garage, you turned the garage over to Mr. Flynn, didn't you?

A. No, sir.

Q. Well, you and the others with you; Mr. Motley went with you; you testified, I think, that Mr. Motley said something about putting Mr. Flynn in possession? A. Yes, sir, I did; that is what Mr. Motley said to Mr. Flynn.

10

Q. That is what Mr. Motley said to Mr. Flynn? A. Yes, sir.

Q. Now, Mr. Darling did not go down with you on that trip, did he? A. No, sir.

Q. Did Mr. Spraggins give you instructions to put Flynn in possession of that garage? A. I cannot say that he did; no, sir.

20

Q. What was it that took you down there, then? A. I don't know whether anything particular took me down there except to make the exchange, and a suggestion was made that we go down to the garage and there I was to receive my two notes and the check; and it was there where Mr. Warnke was to receive his bill of sale and his assignment of the lease.

Q. And whose suggestion was it that you go down to the garage and exchange the papers there?

30

A. I don't know whether it was Mr. Warnke or Mr. Flynn, or who.

Q. Didn't you expect to exchange these papers at my office? A. I certainly did not expect to go to the garage.

Q. Didn't you expect to make the exchange at my office—yes or no? A. I think that is right.

Q. Now, cannot you tell me why it was that you deferred making the exchange until the garage was reached? A. I don't know, I don't recall.

40

Eugene Hayne—Cross.

Q. You cannot give any explanation at all of why you all went down to the garage to exchange the papers there, can you? A. No, sir, except that the suggestion was made that the exchange be made there; there was considerable conversation between Darling, Flynn and Warnke.

10 Q. I want you to tell us what some of these people said, and what the conclusion was; what did Flynn say about this garage? Surely you must remember something he said? A. No, sir, I cannot.

Q. What did Darling say? A. I don't recall Mr. Darling saying anything.

20 Q. What did Warnke say? A. Nothing except that the exchange would be made there at the garage; that I was to retain the bill of sale and the assignment of the lease, and that he would retain the notes and check and we would go to the garage and make the exchange.

Q. Is that all you remember about it, Mr. Hayne? A. That is all I can think of at this time.

30 Q. How was that state of facts arrived at; how did you come to determine that? Instead of exchanging these papers, why was it that you determined to go down to that garage? A. I determined to go because I had the bill of sale and the assignment in my possession; I was sent there to get two notes and a check, and it did not matter particularly just how far I went for them, if I carried the transaction out and got the two notes and the check, and delivered the bill of sale and the assignment of lease.

Q. Why was it necessary to take Mr. Motley down to the garage? A. I cannot say that anything at that time was said with reference to the necessity of Mr. Motley going down.

Q. What papers did he carry? A. Mr. Motley?

40 Q. Yes. A. None.

Eugene Hayne—Cross.

Q. And you had the bill of sale and the assignment of lease? A. Yes, sir.

Q. You carried that down? A. Yes, sir.

Q. Now, when the automobile reached the garage, who went into the garage first—of your party?

A. Of my party?

Q. Yes. A. My party went in last, that is, the Reverend Motley and I, because he was the more 10
elderly of those there; I waited on him to alight.

Q. But who went in first? A. I cannot say who went in first; I would not attempt it.

Q. Did you go into the office of the garage, or in the main part of the garage? A. I don't think I ever got in the office; we stood within the garage a distance of possibly ten feet from the entrance there.

Q. There is the sidewalk—between the curbstone and the building? A. I say within the garage. 20

Q. Inside of the garage? A. Yes, sir.

Q. And was that when Mr. Motley said, "Now I put you in possession, Mr. Flynn." A. Yes, sir; we were in the garage.

Q. As a fact was there some question at my office as to whether Mr. Motley could put Mr. Flynn in possession of that garage, there was, wasn't there? A. I don't know of any question. 30

Q. And wasn't it determined that you all would go down to the garage and the papers would be exchanged provided Mr. Motley could put Mr. Flynn in possession? A. No, sir, I don't recall any conversation where there was any provision with reference to possession.

Q. And was not that the very idea in holding on to the papers until after you got down to the garage? A. No, sir. 40

Eugene Hayne—Cross.

Q. Now, what papers did Mr. Flynn have in his possession after you left my office, and until you made the exchange of papers in the garage?

A. None to my knowledge.

Q. None at all? A. None.

Q. Were you at the criminal trial? A. Yes, sir.

Q. Do you remember Mr. Motley testifying? A.
10 Yes, sir.

Q. Do you remember him testifying as to who handed him the notes? A. I don't recall what he testified as to who handed him the notes.

Q. How long did you stay at the garage? A. Mr. Motley and I stayed a very few minutes.

Q. How long? A. A very few minutes; I don't think it was over five minutes.

Q. You testified at the Franklin trial on May 7th, 1913? A. Yes, sir.

Q. Did you hear this question asked Mr. Motley; did you hear this question asked Mr. Motley (on p. 6); did you hear this question asked of Mr. Motley (p. 6 of trial of indictment): "Q. And were the two notes you delivered to Spraggins the same as you received from Warnke? A. I did not get them from Warnke; I got them from Flynn." Do you remember hearing him testify to that? A. No, sir, I don't remember it; I heard pretty nearly all his testimony; I don't remember; it must be so.
30

Q. And do you remember him being asked this question (p. 6): "Q. This is in Mr. Warnke's presence? A. I don't know whether he was taking notice of it or not; when Mr. Darling signed these notes he passed them to Mr. Warnke. Q. And what did Warnke do with them? A. I don't know." Do you remember that? A. I don't know that I recall that; I will say that I don't recall any testimony of Mr. Motley's specifically.
40

Eugene Hayne—Cross.

Q. Now, your recollection is that these notes were delivered to you? A. By Mr. Warnke.

Q. You are sure of that? A. Positive.

Q. What did you do with them? A. I passed the notes—which time—do you mean at the garage?

Q. At any time. A. The first time I got hold of the notes was immediately after Mr. Darling had signed the two notes—passed them immediately to Mr. Warnke in my presence—and Mr. Warnke handed them immediately to me to look at, and I looked at them. And the second time was when Mr. Warnke passed these two notes to me in the garage. 10

Q. Now, did you see where Mr. Warnke got those notes from? A. Which notes?

Q. Those two notes. A. These two notes?

Q. Yes. A. He took them out of his pocket.

Q. Did you see anybody hand them to him? A. No, sir. 20

Q. Where was Mr. Flynn at that time? A. Mr. Flynn was along.

Q. And right next to you when these notes were delivered? A. I won't say that he was standing next to me; we were all within a radius of five, five or ten feet.

Q. Did you see any notes delivered to Warnke by Flynn or any other person there? A. At the garage? 30

Q. Yes. A. No, sir.

Q. Did you see them delivered to Mr. Warnke before you started on this automobile trip? A. Yes.

Q. Who delivered them to him? A. Mr. Darling.

Q. In my office? A. Yes, sir.

Q. Did you see any change in those notes, so far as possession is concerned, after you left the office, 40

Eugene Hayne—Cross.

and before you started on your automobile trip? A. I did not.

Q. So that these notes which you identify as having been delivered to you that day on the exchange of these papers were not the notes which Mr. Darling handed over to Mr. Warnke, are they? A. I cannot answer that because it would be virtually determining the issues here.

By the Court.

Q. Can you answer the question? A. No, sir, I cannot answer.

The Court: Never mind about determining the issues; answer if you can.

Further cross-examination by Mr. Simpson.

Q. Now, after these notes were delivered, and these papers delivered, what did Mr. Flynn say? A. Mr. Flynn called the young man who went in the automobile with us—

Q. What did he say? A. He said to this young man, "I put you in charge here, see that nobody moves anything out of here."

Q. Do you remember him saying, "I am now in possession of this garage" and called to the young man to take charge of the garage, or "to see that nobody takes anything out of here"? A. Yes, sir.

Q. So that Mr. Flynn said he was in the possession of the garage? A. Yes, sir.

Q. Did you leave Mr. Flynn at the garage? A. Yes, sir.

Q. You then had this chauffeur drive Mr. Motley and yourself to your homes? A. Yes, sir.

Q. And that is all you know about this whole affair? A. Yes, sir.

*Eugene Hayne—Redirect.**Redirect examination by Mr. Anderson.*

Q. Mr. Hayne, were you present at the trial of the State against Charles Flynn in the criminal court in Hudson County? A. I was, yes, sir.

Q. And was this Exhibit C-2 used in that trial?
A. Both notes were used.

Q. C-1 and C-2? A. Yes, sir.

10

Q. And were you present at the trial of the case of Franklin versus Flynn and Darling, tried in the Hudson County Circuit Court? A. Yes, sir.

Q. Were you there as a witness? A. Yes, sir.

Q. Were these notes likewise used in that trial?
A. They were.

Mr. Anderson: I offer in evidence in the same manner as if the stenographer were called who took these notes and made proof of them, the testimony of Henry I. Darling in the case of Franklin versus Flynn, *et al.*, the other being Henry I. Darling, in the Hudson Circuit Court on May 7th, 1913, in which Henry I. Darling was sworn and made the following statements and admissions. I am going to read the whole of it from page 1 to page 18.

20

Mr. Simpson: I don't think counsel can use the testimony in that way; it was only stipulated that it was not necessary to call the stenographer to prove his notes.

30

Mr. Anderson: I offer this as a sworn statement offered in evidence just the same as if we were calling the stenographer and he testified that he had officially taken these notes, and had heard Mr. Darling make these statements, and had officially taken the

40

Eugene Hayne—Redirect.

notes, and that they were correct; and I offer them as admissions against interest, and admissions by Mr. Darling personally, given in the highest form of evidence, and in the most solemn manner—under oath.

Mr. Simpson: I don't understand the offer.

10 The Court: He is offering the testimony of Mr. Darling given in the case of Franklin versus Flynn and Darling in the Hudson County Circuit Court, tried on May 7th, 1913.

20 Mr. Simpson: Well, I don't know that he can do it even as a declaration against interest, but it seems to me that if Mr. Anderson is going to use any testimony which was used in the other case either to contradict—

The Court: The general practice is to call the witness and then put the question to him.

Mr. Anderson: This testimony has all the standing of probative evidence. It is the admission of Henry I. Darling as to this transaction; it relates only to these particular notes; it is germane to the subject.

30 The Court: It is germane.

Mr. Anderson: And it relates only to these notes in question; now I say that I have a right; it is a fundamental rule of the law of evidence that I don't have to call Mr. Darling; that if I had a witness who heard Mr. Darling make certain admissions with regard to these particular transactions, and the very essence and gist of this case, that I can call that witness and ask him what

40

Eugene Hayne—Redirect.

Mr. Darling said, and that would be a declaration against interest and therefore would be admissible in evidence. Now, I am doing exactly the same thing except that I am not calling the stenographer himself who took the testimony, because it has been admitted that this testimony shall have the same effect as if Mr. Ransome, the court stenographer, was called here and put under oath, qualified as the official stenographer and then said that he had read his notes correctly and testified that Darling testified thus and so; I say it is one of the foundation principles of evidence, and I am relying on that in this case. 10

The Court: I am inclined to allow it to go in now and rule upon it later on. It will be taken only as an admission against interest, however; you have admitted that these are the stenographer's minutes and that the minutes are correct; it is a written stipulation by exchange of letters. You admit it is truthfully taken down and correctly taken down? 20

Mr. Simpson: Yes, sir, we admit that.

The Court: It is not necessary for Mr. Roberts to take this down; it can be copied in. 30

Mr. Anderson: I will read from page 1 to page 17. You need not take this down, Mr. Roberts. (Reads testimony of Henry I. Darling as follows:)

*Complainant H. I. Darling's Testimony in
Franklin v. Flynn.*

HENRY I. DARLING SWORN.

Direct examination by Mr. Simpson.

Q. Where do you live? A. 914 Bergen Avenue.

Q. And you have lived in Jersey City how long?

10 A. I have lived in Jersey City about twenty-six or
twenty-seven years and in Hoboken, nine years.

Q. You are in business in Jersey City? A. Yes,
sir.

Q. How long have you been in business here?

A. Over twenty years.

Q. I show you a paper marked Exhibit P-1 in
this case bearing the endorsement H. S. Darling,
and ask you if you ever saw that paper before? A.

20 I don't think I ever saw this paper before, no.

Q. Is that endorsement H. S. Darling in your
handwriting? A. It is not.

Q. Did you ever put it there? A. I did not.

Q. Did you ever authorize any person to put it
there for you? A. I did not.

Q. Do you ever write your name H. S. Darling?

A. No, sir; my name is H. I. Darling.

Cross-examination by Mr. Anderson.

30 Q. Who is your counsel? A. In this case, Mr.
Simpson and Mr. McEwan.

Q. Charles E. S. Simpson. Were you present
at his office some time in May, 1912? A. Yes,
sir.

Q. Who else was present there? A. What time
do you mean?

Q. May 2nd, 1912? A. Well, there was present
Mr. Haynes and Mr. Warnke and Flynn.

*Complainant H. I. Darling's Testimony in
Franklin v. Flynn.*

Q. Mr. Motley? A. And Mr. Motley was there, too.

Q. Did Mr. Hayne come in later? A. He was there, yes.

Q. At that time you had some transaction about a garage, did you not?

10

(Objected to as not cross-examination.
Objection sustained.)

Q. Did you at that time sign a note or notes—
A. I did not sign that note.

Mr. Simpson: Just a minute.

Q. I am not asking you about that. I ask you, on May 2nd did you sign any notes?

20

Mr. Simpson: I object to that unless the note is identified.

The Court: Objection overruled. He has a perfect right to test the recollection of this man with respect to what he did on that day.

A. I did, yes.

Q. You signed a note of \$700. A. I did, yes. 30

Q. To whose order was that note payable? A. To Richard A. Motley.

Q. When I ask you, "Did you sign one?" I mean, did you endorse it? Did you endorse it? A. I endorsed it; I did not sign it.

Q. Now, these two notes were given for a specific purpose, weren't they? A. Yes.

Q. For what purpose? A. Well, Flynn was buying the garage.

40

*Complainant H. I. Darling's Testimony in
Franklin v. Flynn.*

Q. Yes; and didn't you agree that you should buy the garage? A. No, sir; I never saw Mr. Motley or anybody else about it.

Q. And these notes were to be given in payment for that garage? A. To be turned over to Motley, and Motley was to give a bill of sale, yes; so I
10 understand it.

Q. When did you leave Mr. Simpson's office at that time? On that day? A. When did I leave?

Q. On that day; on the day you signed this seven hundred and five hundred note; what time in the day did you leave Mr. Simpson's office? A. Why, it was in the afternoon some time.

Q. About 5 o'clock? A. Perhaps, yes.

Q. When you left who remained in that office? A. Why, the rest of them remained. Flynn and
20 I think the rest of them remained there, yes.

Q. Mr. Warnke, Flynn and Motley remained there, didn't they? A. I think so, yes.

Q. And Mr. Warnke was representing you as your attorney because Mr. Simpson was absent; is that right? A. He was acting, he drew the papers.

Q. And it was understood that he was to go down to the garage with the idea of closing the transaction, is that right? A. Flynn took the notes and he said, "I will not turn them over"—
30

Q. I am not asking you about Flynn. A. Warnke did go down, I understood.

Q. I am asking you about what was understood as to what your counsel was to do.

Mr. Anderson: (To the stenographer) Repeat the question, please.

(Question repeated.)

Q. And he was to go there as your counsel? A.
40 Well, he was principally Flynn's counsel. My part

*Complainant H. I. Darling's Testimony in
Franklin v. Flynn.*

of it was that I bought a chattel mortgage and I got that and then he was to put Flynn in possession.

Q. We will come to the chattel mortgage question in a little while. You know you got the chattel mortgage as consideration for signing these seven hundred and five hundred dollar notes that you said you signed on that particular day. Of course, you did. A. Yes. 10

Q. Now, Mr. Warnke was to go there, as I understand, and close the transaction? A. That was the understanding, yes.

Q. Now, didn't you give Mr. Warnke the notes instead of Flynn? A. I did not. Flynn took them. Flynn took them and said he would not hand them over until he got the garage. 20

Q. You have never paid this seven hundred and this five hundred note, have you? A. I never got anything for it.

Q. How? A. No, I have never paid them, but I never got anything for them.

Q. Are they still outstanding so far as you know? A. Yes, sir.

Q. I show you a mortgage purporting to be a chattel mortgage by Charles Flynn to Henry I. Darling, and ask you to look at it and tell me whose name that is at the bottom of page 3 of this mortgage? A. That is my signature. 30

Q. And you made oath to that before Mr. Warnke as therein recited, did you? A. Yes, sir.

Mr. McEwan: We admit the mortgage.

Mr. Anderson: I do not ask you to admit it.

Q. In this paper you swore that you had endorsed several certain promissory notes aggregated 40

*Complainant H. I. Darling's Testimony in
Franklin v. Flynn.*

ing \$2525 and that you are liable for the payment of the same by virtue of such endorsement; was part of that \$2525 the two notes, one for five hundred and one for seven hundred, dated May 2, 1912, which you signed in Mr. Simpson's office? A. They were, yes.

10 Mr. Anderson: I offer the chattel mortgage in evidence.

Mr. Simpson: No objection.

(Paper designated Exhibit P-2.)

Redirect examination by Mr. Simpson.

Q. After the 2nd of May, 1912, did you ever see the \$700 and the \$500 note you say you endorsed on that day? A. I did.

20 Q. Where did you see them? A. I saw them in your office.

Q. And in whose possession were they? A. In the possession of Charles Flynn.

Q. And when was that? A. That was on the 27th of June.

Q. And what was done with the notes? A. He destroyed them.

30 Q. Now, before they were destroyed did you look at those two notes? A. I did.

Q. And what relation did they bear to the transaction of May 2nd? A. Well, in consideration of the destruction——

Q. What relation did those notes bear? A. Well, they were part of the transaction.

Q. They were part of the transaction of May 2nd, is that right? A. They were, yes.

40 Q. When those two notes were destroyed did you give anything in their place to Flynn? A. I gave

*Complainant H. I. Darling's Testimony in
Franklin v. Flynn.*

five hundred—I endorsed a five hundred dollar note, which I have since paid.

Q. I show you a paper dated June 27th, 1912, for \$500 bearing the endorsement H. I. Darling, drawn by Charles Flynn, and ask if you recognize that? A. Yes, sir, that is my signature; that is the note.

10

Q. Is that the one you gave on the 27th of June? A. Yes, sir.

Recross-examination by Mr. Anderson.

Q. Didn't you think it strange that Mr. Flynn should have these two notes which were given to Mr. Motley at that particular time?

Mr. Simpson: I object to that as merely asking for an opinion from the witness. It does not establish any particular fact.

20

The Court: Oh, I will permit it. I do not see what harm it can do.

A. Yes, I thought it was strange when he told me he had——

Q. I ask you the question, didn't you think it very strange? A. I thought it strange when he told me he had something on Mr. Spraggins, that he got back from Mr. Spraggins.

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40

*Complainant H. I. Darling's Testimony in
Grossman v. Darling.*

Testimony of Henry I. Darling read in evidence by Mr. Anderson from the case of Grossman v. Darling:

- Q. Now this chattel mortgage was given to you?
A. Yes.
- 10 Q. And that chattel mortgage bears date May 2nd, 1912, does it not? A. I believe so.
- Q. And is in the sum of \$2800? A. Yes.
- Q. The affidavit being for \$2425. Now, what were the notes that that was given for? A. That was given to cover the \$900 or \$920 judgment I paid off through Mr. Milton, and a \$600 note I had endorsed for Flynn.
- Q. Yes? A. And the two Motley notes.
- Q. What? A. The \$1200 notes.
- 20 Q. And you paid all those notes? A. The Motley notes were destroyed, I never paid them. The others I paid.
- Q. Who drew these notes, the two to Motley, and the one to him? A. They were drawn by Mr. Warnke.
- Q. Who is Mr. Warnke? A. He is a lawyer in Mr. Simpson's office.
- Q. What? A. The garage had gone and there was nothing to the garage. He in some way or
- 30 other manipulated it so that they would——

Mr. Haight: I object.

The Court: Objection sustained.

Q. Well, your security of the garage, was that gone?

Mr. Haight: I object.

Mr. Edwards: I withdraw that.

*Complainant H. I. Darling's Testimony in
Grossman v. Darling.*

Q. You got the real estate mortgage; what was that to take the place of? A. Take the place of all he owed me in every way.

Q. The garage money? A. The garage money and the \$500 note I endorsed that day.

Q. How did you happen to buy this judgment of \$900 on the garage? A. Well, I thought it was a good thing. There was a good property in that garage then; there was \$5,000 worth of automobiles and more—assets. 10

The Court: Read from page 17.

Mr. Anderson reads as follows:

Q. Who induced you to buy it? A. Well, I did it.

Q. Who induced you to do it? A. I did it.

Q. Who brought it to your attention first? A. Well, it was he. 20

Q. Who? A. Flynn.

Q. What did you assign it to Flynn for? A. I do not know; it was a foolish thing to do, but I did.

Q. You haven't any idea why you did that? A. I was sorry very soon after.

Q. You haven't any idea why you assigned a judgment of \$900 to Flynn when you thought it was a good thing? A. Well, I shouldn't have done it, I admit. 30

Q. But you have not any idea why you did it? (No answer.)

Q. That is right, is it? A. Well, he persuaded me he could make the garage pay and make it a good thing and all that sort of thing. He got it in my mind and I did assign it to him.

Q. Then after you got that judgment that did not give you the garage, did it? A. He tried to 40

*Complainant H. I. Darling's Testimony in
Grossman v. Darling.*

get the garage under that and then he found Motley had a bill of sale.

Q. And you did not get it? A. No.

Q. So then you determined to go and buy Motley out? A. I did not; he did.

Q. And you were to furnish the money for it?

10 A. I was to endorse two notes for Motley.

Q. But you were to furnish the money? A. I was to endorse two notes for Motley.

Q. You endorsed a note for \$300 that was used in that transaction, didn't you? A. Yes, sir.

Q. And you did endorse the Motley notes, didn't you? A. Yes, sir.

20 Mr. Anderson read in evidence testimony of Henry I. Darling given in the Hudson County Quarter Sessions, Part I, at a trial of the State against Charles Flynn on indictment number 251, September Term, charge, forgery:

Cross-examination by Mr. Simpson.

Q. You had some interest in this garage that these notes were given for? A. I had paid a \$900
30 chattel judgment on it.

Q. And you had a chattel mortgage on it? A. No, I was promised a chattel mortgage, but I did not get it.

Q. Who was the owner of the garage? A. I think it was Mr. Bock, but Flynn came and told me that Mr. Motley had a bill of sale of it, and I really did not know, and then he said he was getting possession of it under this bill of sale and he was taking a bill of sale from Motley, and he asked me to
40 endorse the notes.

*Complainant H. I. Darling's Testimony in
State v. Flynn.*

Q. Why did you want to endorse the notes? A. He asked me to.

Q. But where was your interest? A. Because I got a chattel mortgage back on the garage, I was to have a chattel mortgage.

Q. Mr. Motley's bill of sale would not be good as against your judgment— A. My judgment did not wipe out Mr. Motley's bill of sale. 10

Q. Oh, you wanted to wipe out Motley's bill of sale? A. No.

Q. And take a chattel mortgage on that garage? A. No, I paid the judgment and it was pointed out that Motley's bill of sale interfered, and then Flynn told me he would buy out Motley—I had assigned my judgment to Flynn, I admit, foolishly, and then he said he would get the bill of sale from Motley and get possession. 20

Q. You had a judgment which you assigned to Flynn? A. Yes.

Q. And you turned that judgment over to Flynn? A. Yes, I assigned it.

Q. And in addition to that you made out these notes of 300, 500 and 700? A. Yes, I endorsed them, that was done in Simpson's office, Charles Simpson.

Q. So that in addition to your paying the judgment of \$900 you endorsed notes for \$1500? A. I did, and I got a chattel mortgage also to cover the transaction. Why don't you put that in? 30

Q. I don't want to. A. I do.

Q. And these notes you are now disputing. You did intend to give a note for \$500 for Motley to clear up this transaction? A. I did endorse a note for Motley for \$500 on that transaction with the garage.

*Complainant H. I. Darling's Testimony in
State v. Flynn.*

Q. And that was for the purpose of enabling Mr. Flynn to obtain title and get possession of the garage? A. Well, yes.

Q. So that you have no doubt that you intended to and did endorse a note of \$500 for Motley? A. Yes, I don't dispute that; I have no doubt about that, no.

Q. What other notes did you endorse that day to Motley? A. One, \$700.

Q. These notes that you did endorse, where did you endorse them? A. In front of Mr. Warnke in Mr. Simpson's office, in the afternoon, about 2 o'clock.

Q. Did you leave them in the possession of Mr. Warnke? A. Flynn said, "I will not turn these papers to Mr. Motley until he puts me in possession of the garage," and if I recollect, Mr. Flynn took the notes, but I am not positive, and then, if I recollect right, he went down, he and Motley and Haynes, and went to get actual possession of the garage.

Q. You say if you recollect aright. Do you mean you have doubt? A. I do recollect right. Flynn said, "I will not give the notes until I get possession of the garage."

Q. Why did you say if I remember right or if I recall right, why did you say so if you did remember? A. He had possession of the two notes.

Q. Then you were endorsing a note for Flynn so that he might raise money? A. Yes, sir, to close up this transaction.

Q. Why did you make him out an obligation of \$300 when the amount called for was only \$279.42? A. I was not buying the garage, he was.

Q. But he was getting also, according to this, about \$20 of your money for nothing. What is

*Complainant H. I. Darling's Testimony in
State v. Flynn.*

your explanation of that? A. I got a chattel mortgage.

Q. Having paid one of these notes, what did you do with the other two? A. I did not get possession of them.

Q. You left them in Warnke's possession? A. Flynn got them all right. I did not take them at all. The only thing I got was the chattel mortgage, and I left the notes there. 10

Q. Then you went out with your chattel mortgage? A. That is the fact.

Q. Did you have anything else to do with the garage besides what you have testified, having your car sold there? A. No.

Q. Did you not pay \$900 cash for a judgment against that garage? A. \$910, I think, would be correct. 20

Q. You had no interest in that garage, did you? A. I was to get a chattel mortgage from the Bock people.

Q. Did you get it? A. I got it from Flynn.

Q. Did you represent Mr. Flynn and Mr. Darling in the matter of the chattel mortgage that was given by Flynn to Darling for \$2800? A. Yes, sir.

Q. And also acted for them through Mr. Warnke in having the papers signed and the bill of sale and receipt of the bill of sale for the garage? A. Yes, I was trying a case that day and I asked Warnke to attend to it for me. 30

Q. And in that transaction there were those two notes, \$700 and \$500, used? A. Yes, sir.

Q. After the chattel mortgage was given can you tell us what became of the goods covered by the chattel mortgage?

(Objected to as immaterial. Objection overruled.) 40

*Complainant H. I. Darling's Testimony in
State v. Flynn.*

Q. What became of the title to that property as far as you know? A. It was lost through the bankruptcy court where George L. Bock, who claimed ownership, had filed a petition in bankruptcy.

10 (Objected to. Objection sustained as not the best evidence.)

Mr. Anderson read in evidence testimony of Charles E. S. Simpson called by the State and sworn, in the Hudson County Quarter Sessions, Part I, at the trial of the State against Charles Flynn on indictment No. 251, September Term, 1912; charge, forgery:

20

CHARLES E. S. SIMPSON, called by the State and sworn, testified as follows:

Direct examination by Mr. Vickers.

Q. On the 27th day of June, Mr. Darling was present, and Mr. Flynn was present at my office. Darling had been finding fault because the security for that chattel mortgage had been lost through the bankruptcy proceedings—

30

Q. Was that said there? A. Yes, for some days prior to that time—

(Objected to.)

Q. Didn't it seem strange to you that the Motley notes should have been given up at that particular time after Motley had parted with the garage

*Complainant C. E. S. Simpson's Testimony in
State v. Flynn.*

and the garage had been dissipated in bankruptcy proceedings? A. No, it did not seem strange, because of the fact that the garage transaction had gone up in the air and it would have been an easy matter to get back those notes.

Q. You knew that the title of Motley had passed to Flynn, didn't you? A. It had on paper. 10

Q. Well, and it had actually, hadn't it, wasn't Flynn in possession? A. No, the receiver in bankruptcy was in possession.

Q. Didn't your man Warnke go down and put Flynn in possession of those premises? A. At the time of the transaction, yes.

Q. And Flynn remained in possession for some time? A. Oh, a day or two, I think.

Q. It was longer than a day or two, wasn't it? A. No, only a few days. 20

Q. Well, the bankruptcy proceedings merely resulted in the setting aside of the bill of sale to Flynn as between Flynn and the Bocks on the ground that it was a mortgage, didn't it? A. Yes, the referee in bankruptcy held that the bill of sale held by Flynn was nothing but an equitable mortgage.

Q. Yes, so that that was a matter between Flynn and the Bocks, wasn't it? A. Yes. 30

*Complainant John W. Warnke's Testimony in
State v. Flynn.*

Mr. Anderson read in evidence testimony of John W. Warnke, called by the State and sworn, in the trial of the State against Charles Flynn:

JOHN W. WARNKE.

10 *Direct examination by Mr. Vickers.*

Q. You reside in Jersey City? A. Yes.

Q. How long? A. Since 1879.

Q. You are associated with Mr. Charles E. S. Simpson? A. I am.

Q. On the second day of May, 1913, were you in his office? A. I was.

Q. Do you know Charles Flynn, the defendant?
A. I do.

20 Q. On the 2nd day of May do you recall some transaction that involved a garage known as Bock's Garage? A. I do.

Q. Do you remember Mr. Motley being there, the last witness? A. I do.

Q. Who else was there? A. Mr. Hayne and Mr. Darling and Mr. Motley.

Q. Do you remember the making out or signing certain promissory notes at that time? A. I do.

30 Q. Did you see H. I. Darling endorse certain notes at that time? A. He endorsed three notes which I drew up.

Q. I show you a paper writing and ask you whether that is one of the three papers drawn up by you that you have referred to in your previous testimony? A. It is.

40 Q. The three notes which you drew on the 2nd of May, as you have described, were they signed in your presence by the defendant Flynn? A. They were.

*Complainant John W. Warnke's Testimony in
State v. Flynn.*

Q. Were the three notes at that time endorsed by both Flynn and Darling? A. They were.

(Note for \$300 marked S/2 for Identification.)

Q. Have you ever seen this note before, being S/1, until it was shown to you now on the witness stand? 10

A. I believe it is the same note I saw in Mr. Spraggins'; he showed it to me and asked me if that note was good.

Q. That was some time previous to this? A. Yes.

Q. After you drew up these notes, as you have described, and they were signed by Flynn and Darling, what, if anything, did you do with them? A. There seemed to be some question as to whether we could get possession of the garage, the legal title being in Mr. Spraggins, I believe, and the possession was in one Bock, and therefore I retained the notes until we got down to the garage, and Mr. Hayne retained the bill of sale, and the papers were to be exchanged there when possession was given. 20

Q. And did you go in the automobile described by Mr. Motley? A. Yes.

Q. And in the garage you delivered the notes? 30
A. We passed papers from one to another; part papers were delivered by Flynn and part by Motley.

Q. Do you know who delivered the notes to Motley? A. I did; I delivered them to Motley at the garage.

Q. Was Flynn there? A. He was. He passed them back to me and I passed them to Motley. I took them to the garage and passed them to Flynn 40

*Complainant John W. Warnke's Testimony in
State v. Flynn.*

and Flynn passed them back to me, and then I passed them to Motley.

Q. I show you another paper writing purporting to be a note and dated the 2nd day of May, 1912, for \$700, and purporting to be signed by Charles Flynn, and ask you whether you wrote that
10 or any part of it? A. No, sir. That has got altogether a different form and not in my handwriting.

Q. Different form, the same as S/1? A. Yes.

Q. Do you say neither papers S/1 nor this last one, which I have shown you now for \$700, neither one of these is the second or third note of the notes which you made out at the time that you drew up the three notes, one of which is S/2 for Identification? A. They are not.

20

(Paper marked S/3 for Identification.)

Q. At this time, when the three notes which you have spoken of were filled out by you and executed by Flynn and Darling, was there a paper purporting to be a chattel mortgage executed? A. There was.

Q. And did that form part of this same transaction? A. Yes.

Q. Part of this same paper shuffling which was
30 going on there? A. Yes.

(This question and answer stricken out on objection of defense.)

Q. Is this the paper which I have indicated as a chattel mortgage executed at that time? A. It is.

Q. Written on this is that your handwriting or is a portion of it in your handwriting? A. The first page is partly mine and Mr. Simpson's.

40

*Complainant John W. Warnke's Testimony in
State v. Flynn.*

Q. Just after Charles Flynn in the schedule? A. That is my handwriting.

Q. And part of the affidavit? A. Also in my handwriting.

Q. And where the names of Charles Flynn and H. I. Darling appear, were they signed by Flynn, the defendant here, and H. I. Darling here at that time respectively? A. Yes. 10

Q. And likewise by you as master in chancery acknowledged? A. Yes.

(Paper marked S/4 for Identification.)

Q. When did you draw the notes? A. About 2 o'clock.

Q. Had there been a great deal of waiting about this transaction? A. There was about getting possession of the garage; Mr. Bock was in possession of the garage and he did not want to give it up. 20

Q. Who went down to the garage with these papers after they had been executed? A. Mr. Flynn, his chauffeur, Mr. Hayne, and Mr. Motley and myself.

Q. And when you got to the garage you had the notes and the papers that were to be delivered to Mr. Hayne, when you actually got to the garage? A. I did. 30

Q. What papers were to be delivered to Mr. Motley? A. Three notes and a bill of sale.

Q. He did not want the bill of sale? A. I had the bill of sale in my possession.

Q. Who had signed the bill of sale, Motley, Bock, or who had signed the bill of sale? A. Motley had signed it.

Q. And that was to go to Flynn? A. Yes.

*Complainant John W. Warnke's Testimony in
State v. Flynn.*

Q. So that when you got to the garage you had in your possession a bill of sale and the notes? A. Yes.

Q. And you delivered the bill of sale to Flynn, did you not, when you got to the garage, and the notes to Motley? A. Yes.

10 Q. Then what did you do? A. We couldn't get immediate possession and the papers were taken back again.

Q. There was some trouble? A. We called the police reserves.

Q. You took the bill of sale back from Flynn and the notes back from Motley? A. Yes.

Q. Then what did you do? A. Waited until the trouble blowed over.

20 Q. How long did you wait? A. I waited in the garage two hours, and then finally delivered the papers; Bock agreed to give possession, and then the papers were delivered.

Q. Did he agree to give up possession after the police came? A. They came there and would not interfere, and after that he gave up possession. In the meantime I had given the notes to Mr. Flynn, as it appeared that the transaction would not go through and I wanted to get back to the office.

30 Q. When did Flynn give you back the papers? A. When Bock finally decided to give possession.

Q. Then what did he give back to you? The bill of sale and the notes or only the notes? A. I don't recall.

Q. Is it not a fact, according to your best recollection, that the last papers you had in your possession were the notes which you handed to Mr. Motley in the presence of Hayne? A. They were delivered to Motley.

*Complainant John W. Warnke's Testimony in
State v. Flynn.*

Q. At that time you did not have the bill of sale?

A. I don't recall whether I had the bill of sale any longer.

Q. What time of the day was that? A. About 5 o'clock in the evening.

Q. If the transaction began at 2 o'clock, and Motley was in your office seven hours, how could it be closed at 5 o'clock? A. I went back to my office. 10

Q. At the Bock garage was that the last thing you did? A. I did.

Q. And that is where you handed the notes over to Motley? A. Yes.

Q. And then you went away and paid no more attention to it? A. No.

Q. What were the amounts of the notes you handed over to Motley? A. Three hundred, five hundred, seven hundred, aggregating fifteen hundred dollars. 20

Q. That was the amount of the notes you handed over to Motley? A. Yes.

Q. Who gave you these matters to take care of? A. Mr. Simpson.

Q. He was then acting for Mr. Darling and Mr. Flynn? A. He was acting for one of them.

Q. Did not Mr. Simpson actually handle part of this transaction and write some papers? A. He drew the chattel mortgage in part in the morning; he had to go to court. 30

Q. And he left the chattel mortgage unfinished and left it for you to finish? A. Yes.

Q. And you finished it? A. Yes.

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

10 Mr. Anderson: I ask that these exhibits be marked by the stenographer; one is an assignment by Philip Franklin to Richard A. Motley, the second one is an assignment by Traverse A. Spraggins to Richard A. Motley; the third is a chattel mortgage by Charles Flynn to Henry I. Darling, marked Exhibits C-10, C-11, C-12.

Mr. Anderson: We rest.

DEFENDANT'S CASE.

20 Mr. McEwan read in evidence the testimony of Richard A. Motley, called by the State and sworn, in the Hudson County Quarter Sessions, at the trial of the State against Charles Flynn, tried on February 3, 1913:

RICHARD A. MOTLEY, being duly sworn, according to law, on his oath, testified as follows:

Examination by Mr. Garrison.

Q. Where do you live, Mr. Motley? A. 92 Ege Avenue.

30 Q. What is your business? A. Minister of the Gospel.

Q. Are you the same Richard A. Motley mentioned in the bill of sale made to him by Charles Flynn on or about April 26th, 1912, that covered several touring cars and the goods and chattels in the garage on the corner of Boulevard and Communipaw Avenue, did it not? A. Yes, sir.

40 Q. Prior to the time you made the bill of sale to Flynn of these automobiles and chattels in the garage, had you loaned any money to George L. Bock? A. Yes, sir.

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

Q. How much? A. \$900.

Q. Wasn't it \$800, in cash? A. Yes, I got his note here for \$900 that had not been endorsed until drawn and was payable three months after.

Q. From whom did you make arrangements for the loan of \$800 from Mr. Bock? A. Mr. Spraggins.

Q. When was it you made arrangements with Mr. Bock to loan him this \$800? A. The date this note was made, January 5th, 1912. 10

Q. That is, on January 5th, 1912, you loaned \$800 to Mr. Bock and he gave you his three months' note for \$900? A. Yes, sir.

Q. Did you get any security for the payment of that note? A. He signed off the garage and three or four cars, all the tools and everything that was in the garage and the lease also.

Q. Tell me again what security you got, if any, from Bock for the payment of this note? A. The three or four cars and all of the tools and possession of the place, as he had it leased; that was the understanding. 20

Q. Was that security made by a bill of sale by Bock to you or by chattel mortgage covering these articles? A. I don't know what you would call it, the papers are all on file in the Court House.

Q. The papers were passed upon by your attorney, Mr. Spraggins? A. Yes, sir. 30

Q. Did you take possession of the garage? A. No, sir; Mr. Bock and his wife who signed this note continued.

Q. Did you consider that you had title to these automobiles and the lease and the articles in the garage, so that you could sell them? A. I understood that by the papers that were passed upon with my attorney and was so told that if he failed to pay

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

this that at any time it was due I had a perfect right to sell them.

Q. And if he did pay, what? A. I promised him verbally if he paid \$300 when the three months were up I would extend the note three months longer.

10 Q. Has that not been repaid to you yet? A. No.

Q. Did you ever get possession of any of these automobiles or any of the property in the garage or the garage? A. No, sir.

Q. Do you know Charles Flynn? A. No, sir.

Q. Never heard of him? A. I have heard of him, but I never knew him.

Q. Did you know him before you made the bill of sale to him on April 26th, 1912? A. I don't know as I had ever seen him until that day.

20 Q. Did you have any negotiations with him for the transfer of the property to him that you had gotten from Bock? A. Not until the time I gave him the bill of sale.

Q. You did give him a bill of sale April 26th, 1912? A. I did.

Q. Through whom did you transact your negotiations for that transfer? A. That was through Mr. Spraggins.

30 Q. Did you have any talks personally with Flynn before you made the bill of sale to him in April? A. No, sir.

Q. Did you and Mr. Spraggins talk over the fact that if that note was paid you had no title to these automobiles and the goods and chattels in the garage? A. That was the agreement, when this note was settled, everything was off.

40 Q. Tell me in your own words what your agreement was about that note with Mr. Bock? A. He was to pay it in three months, that was the agreement.

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

Q. And if he did pay it, what? A. I would have my money and I would give him his note.

Q. And what would become of the goods and chattels and automobiles in the garage? A. They would be his, he would have them back by redeeming his note.

10

Cross-examination by Mr. Simpson.

Q. Did you receive any money from Mr. Flynn when you made the bill of sale to him? A. No, sir.

Q. What did you make it for? A. I made it on a note endorsed by my friend, Mr. Darling.

Q. Did you get the notes discounted? A. I disposed of them.

Q. Have you got the value of them? A. Yes, sir.

Q. So that the money went into your pocket? A. I didn't say I had the money, but I disposed of them. 20

Q. For value? A. Yes, sir.

Q. When you made that bill of sale to Flynn did you go to the garage with Flynn? A. I did.

Q. What did you go down for? A. To give him possession.

Q. What happened when you got down there? A. Mr. Bock wasn't in when we got there; when he did come in he and Mr. Flynn had some talk and Mr. Flynn informed Mr. Bock that he had bought the place out and he wanted possession and he asked me to put him in possession. I handed him the bill of sale and left him in possession of the place. 30

Q. Were these negotiations with Flynn conducted through Mr. Spraggins? A. I think so.

Q. When was the first you knew that Flynn wished to purchase? A. Didn't know it until—might have been a day or two before. 40

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

Q. You say you had never known Flynn before that time? A. No, sir.

Q. Have you got that note with you that was given at the time the bill of sale was given by Bock?

A. Yes, sir.

Q. Will you let me see it?

10

Witness produces note, reading as follows:

\$900 Jersey City, N. J., Jan. 5, 1912.

Three months after date we promised to pay to the order of Richard A. Motley nine hundred dollars, at 75 Montgomery Street, Jersey City, N. J.

Value received

20

Due (Signed CECELIA BOCK,
 GEORGE L. BOCK.

Endorser,

TRAVERSE A. SPRAGGINS.

Q. Was any payment made at the expiration of two or three months? A. Not a cent of that note has been paid.

Q. Whom was the bill of sale signed by? A. Bock.

30

Q. Where? A. In Spraggin's office.

Q. And you were there too at the time? A. I was there at the time the note was drawn and saw both he and his wife sign that note.

Redirect by Mr. Garrison.

Q. You wouldn't have accepted this note, which has been read into record, unless Bock gave you his bill of sale and assignments of lease? A. No, sir.

40

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

I accepted it on Mr. Spraggin's endorsement and if Mr. Spraggins had not endorsed it I would not have taken it at all.

Q. I mean, you would not have taken Bock's note unendorsed unless he had given you as security the automobiles and the articles and chattels in the garage and the lease? A. No.

10

Q. You had no idea of running a garage when you got the bill of sale from him? A. Not at all.

Q. You never ran an automobile in your life, did you? A. Never.

Q. The only time you were ever in the garage after you got the bill of sale was the time you went there to put Flynn in possession? A. No, I was down there several times to see Bock.

Q. Just to visit him, you never went to take possession of the cars? A. No.

20

Q. What day did you put Flynn in possession? A. I haven't the date down.

Q. Was it Friday of last week? A. I think it was on the 27th of April; I am not sure.

Q. Whose car did you ride to the garage in? A. I rode down with Flynn. I don't know whose car it was.

Q. Had Flynn asked you to put him in possession? A. Yes, sir.

Q. Who else was in the car? A. I didn't know any of them.

30

Q. What time was it? A. Along 5 or 6 o'clock.

Q. Were there any other automobiles accompanying you and Mr. Flynn down there? A. I saw automobiles on the Boulevard; I don't know if any of them were accompanying us.

Q. Were there any other people in the garage at the time you put him in possession? A. Yes, those that went down there with us.

40

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

Q. How many? A. Three or four.

Q. Friends of Flynn's? A. I suppose so—they were all strangers to me.

Q. What did Mr. Bock say when you saw him in the garage? A. Didn't say anything to me. I simply heard Mr. Flynn tell him that he bought the
10 place out and he spoke to me pleasantly.

Q. To whom did you assign the lease to the garage? A. Mr. Flynn.

Recross by Mr. Simpson.

Q. Mr. Motley, who executed the bill of sale to you, was it Bock or anybody else? A. I saw Mr. Bock and Mrs. Bock both sign it.

Q. What became of that bill of sale? A. It is on
20 record at the Court House.

Mr. Simpson makes the witness his own witness for the following questions:

Q. At the time you purchased the garage did you purchase from a Mr. Crowley? A. From the Bocks, from George L. Bock and Cecelia Bock, his wife.

Q. They made the bill of sale? A. Yes..

Q. You are sure of that? A. They signed it. I
30 took it for granted they made it.

Q. Did you preserve that bill of sale? A. No.

Q. What became of it? A. Mr. Spraggins got it.

Q. Who has it now? A. He has it.

Q. You only got one bill of sale? A. That is all.

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

Mr. McEwan further read in evidence the testimony of Richard A. Motley, called by the State and sworn, in the Hudson County Quarter Sessions, in the case of the State against Charles Flynn, tried on February 3, 1913:

RICHARD A. MOTLEY, called by the State and sworn. 10

Direct examination by Mr. Vickers.

Q. You reside in Jersey City? A. Yes.

Q. Are you acquainted with the defendant, Charles Flynn? A. Somewhat.

Q. I show you a paper writing, dated the second day of May, 1912, and ask you whether that paper writing came into your possession? A. Something like that; yes, that came into my possession; that is my signature on the back. 20

Q. Did you get this paper writing in the course of a transaction you had with Mr. Flynn regarding the sale of a garage? A. Yes, through my counsel, Mr. Spraggins.

Q. Traverse A. Spraggins? A. Yes.

Q. Did you get it from Mr. Spraggins or did you get it from Mr. Flynn? A. I think I got it from Mr. Flynn. 30

Q. When you received this paper writing from Mr. Flynn was this name H. S. or H. I. Darling, whichever it may be, on it at the time and before you signed your name, R. A. Motley, as it now appears there? A. Yes.

Q. Where were you when you received this paper writing from Mr. Flynn? A. It was in the garage at Communipaw Avenue, or in the building up at Five Corners, the one or the other, I am not positive. 40

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

Q. Do you know whether it was at Mr. Charles E. S. Simpson's office? A. I saw him there that morning of the same day.

Q. When you say it was there in the building do you refer to that building in which Mr. Simpson's office is? A. Yes.

10 Q. Either at Mr. Simpson's office building or at the garage? A. Yes.

(Paper put in evidence. Marked—S/1
JM.)

Cross-examination by Mr. Alex. Simpson.

Q. What is your occupation? A. Haven't any.

Q. Never had any? A. Yes; I was pastor of Salem Baptist Church here twenty-seven years; 20 eight years ago I gave it up.

Q. You were at Charles E. S. Simpson's office the same day you got this note? A. Yes.

Q. And you were there to negotiate about this garage and close this transaction? A. No, sir. I never negotiated at all except through my counsel.

Q. Mr. Spraggins? A. Yes.

Q. Did Mr. Spraggins tell you to go to Mr. Simpson's office? A. Yes.

30 Q. And you did go up there? A. Yes.

Q. And Mr. Darling was there? A. Yes, a good while.

Q. And he was there before you got there? A. Yes.

Q. And you saw this note at this office? A. Yes. I would not swear that was the note I saw Mr. Darling sign; I saw Mr. Darling sign two notes up in that office.

40 Q. And were those notes for \$500 and another sum? A. 500 and 700.

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

Q. One was for 500? A. Yes.

Q. Did you look at the notes Mr. Darling signed?

A. I did not look at them until I got to my counsellor and delivered them to him.

Q. Did you not get them at Mr. Simpson's office?

A. I say—I give myself the benefit of the doubt—I received them either at the garage on Communipaw Avenue or in Mr. Simpson's office. 10

Q. Give us the benefit of a certainty. Don't you know where you got them? A. No.

Q. You were at Simpson's office? A. Yes; I was there about seven hours.

Q. And you saw Mr. Darling endorse a note for \$500. A. I did not see him sign it.

Q. Who was there? A. Mr. Warnke and Mr. Darling.

Q. Did he talk to you with reference to Mr. Flynn in this transaction? A. No, sir. 20

Q. What did you do with Warnke when you were in the office? A. I sat down, and when I got tired I walked around.

Q. Did you speak to Warnke at all? A. Nothing particular.

Q. Had you not gone up there in pursuit of this transaction, in which you were selling or releasing a garage? A. Yes.

Q. And you were there seven hours? A. Yes. 30

Q. And all that time all you did was walking around and talking about something other than you went there to do? A. Yes, because I had nothing to do with the business; Mr. Spraggins sent me there to receive what he and Mr. Flynn in some way had agreed to.

Q. You went there to receive something? A. Yes.

Q. Did you receive it? A. I did.

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

Q. What? A. Papers of the transaction between Mr. Spraggins and Mr. Flynn, and Mr. Hayne was there to represent Mr. Spraggins, and Mr. Hayne had the papers.

Q. You left it to Mr. Hayne to do the negotiating?

A. He was representing Mr. Spraggins.

10 Q. And Mr. Spraggins was representing you? A. Yes.

Q. So that you were being represented by Mr. Hayne. A. You may put it that way.

Q. You went there to get certain papers. A. Yes.

Q. What papers? A. The papers of negotiations between Mr. Spraggins and Mr. Flynn relating to the garage.

20 Q. And included in those papers were these two notes of 500 and 700? A. I found them there when I got the papers.

Q. When you delivered the papers that you got to Mr. Spraggins you found those two notes in them? A. Yes.

Q. And you got those papers from Warnke? A. Yes.

Q. Did you see Mr. Darling sign any papers before you got the papers from Warnke? A. Yes.

30 Q. And the only papers you delivered to Mr. Spraggins afterwards was this note for \$500. A. The only papers?

Q. You said you were at Chas. Simpson's office and Mr. Warnke and Mr. Hayne were there, and you were there to get certain papers which you did get, and you delivered them to Mr. Spraggins after you got them? A. Yes.

Q. And you found these two notes in those papers, one for \$500 and the other for \$700? A. Yes.

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

Q. And were the two notes you delivered to Spraggins the same as you received from Warnke? A. I did not get them from Warnke. I got them from Flynn.

Q. In Warnke's presence? A. I don't know whether he was taking notice of it or not. When Mr. Darling signed those notes he passed them to Mr. Warnke. 10

Q. And what did Warnke do with them? A. I don't know.

Q. You said before to Major Vickers you were not certain whether you got those notes at the Communipaw yard or at Mr. Simpson's office. Is that true too? A. That is a fact.

Q. Now you testify positively that they were in the papers you got in Mr. Simpson's office. A. I overspoke myself. I don't know whether I got them in the garage or in the passing of the papers, and the papers were passed in the garage. 20

Q. Did you not make an affidavit that you saw Mr. Darling sign this note? A. No.

Q. Are you sure that that affidavit was not made and is now in Mr. Spraggins' office? A. I am sure that I made an affidavit that I saw Mr. Darling sign two notes.

Q. Did you make affidavit that he signed these two notes that have your signature on? A. No, sir. 30

Q. How do you know? A. I saw him put his signature on two papers; but I did not see it to read it.

Q. What price were you to get for the garage? A. I did not set the price on it; Mr. Spraggins made the deal with Mr. Flynn.

Q. You only know that Mr. Spraggins made a certain transaction with Mr. Flynn and you got certain papers at Mr. Simpson's office? A. I say 40

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

I got the papers at the garage and passed the papers there.

Q. You did not get them at Charles Simpson's office from Flynn? A. No.

Q. And Mr. Warnke was not at the garage? A. I can't say positively.

10 Q. What did you mean when I asked you whether you saw Mr. Warnke get these papers and you said he was there and he did not pay any attention and don't know whether he got the papers at all? A. I did not say he was not paying any attention.

Q. What were you doing there seven hours? A. Nothing, only waiting for the people to get through.

Q. Did Mr. Hayne give you the papers there? A. Yes.

20 Q. Did he give them to you at the garage? A. Yes.

Q. Was there a bill of sale in those papers you got at the garage? A. I don't know.

Q. Was there any note among them? A. I did not see any. There might have been in the papers I received.

Q. Are you sure that Mr. Hayne, representing Mr. Spraggins, did not give you two notes at the garage? A. No.

30 Q. You are not sure of anything in this case except that you saw Mr. Darling endorse two notes in Charles Simpson's office; are you positive of that? A. Yes; and I am positive that I got the papers.

Q. What time did you go to the garage when you got these papers? A. Between 6 and 7.

Q. What did you go there for? A. I went there with Mr. Flynn to put him in possession of the garage he had bought.

40 Q. Who was there when you went down? A. I don't know.

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

Q. Was Mr. Hayne there? A. Mr. Hayne went down with us in Mr. Flynn's machine.

Q. At that time did not Mr. Hayne give you the two notes and give Mr. Flynn the bill of sale? A. They were in the papers I received from him.

Q. Was not Mr. Warnke there too? A. I don't remember. 10

Q. You are not clear on that score? A. No, I am an old man now and I don't receive impressions as I did fifty years ago.

Q. How old are you? A. Seventy-one.

Q. You then don't remember clearly whom you did get these notes from? You won't swear it was not Mr. Hayne gave them to you? A. I will swear they were among the papers I received.

Q. And Mr. Hayne gave you the papers? A. Yes; he did give me the papers, which I handed to Mr. Spraggins; Mr. Hayne gave me the papers of authority to put Flynn in possession of the garage; I handed them to Mr. Flynn and told him the garage was his. 20

Q. At the same time did not Mr. Hayne give you these notes? A. I don't think he did.

Q. You are not clear about it? A. No, I am not clear about it; I know I got the notes.

Redirect by Mr. Vickers. 30

Q. Do you recall anything else that Mr. Darling signed on this occasion that you have spoken of? A. No, sir.

Q. Do you know whether he signed more than the two notes that you have in your mind now, whether he signed three notes? A. No, sir, I don't recall.

Q. You don't recall whether you saw him sign or execute any other paper, chattel mortgage or anything of that kind? A. No, sir. 40

*Defendant Richard A. Motley's Testimony in
State v. Flynn.*

Q. Did you see Flynn execute any papers there?

A. No, sir.

Q. In connection with this transaction, this garage transaction, were you at Mr. Simpson's office more than once? A. No, sir, I don't think I was.

10 Q. Are you certain about that? A. I am certain that I never saw those notes but on this occasion, only on that day.

Q. Were you there in the morning? A. I got there about a quarter of eleven.

Q. You were in and out of that office; you did not stay in Mr. Simpson's office seven hours hand-running? A. Only once I went out.

Q. You recall going to the garage in an automobile? A. Yes.

Q. Whose automobile? A. Mr. Flynn ordered it.

20 Q. Do you know whether or not you received the notes you speak of before you put Mr. Flynn in possession of the garage, or at the same time, or after you put him in possession? A. I am a little doubtful about that.

Q. Having spoken of the automobile driving down there, does that refresh your memory as to whether or not Mr. Warnke went with you to the garage? A. No, sir; I am not sure.

30

40

*Defendant Richard A. Motley's Testimony in
Bankruptcy Case.*

Mr. McEwan: In the bankruptcy case Mr. Motley was recalled and I wish to read from his testimony, page 188, down to the bottom of page 196, "Richard A. Motley, being duly recalled, cross-examination by Mr. Melniker" (continues reading)

10

RICHARD A. MOTLEY, being duly recalled.

Cross-examination by Mr. Melniker.

Q. Mr. Motley, how much money did Flynn pay you in cash for the garage business on the Boulevard which he sold you? A. \$279 and forty some cents.

Q. What was the amount of the notes he gave you? A. Seven and Five hundred dollars.

Q. Where was the money paid to you? A. On Newark Avenue. 20

Q. How many times did you meet Flynn? A. When I testified here before I said I hadn't seen him before that day we went to the garage. Since that time I conferred with my counsel and he reminded me that I had seen him the night before; but I didn't know him then.

Q. Did you speak to him? A. I must have.

Q. You knew him as the prospective purchaser of that business? A. Only through my counsel. 30

Q. Did you tell him how much money you wanted for that business? A. No, I left it to my counsel.

Q. Who is your counsel? A. Mr. Spraggins.

Q. Mr. Spraggins made the deal? A. Yes.

Q. Did you tell Mr. Flynn how much your claim was? A. I did not.

Q. Didn't Mr. Spraggins tell him how much his claim was? A. Not until the deal was over

Q. How long after? A. The next day. 40

*Defendant Richard A. Motley's Testimony in
Bankruptcy Case.*

Q. After you gave Flynn the bill of sale? A. Yes.

Q. Who made the deal with Flynn for \$1400? A. I don't know, only through my counsel.

Q. You got \$1400, didn't you? A. I got \$1400 in notes and checks.

10 Q. How did he come to give you that amount of money? A. You ought to ask him that.

Q. You didn't know why Flynn gave you \$1400 in notes and by check? A. Only through my counsellor.

Q. When did you find out through your counsellor? A. The next day.

Q. After you got the money? A. After I got the notes, yes.

Q. You remember signing the bill of sale to Flynn, don't you? A. I do.

20 Q. Did you know how much money you were going to get when you signed the bill of sale? A. Yes.

Q. How did you know that? A. I learned it through Flynn and Mr. Hayne, representing Mr. Spraggins.

Q. Flynn told you he was going to give you \$1400 in check and notes? A. I don't remember he told me that.

30 Q. Did you know you were going to get \$1400 when you gave the bill of sale? A. I only had \$900 in it.

Q. What was the other \$500 for? A. That was Mr. Spraggins'.

Q. When did you first find out that Flynn was going to pay you \$1400? A. I don't know.

Q. How long before you signed the bill of sale? A. I didn't know until the papers were made known to me. The same time.

*Defendant Richard A. Motley's Testimony in
Bankruptcy Case.*

Q. The same time you signed the bill of sale was the day you found out? A. Yes.

Q. From whom? A. From Mr. Hayne, he was representing Mr. Spraggins.

Q. Did he tell you what the \$1400 was for? A. No.

Q. Did you know what it was for? A. I had sold 10
the garage and everything that belonged to me.

Q. You mean everything belonged to you absolutely? A. Yes.

Q. Did you tell Flynn that it didn't belong to you absolutely? A. No, sir; I had the bill of sale proving that it was.

Q. Didn't you tell Flynn that you had absolute title? A. Yes.

Q. And you told Flynn that he would get an absolute title? A. I told Mr. Spraggins, as Mr. 20
Spraggins knew of the papers by which I got an absolute title, and it is recorded, and I gave Mr. Flynn the same title that was given to me, an absolute title.

Q. Did you tell Flynn he was getting an absolute title? A. He knew it through Mr. Spraggins. I don't know if I told him or not.

Q. Your claim was only for \$900, was it not? A. That is all.

Q. Did you understand what the other \$500 was 30
for? A. Mr. Spraggins made his claim over to me.

Q. Were you to give the \$500 to Spraggins? A. Mr. Spraggins was to get it from me.

Q. This \$500 was paid to you for the purpose of cleaning up all other claims to the title, was it? A. I don't know.

Q. It was paid to wipe out all other claims against it? A. I suppose so.

*Defendant Richard A. Motley's Testimony in
Bankruptcy Case.*

Q. Wasn't that the reason why Flynn was asked to pay \$500 more than your claim? A. I don't know.

Q. Didn't Mr. Spraggins tell you about that on the payment of \$500 over and above the amount of your claim, \$900, the \$500 was to be paid to him? A. No.

10 Q. Did you go with Mr. Flynn when he took possession? A. I did.

Q. You testified here some weeks ago that the agreement was that when your note was settled that everything would be off; do you remember that testimony? A. That was the agreement between Mr. Bock and myself.

Q. Was that so? A. Yes.

20 Q. Isn't the truth of the matter that everything was not to be off until when your note was to be paid and Spraggins' claim too? A. I don't know anything about that.

Q. Wasn't this business turned over for security for your claim and security for the money Bock owed Spraggins? A. That is his business.

Q. You don't know anything about that? A. No.

Redirect examination by Mr. Warren.

30 Q. The agreement that you made was with Mr. Bock, wasn't it, in regard to the whole matter? A. Through my counsel.

Q. You had talks with Mr. Bock, did you not? A. No.

Q. When you said that this was to be security for your claim and that you had so agreed with Mr. Bock, was that an agreement you had directly with Mr. Bock? A. Mr. Bock, I understood through my counsel, sold me all of his interest in the garage business with four cars for \$800, advanced for which

*Defendant Richard A. Motley's Testimony in
Bankruptcy Case.*

I was given a note for \$900, endorsed by Mr. Spraggins, with an agreement that if Bock paid that in three months all that was verbal, I would give a note for three months longer; but the bill of sale and everything else was absolute.

Q. That \$800 was a loan for which \$900 was to be repaid? A. I didn't consider it a loan; I considered it a purchase. 10

Q. Mr. Motley, you never knew Mr. Flynn prior to these negotiations? A. No, sir.

Q. Since you were here the last time have you seen him? A. I met him, I think, last Sunday afternoon on the Boulevard and he took me home in his automobile.

Q. Did Mr. Bock ever give you a bill of sale for the four cars other than the 1912 Oakland? A. Yes, sir. 20

Q. Where is it? A. Mr. Spraggins ought to know where it is.

Q. How many bills of sales did you get from Mr. Bock? A. Only one that I know of.

Q. Did that bill of sale which is in evidence here (showing witness Exhibit 10), the bill which you mentioned? A. I can't say that that is the bill of sale.

Q. But it was a similar bill of sale. A. Yes.

Q. And the other security you got was a bill of sale from Mr. Crowley, wasn't it? A. I don't know Mr. Crowley. 30

Q. You got a bill of sale from Mr. Crowley, didn't you? A. I don't remember.

Q. I show you Exhibit 2, did you ever see that before? A. I can't recall to mind of ever seeing anything like this before.

Q. Have you seen Mr. Spraggins since the last time you testified here? A. Oh, yes, many times. 40

*Defendant Richard A. Motley's Testimony in
Franklin v. Flynn.*

Q. Did you talk to him about this matter? A. Yes, I cannot remember what our conversation was. I was called here.

10 Mr. McEwan: I offer and read the testimony of Richard A. Motley, taken in the case of Philip R. Franklin against Charles Flynn *et als.*, in the Hudson Circuit Court, page 13, all of the testimony beginning on page 13 running to page 17, "Richard A. Motley, sworn direct examination by Mr. Anderson" (reading as follows:)

RICHARD A. MOTLEY, sworn.

20 Q. That is sufficient. Can you recall who had the notes before you got them? A. Before I got them—I did not see the notes from that time that I saw Mr. Darling pass them to Mr. Warnke until they were given to me.

Q. In whose possession were they when they were about to be given to you? A. That is all I know. I do not know who Mr. Warnke gave them to. I suppose he, being counsel for the—Mr. Darling—he was doing his own business. I was waiting, and Mr. 30 Haynes, who was representing my counsellor, Mr. Spraggins, was tending to the other end and I was simply waiting for them to complete their work in the matter.

Q. Can you recall to whom Mr. Warnke gave this particular note when you were at the garage? A. I cannot.

Q. Well, who represented you, who was the attorney representing you at that time? A. Mr. Hayne.

40

*Defendant Richard A. Motley's Testimony in
Franklin v. Flynn.*

Q. Did he have anything to do with these notes and the delivery of them at that time? A. I do not know whether he had anything to do with the notes or not; but he had the bill of sale and the other papers. I do not think Mr. Warnke had anything to do with them until Mr. Hayne, my representative in the matter, had turned those papers over to him. 10

Q. Well, who made the exchange? A. Who made—

Mr. McEwan: Now I will read the testimony page 1 to page 14 in the bankruptcy case, testimony of Traverse A. Spraggins relative to this same transaction, and he was the attorney.

Mr. Anderson: I make the same objection.

The Court: I will take it subject to the objection of the complainant. 20

Mr. McEwan:

TRAVERSE A. SPRAGGINS, being duly sworn, according to law, on his oath testified as follows:

Examination by Mr. Warren.

Q. What is your profession, Mr. Spraggins? A. Lawyer. 30

Q. Of New Jersey? A. Of New Jersey.

Q. Do you know the bankrupt, George L. Bock, and his wife, Cecelia Bock? A. I do.

Q. Are you familiar with their business transaction? A. Yes, somewhat.

Q. Do you recall the situation of the Bocks in November, 1911, in reference to a claim of one John Nelson? A. Yes, sir.

Q. Was Mr. Nelson pressing the Bocks for payment? A. He was pressing the Communipaw Motor 40

*Defendant Traverse A. Spraggins' Testimony in
Bankruptcy Case.*

Car Company, who was the defendant in a suit where a man by the name of Treu was plaintiff and had obtained judgment against the Communi-paw Motor Car Company, and this judgment had been assigned by Treu to Nelson and execution issued.

10 Q. What was that claim for? A. Something about the store of an automobile.

Q. Didn't the Bocks owe Mr. Nelson some portion of the purchase price of the business? A. Not until the 15th of November, 1911, suit had been brought in the Supreme Court on a note which had been renewed by another note and it was a note due the 15th of November, and afterwards when the case came up to be tried Judge Vale allowed Mr. Nelson to amend his bill of particulars, the amount

20 of which was \$800.

Q. During the month of November did the Bocks execute a mortgage? A. I think it was in November.

Q. To one Sandowitch? A. Andrew Sandowitch.

Q. The amount that mortgage was how much? A. \$2,000.

Q. What was the purpose of executing that mortgage? A. That was in order to negotiate with Mr. Nelson. He was trying to put them out of business. This money was advanced him.

30 Q. By whom? A. I paid the money.

Q. Have you been repaid? A. Yes.

Q. When? A. A short time after.

Q. Was it the same day? A. It might have been the same day.

Q. It wasn't longer than a day after? A. No.

Q. What was done by Sandowitch concerning that mortgage? A. It was afterwards foreclosed.

Q. When? A. I don't remember the date.

40

*Defendant Traverse A. Spraggins' Testimony in
Bankruptcy Case.*

Q. Was it foreclosed after the money was repaid to you? A. I think so.

Q. Who purchased the property at the foreclosure sale? A. I wasn't there; but I understand that Mr. Crowley purchased it.

Q. At that time there was nothing due on the mortgage, though? A. I wouldn't say that. 10

Q. Your \$2,000 had been repaid? A. Yes, there was nothing due me.

Q. How much did Crowley pay at that foreclosure sale? A. I don't know.

Q. Where can Mr. Crowley be located? A. I think at the corner of Seidler Street and Communipaw Avenue.

Q. This mortgage covered what? A. It covered several cars in the garage and the stock and fixtures and whatever was there. 20

Q. The good will? A. I think so.

Q. Where is this garage? A. 2395-97 Hudson County Boulevard, corner of Communipaw Avenue.

Q. Do you know one Richard A. Motley? A. Yes.

Q. Are you acquainted with any business transactions between Mr. Crowley and Mr. Motley? A. No.

Q. Do you know whether or not Crowley conveyed this property to Motley? A. Yes, that was done some time in January. 30

Q. January 5th, 1912? A. Yes.

Q. That conveyed the same cars and all good will by virtue of the foreclosure sale under the Sandwich mortgage? A. Yes.

Q. Do you know what the consideration was? A. No, I don't know. I might say the consideration was the same as mentioned in the other bill of sale. I think \$800.

*Defendant Traverse A. Spraggins' Testimony in
Bankruptcy Case.*

Q. This bill of sale recited \$1 as consideration?

A. It was all in this loan of Mr. Motley and then I assigned Mr. Motley some money which was due.

Q. The Bocks needed some money on a new car?

A. Yes.

Q. And they consulted you about that? A. Yes.

10 Q. Did you make arrangements with Mr. Motley so that they would advance certain monies? A. Mr. Bock or Mrs. Bock went to Motley and then he saw me. He said he would loan the money provided I would endorse a note. Then these bills of sale were given and an assignment of the lease. I did that because there was considerable trouble there.

Q. Did the Bocks give a bill of sale to Mr. Motley?

20 A. I think the bill of sale was given by Mr. Bock alone.

Q. Did that cover all the stock automobiles and good will of that business? A. No, sir.

Q. What did it cover? A. The 1912 Oakland.

Q. That is all? A. Yes.

Q. Did Mr. Motley ever get a bill of sale from Mr. Bock for anything other than the 1912 Oakland?

A. I don't think so.

Q. Not to your knowledge? A. No.

30 Q. How much money did Mr. Motley advance to George Bock? A. \$800.

Q. What was the amount of the note given by Motley to Bock? A. \$900.

Q. What was the arrangement for the repayment of this \$800? A. This note was given for three months. The understanding was that if an amount of two or three hundred dollars were paid it would be renewed for six months.

40 Q. What was the purpose of this bill of sale for the 1912 Oakland car? A. It was in order to pro-

*Defendant Traverse A. Spraggins' Testimony in
Bankruptcy Case.*

tect Motley and to secure him for the repayment of money.

Q. Was the car delivered to him? A. No, sir.

Q. Do you know whether or not this bill of sale was for absolute control of this 1912 car? A. It was only for the purpose of protecting him to effect the foreclosing of the mortgage. We didn't want to take the mortgage. 10

Q. And who assigned the lease to Motley? A. Mr. and Mrs. Bock.

Q. Do you know Charles Flynn? A. I do.

Q. Did you have any conversation with Charles Flynn prior to April 26, 1912, concerning the business of Mr. Bock and the title which Mr. Richard A. Motley held to the business of Mr. Bock—the cars, the stock, good will and lease? A. We had several conversations, I think, prior to April 22nd in reference to the lease and bill of sale. 20

Q. Did you or did you not inform Mr. Flynn of the condition of Mr. Motley's title? A. Yes, several times.

Q. What did you tell Flynn? A. I told Mr. Flynn, in the presence of Mr. and Mrs. Bock, that Mr. Motley's claim was for \$800 and that upon the payment of \$900 we would release to Mr. Bock everything.

Q. Did you or did you not tell Mr. Flynn of the title which Mr. Motley acquired by virtue of the bill of sale from Crowley? A. Yes, certainly. 30

Q. He understood that Motley got no title under the bill of sale from Crowley? A. He understood that the title he got was only a conditional bill of sale and held Bock for the repayment of \$900 due him.

Q. That was as to the 1912 Oakland? A. That was in reference to all the property. 40

*Defendant Traverse A. Spraggins' Testimony in
Bankruptcy Case.*

Q. He knew what title Crowley had and what title he conveyed to Motley? A. I don't know that Mr. Crowley's name was ever mentioned.

Q. Did you explain to him the title of all of Bock's property was supposed to be held by Motley either within the lease and the 1912 Oakland? A. I don't
10 know as I did in detail. We had many conversations and conferences. It seems that all understood just what it was.

Q. What was your understanding at that time? A. In reference to what?

Q. In reference to the title of Motley to everything except to the Oakland 1912 car and the lease? A. That he held his bill of sale as a conditional bill of sale for everything. The bill of sale from Nelson and Crowley and assignment of lease from Mr. and
20 Mrs. Bock.

Q. Do you know whether or not Motley gave any bill of sale to Flynn? A. I think he did. I wasn't present at the time.

Q. Eugene R. Hahn is connected with your office, is he not? A. Yes, sir.

Q. And you don't know what Flynn paid Motley for that bill of sale. A. I think that there were two notes for \$1200 and the amount of cash I don't know.

30 Q. Paid by Flynn to Motley? A. That is my understanding of it. I saw the notes, but not the cash.

Q. Whose notes were they? A. Notes made by Flynn and endorsed by H. I. Darling.

Q. You don't know whether or not that money on the notes was ever paid for? A. No.

Q. Whom were the notes payable to? A. Richard A. Motley.

*Defendant Traverse A. Spraggins' Testimony in
Bankruptcy Case.*

Q. As a matter of fact, didn't Darling endorse the Bocks' notes? A. I don't know, I never saw them.

Q. Can you state what cars in the garage of Bock on April 26th, 1912, belonged to the Bocks? A. There was a 1912 Oakland touring car, one Buick, one Oakland 1911 car, one Cadillac car, one Pope Hartford car, which was in New York. 10

Q. That was not there? A. No.

Q. These cars belonged to the Bocks? A. Yes.

Q. As far as you know also the goods and chattels belonging to the Bocks? A. I don't know what the goods and chattels were there. I think there is a safe there that is not included in the bill of sale.

Q. Did you represent George Bock and Cecelia Bock at the time they purchased from Nelson this business? A. No, sir. 20

Q. Do you know of your own knowledge as to the terms of that transaction? A. I know from what I have heard them say and I know from bill of sale given by the Communipaw Motor Car Co. to Cecelia Bock.

Q. Do you know whose money was paid to Mr. Nelson? A. I don't.

Q. Do you know who has possession of the Sandwich mortgage? A. I may have it. It has been cancelled. 30

Q. Do you know the date of cancellation? A. No, I do not. There was a bill of sale given by Mr. and Mrs. Bock to B. J. Crowley. That bill of sale was for \$500 and was subject to the Sandowitch mortgage.

Q. When was that bill of sale executed? A. I don't remember. I think some time in November. Mr. Anthony Botti took the acknowledgment.

Q. Wasn't that for \$500? A. \$500. 40

*Defendant Traverse A. Spraggins' Testimony in
Bankruptcy Case.*

Q. And how long after that bill of sale was executed was the \$500 returned? A. I don't know.

Q. Who advanced the \$500? A. I did.

Q. And you got it back? A. Yes.

Q. You got the \$500 back prior to January 5th, 1912? A. Oh, yes.

10 Q. Will you make a search of your office files and see if you can produce the chattel mortgage before mentioned and this bill of sale from the Bocks to Crowley? A. I know I haven't got that. I don't know where that is. I can find the chattel mortgage though.

Q. Was that chattel mortgage given as additional security? A. No, that wasn't. That was when they were having trouble with Nelson.

20 Q. It was given to protect them from Nelson's claim? A. Yes.

Q. Was that chattel mortgage recorded? A. Yes, sir.

Q. Was the bill of sale from Bock to Crowley recorded? A. I think so. I think one of the bills of sale was recorded. This last bill of sale to Crowley wasn't given by Bock, but by the attorney in fact, Philip H. Leihman.

30 Q. The bill of sale that Leihman gave to Crowley was for the purchase of the goods under the foreclosure? A. Yes.

Q. Now the bill of sale from Bock to Crowley; was that recorded? A. I think so. I won't be positive.

Q. Do you know whether or not the bill of sale from Crowley to Motley was recorded? A. No.

Q. Do you know whether or not the bill of sale from Bock to Motley was recorded? A. I don't think it was.

*Defendant Traverse A. Spraggins' Testimony in
Bankruptcy Case.*

Q. Do you know whether or not the bill of sale from Motley to Flynn was recorded? A. I do not know.

Q. Do you know whether or not the lease from Cecelia Bock to Richard A. Motley was recorded? A. Yes.

Q. Do you know anything about the assignment of the lease of this garage from Motley to Flynn? A. No, I do not know anything about that. 10

Q. Do you know who has possession of some or all of these bills of sales, etc.? A. They are between Richard A. Motley, Zeigner & Lane, and myself and Mr. Flynn.

Q. What have you got? A. I think I have the mortgage, assignment of the lease from Bock to Motley, and I think Zeigner & Lane have the bill of sale from Mr. Bock to Mr. Motley, and they have, I understand, the lease, and they have the bill of sale from the Communipaw Motor Car Company to Mrs. Bock, and may have some other papers. 20

Mr. Simpson: We offer in evidence the petition of George L. Bock.

The Court: All this is taken subject to the objection of the complainant.

Mr. Simpson: Bearing No. 3459, filed in the United States District Court for the District of New Jersey on May 7th, 1912. Also an order made by George R. Beach, bearing date June 4th, 1912, and filed June 21st, 1912. Order to show cause directed to the creditors of George L. Bock, returnable July 3rd, 1912, and the order confirming sale, etc., entered in that matter, filed July 31st, 1912, bearing the date of July 31st, 1912, relating to the assets of George L. Bock. 30

*Defendant Traverse A. Spraggins' Testimony in
Bankruptcy Case.
Defendant C. E. S. Simpson—Direct.*

Mr. Simpson: Also the report of Trustee, same matter, dated September 3rd, 1912, made by Charles C. Kelly, trustee.

Mr. Anderson: Does that show that the title passed to Flynn?

10 Mr. Simpson: Yes.

Mr. Anderson: I want to know what becomes of your case in that event then?

Mr. Simpson: Shall I dictate into the record reference to the sale of these things to Charles Flynn?

The Court: It is unnecessary.

Mr. Simpson: I think that is all from this record.

20 Mr. Simpson: Now this bankruptcy record may go back to Mr. Beach.

CHARLES E. S. SIMPSON, sworn in behalf of the defendants, testified as follows:

Direct examination by Mr. McEwan.

30 Q. You are an attorney and counsellor at law of the State of New Jersey? A. Yes, sir.

Q. And you were such in 1912? A. Yes, sir.

Q. At that time you had your office in the Jersey City Trust Building, Newark Avenue, at the Five Corners? A. Yes, sir.

Q. Did you know Charles Flynn at that time? A. Yes, sir.

Q. State whether or not Charles Flynn employed you with reference to the matter of the purchase of the garage from Mr. Motley.

40

Defendant C. E. S. Simpson—Direct.

Mr. Anderson: Objected to as not binding on us.

The Court: I will admit it for the present and deal with it later.

A. I was called upon by Mr. Flynn, who gave me instructions to prepare the chattel mortgage.

Q. Just answer yes. A. Yes.

10

Q. State what you did in pursuance of that employment with reference to that matter.

Mr. Anderson: This is taken under our objections and all rights reserved.

The Court: Yes.

A. I drew the chattel mortgage for Mr. Flynn—at least, I partly drew it, and on account of being called to try a case before Judge Speer or Judge Vail, one or the other, I left the chattel mortgage unfinished and turned it over to Mr. Warnke to do it for me, giving Mr. Warnke instructions to follow whatever the directions of Mr. Flynn might be in the matter.

20

Q. Prior to preparing these papers, did you have any conversation with Mr. Flynn? A. Oh, yes.

Q. And with anyone else with reference to the matter? A. Yes, with Mr. Flynn, and Mr. Milton, and Mrs. Bock—I am almost sure.

Q. Did you have any talk with Mr. Spraggins? A. I believe I did over the 'phone, asking him what papers would be delivered over to Mr. Flynn.

30

Q. And that was before the transaction was closed? A. Yes, sir.

Q. Now, whom, if you know, did Mr. Spraggins represent at that time? A. He represented himself and Mr. Motley.

Q. Was that stated to you by him? A. Yes, sir.

40

Defendant C. E. S. Simpson—Direct—Cross.

Q. And in your conversation with Mr. Spraggins at that time, did you say anything to him concerning whom you represented in the matter? A. I am sure when I call Mr. Spraggins up that I told him that I represented Mr. Flynn, who proposed to buy that garage.

10 Q. The papers which you say you prepared were what? A. The chattel mortgage, which is half in my handwriting, and the rest is in Mr. Warnke's handwriting.

Q. Now, this chattel mortgage was what? Tell us about that.

Mr. Anderson: It is "Exhibit No. 12," I think, and speaks for itself.

20 Q. You say a chattel mortgage—you mean the chattel mortgage from Flynn to Darling? A. Yes, sir.

Q. And that covered the garage? A. It covered the goods in the garage that were sold to Mr. Flynn.

Q. State who ordered you to prepare that chattel mortgage. A. Mr. Flynn.

Cross-examination by Mr. Anderson.

30 Q. Mr. Simpson, that mortgage was for \$2500? A. I don't recall now what the amount was.

Direct examination (continued) by Mr. McEwan.

Q. State whether or not Mr. Darling gave you any instructions as to the preparation of the bill of sale, or the names that were to go therein? A. No, sir, he gave me no instructions in that particular.

Q. These instructions were received from whom? A. From Mr. Flynn.

*Defendant J. W. Warnke's Testimony in
Franklin v. Darling and Flynn.*

Mr. McEwan read in evidence testimony of John W. Warnke in the case of Franklin v. Darling and Flynn:

JOHN W. WARNKE, SWORN.

Direct examination by Mr. Simpson.

10

Q. What is your occupation? A. Lawyer.

Q. Where is your office located? A. 665 Newark Avenue, at present.

Q. On May 2, 1912, where was it located? A. 662 Newark Avenue.

Q. I show you a note, Exhibit D-1 in this case, and ask you if you recognize it? A. Yes, that is my writing.

Q. I show you Exhibit P-2 and ask you in whose handwriting that is? A. The acknowledgment is taken in my handwriting. 20

Q. And take the body of it; whose handwriting is that in? A. Partly in yours and partly in mine.

Q. Take the affidavit, whose handwriting is that? A. Mine.

Q. Do you recall the circumstances attending the making of this note, Exhibit D-1? A. I do.

Q. What were they? A. Why, you said you were engaged and asked me to close out the matter for you, as you had to go downtown. 30

Q. Do you remember these gentlemen coming to the office? A. I do.

Q. Do you remember three notes being drawn on that day? A. I do.

Q. What were the amounts of those notes? A. \$300, \$500 and \$700.

Q. Who drew the notes? A. I drew the notes.

40

*Defendant J. W. Warnke's Testimony in
Franklin v. Darling and Flynn.*

Q. And was the body of each of those notes all in your handwriting? A. They were.

Q. All three? A. All three.

Q. I show you Exhibit P-3 and ask you if the body of that note is in your handwriting? A. It is not.

10 Q. Was that note, Exhibit P-1, one of the three notes which you prepared on that day? A. It is not.

Cross-examination by Mr. Anderson.

Q. Who were present at this time when these three notes were signed? A. Mr. Darling, Mr. Hayne, Mr. Motley, myself. Oh, I am not sure whether Mr. Hayne was there at the time or whether he came in later.

20 Q. When the notes were signed by Mr. Darling were they handed to you? A. They were signed in front of me. We changed seats and left there and immediately after they were signed. Mr. Flynn said "I'll take those notes until I get possession."

Q. Did they come into your possession at that meeting? A. Part of the time, certainly. I drew the body of them. They had to be in my possession.

30 Q. I will ask you if they came into your possession in Mr. Simpson's office at the time of the transacting of this particular thing? A. Certainly, I drew them. They were signed there..

Q. But did Mr. Flynn give them to you before he left the office that day? A. After they had been signed Flynn picked them up and said, "I'll keep these until we get possession."

Q. I ask you if they were given to you at that time? A. Were given to me?

Q. Yes; handed over to you by anybody? A. They were lying in front of me. I do not understand what you mean—"Given to you."

*Defendant J. W. Warnke's Testimony in
Franklin v. Darling and Flynn.*

Q. Did you take them? A. I did not; they were lying on the desk.

Q. Did you take possession of them? A. No.

Q. Did you have them at the garage that day?
A. I do not recall that I had them at the garage.

Q. Did you go down to the garage? A. I did.

Q. Representing Darling? A. And Flynn. 10

Q. And on the delivery of certain papers you were to give over these notes, weren't you? A. Yes, sir.

Q. Now was this mortgage made out at this time?
A. Part of the same transaction.

Q. And what other papers were made out? A. There was an agreement and a bill of sale.

Q. Yes, and an assignment of a lease? A. I do not recall that; I know we had some trouble over the lease; we could not get the lease itself and that delayed the transaction. 20

Q. I show you a paper which purports to be an agreement between Richard A. Motley and Charles Flynn, and ask you if that is the paper you refer to when you say an agreement was drawn? A. Yes, sir.

(Paper marked in evidence P-3.)

Q. I show you a paper purporting to be a bill of sale by Richard A. Motley to Charles Flynn and ask you if any part of that paper is in your handwriting? A. Part of it is in my handwriting. 30

Q. Was that one of the papers that formed part of this transaction? A. It was.

(Paper marked P-4.)

Mr. Simpson: I will consent to all of these papers growing out of this particular transaction going in without any additional proof of it. You can put them in. 40

*Defendant J. W. Warnke's Testimony in
Franklin v. Darling and Flynn.*

Mr. Anderson: I want the jury to know what is going in.

The Court: They know what is going in. Mr. Hayne has testified to it and this man has testified to it.

10 Mr. Anderson: I offer an assignment of lease by Richard A. Motley to Charles Flynn.

(Paper marked P-5.)

Q. Did you receive these papers on behalf of Mr. Motley at the garage at Newark Avenue and the Boulevard? A. Those papers were part of the time in Mr. Flynn's possession and part of the time in my possession——

20 The Court: No; the question is, did you receive them as part of the transaction at the garage?

A. They were down there.

The Court: Well, you got them as part of the transaction.

A. I got the chattel mortgage.

The Court: Who got the other papers?

30 Q. Did you receive them? (No answer.)

Q. You personally? A. I received the chattel mortgage. I do not know whether I received the other papers.

The Court: What were you there for?

A. I received the bill of sale, yes.

40 Q. You say you do not know anything about the notes after you left whose office? A. When we got—

*Defendant J. W. Warnke's Testimony in
Franklin v. Darling and Flynn.
Defendant C. E. S. Simpson—Cross.*

when Flynn picked up these notes and said, "I will keep them until I get possession," the party adjourned to his saloon, where he had an automobile, intending to take them down there. I reached there a little late. When I got there they were eating lobsters, and they stayed there about an hour. 10

Q. You were in that party too? A. Part of the time.

Q. And you went to the garage? A. I did.

Q. Do you mean to say you were not there when the notes were delivered to Motley? A. I did not see them passed.

Mr. CHARLES E. S. SIMPSON resumes the witness stand. 20

Cross-examination (continued) by Mr. Anderson.

Q. Were you Mr. Darling's lawyer at the time this mortgage was drawn? A. No, sir; I was Mr. Flynn's attorney.

Q. Do you recall the amount of this mortgage due? A. Not off-hand.

Q. \$2800—I show it to you. A. Yes, sir.

Q. Now you knew that that was to cover more than that garage—the amount involved in this garage, rather. A. If I recall that right, this was to include a \$300 note and something else; I don't recall just now what it was. 30

Q. These two notes of \$700 and \$500 with \$300 before, making \$1500, you recall that, don't you? A. These two notes were given by Mr Flynn to pay for the garage.

Q. I understand that; I am speaking of the two notes in question in this suit; did you know this 40

Defendant C. E. S. Simpson—Cross.

mortgage covers those two notes; you so testified in the other trials? A. Those notes were included in this mortgage; they were not in addition to the garage, but they were part of the purchase price of the garage.

10 Q. And the \$300 was that note which was discounted and from which the sum of \$279.42 was paid in cash when the garage was transferred at Communipaw Avenue on the 2nd of May? A. I don't recall whether that was discounted or not; but I am almost sure that \$300 note was included in this \$2800.

Q. And this \$900 and some odd dollars which had been paid by Mr. Darling for the Nelson v. Bock judgment? A. Yes, sir, I guess that is right.

Q. And the rest was bonus? A. I don't know about that.

20 Q. Don't you know there was not another penny in that mortgage at that time except those amounts?

Mr. McEwan: How is that material?

A. The bonus was in the real estate mortgage for \$3000.

30 Q. And the real estate mortgage was to take the place of this chattel mortgage, wasn't it? A. The real estate mortgage—I don't recall now, how that was made up; but there was some four or five hundred dollars included in that mortgage, which was regarded as a bonus, because it was a third or a fourth mortgage.

Q. Just try to remember; you have been sworn in every one of these cases? A. Almost all of them.

Q. Don't you recall that in one of them the only amounts that were covered by this mortgage was that \$900 and \$910 which was paid by Mr. Darling for the judgment of Nelson v. Bock and these three

Defendant C. E. S. Simpson—Cross.

notes that were involved in this garage matter; don't you know the rest was bonus? A. No, sir, I don't know that.

Q. Do you know of a single thing that will be added to that mortgage to make up the \$2800? A. What was to make up that \$2800 at the time I did not know, because it was something which Mr. Flynn and the sellers had made up between them. 10

Q. Now, just look at the affidavit of the mortgagor and see if you are not mistaken on that? A. No, sir, where do you find I was mistaken?

Q. \$2425, is not that right? A. That is what this says here.

Q. And that paper was drawn by your associate, Mr. Warnke, in his handwriting, that affidavit? A. Yes, sir, that part is in his handwriting; that is why I tell you that I told Mr. Warnke to follow Mr. Flynn's instructions. 20

Q. And this mortgage was for the protection of Henry I. Darling? A. It was to secure him for whatever moneys he was advancing, or whatever indorsements he had made for Mr. Flynn.

Q. And you had attended to the matter of the Nelson and Bock judgment before, or it had come under your notice as attorney for Henry I. Darling? A. No, sir, that is not the fact; I had nothing to do with that.

Q. Do you mean to say you had not seen Mr. John Milton on April 26, just prior to that May 2nd in 1912? A. A day or two before I saw him that Nelson judgment, as I understand, was taken over a week or ten days or two weeks before that; I knew nothing about it; the whole business was put through in Mr. Milton's office. 30

Q. But did you have a meeting with Mr. Milton about this matter before May 2nd? A. Was May 2nd the date of the mortgage? 40

Defendant C. E. S. Simpson—Cross.

Q. Yes, 1912. A. Well, the day or two before that there was a talk between Mr. Milton and Mrs. Bock and Mr. Flynn.

Q. And you were present? A. Yes, sir, that was at my office.

Q. And was the Nelson and Bock judgment mentioned at that time? A. No, sir, it was not mentioned at all.

Q. What did you have to say at that time about this matter? A. There was something said about the Bocks wanting an extension of time, as I recall it.

Q. From Mr. Darling? A. I don't know from whom.

Mr. McEwan: Pardon me, I object; the assignment of that judgment was to Mr. Flynn.

The Court: Let us be absolutely fair in the matter.

Mr. Anderson: I don't want to be anything else.

Q. Now, Mr. Simpson, your counsel says that that judgment was assigned to Mr. Flynn and not to Mr. Darling; who paid for that judgment? A. I could not tell you.

Q. Don't you remember, it had been testified to in many of the cases, that Darling paid for that? A. I don't know; those things were done before Mr. Flynn came to me.

Q. But you had been talking to Mr. Darling at this time of the meeting with Mr. Milton, had you? A. Mr. Darling was not there; the fact was, as I recall it, that the Bocks and Mr. Milton learned that Mr. Flynn was going to buy the garage and they came up to me and asked for an extension of time.

Defendant C. E. S. Simpson—Cross.

Q. And they came there because Mr. Darling had furnished the money, is that right? A. I don't know.

Q. You saw this extension "Exhibit C-11," and you know all about it, don't you? A. No, sir, that was drawn down in Mr. Milton's office, and it was not until after this chattel mortgage was made that I knew anything about this thing.

10

Q. But you know that that money, that \$904, was paid by Mr. Darling and not by Mr. Flynn, don't you? A. I assumed that from this paper.

Q. You have learned that from Henry I. Darling, haven't you? You have learned that from Henry I. Darling, that he paid that judgment of Nelson v. Bock? A. I assume that he paid for it.

Q. Did you hear him testify in the criminal trial that that was done and that he had parted with it? A. I cannot help what he testified to.

20

Q. Did Darling tell you at any time that he paid for the Nelson and Bock judgment? A. I don't recall whether he ever did make that statement to me, but since seeing this paper, I assume that he was the one who paid—and that is the papers which was drawn in Mr. Milton's office.

Q. How long before May 2nd had you seen Mr. Darling with reference to this matter? May 2nd, 1912, I mean? A. Mr. Darling had offices in the same building that I had offices.

30

Q. How long before May 2nd, 1912, had you seen Mr. Darling with reference to this particular matter? A. Well, it may have been a day before that mortgage was drawn.

Q. Now, do you recall it was several days before, and that you had telephoned to Mr. Spraggins in regard to it? A. No, sir, I do not.

Q. You testified on your direct examination that you did talk to Mr. Spraggins. A. Yes.

40

Defendant C. E. S. Simpson—Cross.

Q. Do you recall that you told him not to put the names in the bill of sale, "Exhibit C-3" in this cause? A. I do not.

Q. Did you know that that paper was to be delivered on that day? A. I did not know that this particular paper was to be delivered on this day.

10 Q. What talk had you with Mr. Spraggins with regard to the papers that were to be delivered on May 2nd, 1912, at the closing of this transaction? A. As near as I can recall it, I told him to take up in my office whatever papers he had to show his title, as near as I can recall now.

Q. Do you recall telling him not to insert the name of the grantee in that bill of sale until it got there, because there was some doubt in whose name the paper should be taken? A. No, sir, I don't recall any such thing.

20

By the Court.

Q. Have you any memory on that subject at all?

A. In a vague way; the same as every other lawyer has of these things that pass through his office.

30 Q. What is your memory on it? A. That I merely 'phoned down and told him I represented Mr. Flynn—told Spraggins—who was to buy that garage, and the matter was to be closed at my office the next day, and that he had better send up whatever papers he had showing his title.

Further cross.

Q. Now, when you testified, as you have done in response to the Vice Chancellor's question, are you testifying from memory or testifying from the usual course—what you think happened at that time? A. From what I recall that happened at that time.

40 Q. And from the usual course of business be-

Defendant C. E. S. Simpson—Cross

sides? A. I am guided somewhat by that; but as I recall the fact at that time.

Q. Mr. Simpson, do you recall a meeting at which you and Mr. Darling and Mr. Spraggins were present in your office concerning this matter a day or two or some little time before this chattel mortgage was executed? A. When Mr. Spraggins and who else?

10

Q. Mr. Spraggins, Mr. Milton, Mr. Darling and possibly one or two others?

The Court: Before this mortgage was drawn up?

Mr. Anderson: Yes.

By the Court.

Q. Do you recall such an event? A. I don't recall such a meeting.

20

Further cross.

Q. What was done with this paper after it was signed, Mr. Simpson; this chattel mortgage? A. I don't know, for I was not in the office at the time.

Q. Don't you know it was taken care of by you in behalf of Henry I. Darling and finally delivered to him? A. No, sir, because, when these papers were delivered and exchanged, I was trying a case, and I was not present, and I don't recall whether the recording of it was charged to me, or whether the papers was immediately delivered to Mr. Darling or recorded by him, or Ben Darling; I don't recall what the circumstances were.

30

Q. When do you say you became the attorney for Henry I. Darling? A. When we discovered the fraud that Flynn was involved in.

Q. You mean to say you were not Mr. Darling's attorney on June 27, 1912, the date of the destruc-

40

Defendant C. E. S. Simpson—Cross.

tion of these notes with the genuine signature of Mr. Darling endorsed thereon? A. No, sir, I was not his attorney then; I was Mr. Flynn's attorney, for he was buying some property on Broadway.

Q. Don't you recall Mr. Darling asked you if they were all right and that you gave him an opinion?

10 Mr. McEwan: I object to the opinion; we want the facts.

A. I don't know whether you would call it an opinion or not; when I saw the notes I said, "Those are the notes."

Q. Don't you know that Henry I. Darling relied upon you at that time? A. I believe he may have done that, because we are friendly and had been for years.

20 Q. And you were looking out for his interest at that time? A. No, sir; I was not looking out for his interests any more than——

Q. Who paid you for that meeting and that opinion? A. Nobody; as soon as the fraud was discovered I refused to have anything more to do with Flynn, and told him so, and I would not take any of his money.

30 Q. How often did you meet Mr. Darling between April 26, 1912, which is the date of "Exhibit P-11" in this cause, and June 27, 1912, which is the date of the destruction of these notes with the genuine signature indorsed thereon—— A. What is "Exhibit P-11"?

Q. The memorandum of agreement concerning the Nelson and Bock judgment; I only mention that for the time and not because I wish to bring in the paper; I am fixing the time now, Mr. Simpson, dated April 25 instead of 26? A. I could not tell you.

40

Defendant C. E. S. Simpson—Cross.

Q. You saw him a number of times, did you? A. Yes, sir.

Q. Did you have any talk with him about these transactions? A. No, sir.

Q. Did you have any talk with him about that chattel mortgage? A. Not that I recall.

Q. Don't you know, Mr. Simpson, that chattel mortgage would go in your box at the court house and that it would come back and that you would have to meet Mr. Darling? A. Let me see it and I will tell you. (Witness examines it.) No, sir, that would not go back to my box, for my name is crossed off of it; if that was put in my box and I had recorded it I would endorse there "To record and return to my box." 10

Q. Do you recall a single meeting between that date, April 25, 1912, and June 27, 1912, with Mr. Darling? A. No, sir; we may have met in a general way in the building, but not in relation to these matters. 20

Q. Don't you remember that he was here at the time of the drawing of these papers of May 2, 1912? A. Where?

Q. In your office, on May 2, 1912, at the drawing of these papers? A. I told you, Mr. Anderson, that I began to draw the chattel mortgage, and you will see my handwriting half way down; I did not know what goods were to go into the chattel mortgage; but I had to leave the office to go to court, and I told Mr. Warnke to attend to it for Mr. Flynn, whom I represented, and I left and went to court and was away all day long. 30

Q. Mr. Simpson, you are an attorney of twenty-five years' standing; does that answer the question? A. So far as I know, I will say, "No, he was not, while I was there, positively not."

Q. Do you recall that Mr. Darling was in and out of your office that day, for nearly seven hours? A. 40

Defendant C. E. S. Simpson—Cross.
Complainant T. A. Spraggins' Rebuttal—Direct.

I don't recall, because I was not in the office; I was away in court all day long, with the exception of perhaps three-quarters of an hour, between 9 o'clock and 9:45.

Mr. McEwan: That is all of our testimony.

10

DEFENDANTS REST.

TRAVERSE A. SPRAGGINS, sworn in rebuttal, testified as follows:

Direct examination by Mr. Anderson.

Q. What is your business at the present time?
 20 A. A little of everything—contracting and salesman and broker.

Q. But not practicing law? A. No, sir.

Q. Did you practice law in 1912? A. Yes, sir.

Q. Did you meet Mr. Simpson in the months of April and May, 1912? A. Yes, sir, I did.

Q. With regard to this Motley and Flynn and Darling controversy here? A. Yes, sir.

Q. Do you recall having a telephone conversation with Mr. Simpson a few days prior to May 2, 1912, concerning this particular matter of the bill of sale by Motley to Flynn, and this chattel mortgage from Flynn to Henry I. Darling? A. On May 2, 1912, I had a telephonic conversation with Mr. Simpson.

Q. What was that? A. I had had a talk with Mr. Simpson before this, and on the 2nd of May he called me and asked me to send Mr. Motley up to his office; Mr. Simpson and I had talked over the question of Mr. Motley's conveying his interest to either Mr. Darling or Mr. Flynn; I don't recall which one it was; so that on the 2nd of May Mr.

40

Complainant T. A. Spraggins' Rebuttal—Direct.

Simpson called me up and asked me to hurry Mr. Motley up there.

Q. I show you the paper "Exhibit C-3," which is the bill of sale by Richard A. Motley to Charles Flynn, and call your attention to the part in Mr. Warnke's handwriting, and ask you if that paper was sent by your office to Mr. Simpson's office with those spaces blank which are now filled in in Mr. Warnke's handwriting? A. Yes, sir. 10

Q. Why were those spaces left? (Question withdrawn.) What did you say to Mr. Simpson and what did he say to you whereby those spaces were left blank to be filled in in Mr. Simpson's office? A. I told Mr. Simpson that we had a bill of sale and we had had several conversations together with reference to the title Mr. Motley held, and I told him about the bills of sale which Mr. Motley had gotten from Mr. Crawley and Bock, and told him of this blank bill of sale; we had it in Mr. Simpson's office the day before the 1st of May, and I was directed by Mr. Simpson to send this bill of sale with the blanks not filled in, and I did so. 20

Q. What did he say was the reason for not filling in the blanks? A. I don't know that he told me any reason; I understood it.

Mr. McEwan: I object to that.

Q. Was there anything said about whose name was to be put in? Did you decide on whose name was to be put in when the paper reached Mr. Simpson's office? A. I don't recall whether anything was said as to whose name was to be put in the bill of sale. 30

Q. Now, do you recall a meeting a few days prior to this with Mr. Darling and Mr. Simpson concerning this matter? A. Yes, sir. 40

*Complainant T. A. Spraggins' Rebuttal—Direct—
Cross.*

Q. Can you recall specifically, Mr. Spraggins, anything that was said to Mr. Simpson at that time by Mr. Darling in your presence in reference to the manner in which Mr. Simpson was to appear in this matter for Mr. Darling? A. Mr. Simpson and Mr. Darling and Mr. Flynn and Mr. and Mrs. Bock and
10 Mr. Milton were discussing a transfer of title, etc., and Mr. Darling said to Mr. Simpson, "Now, Charlie, you look out for my interests"; that was on the 1st of May, in Mr. Simpson's office.

Cross-examination by Mr. McEwan.

Q. How many times did you see Mr. Simpson about this matter prior to the 2nd of May? A. I don't recall the number of times, but we had several conferences.
20

Q. Prior to that time you had been the attorney for the Bocks? A. I was the attorney for the Bocks up to about the 1st of April; Mr. John Milton represented the Bocks at that time; I did not.

Q. Whom did you represent? A. The Rev. Mr. Motley and myself.

Q. And you were interested in this matter yourself? A. I was, yes, sir.

Q. And Mr. Motley came into it through you, didn't he? A. No, sir, through the Bocks.
30

Q. Through you, as attorney for the Bocks? A. No, sir; Mr. and Mrs. Bock had borrowed \$800 from Mr. Motley and I endorsed the note.

Q. That was negotiated through you, wasn't it, with Mr. Motley? A. Mr. and Mrs. Bock got Mr. Motley to loan the money; at least I asked Mr. Motley to loan the money and he said he would if I would endorse the note, and I endorsed the note, and the money was loaned.

Complainant T. A. Spraggins' Rebuttal—Cross.

Q. At this time you represented Mr. Motley? A. Yes, sir.

Q. And Mr. Motley was interested to what extent? To get out this \$800? A. Yes, sir.

Q. Anything more? A. And then I had assigned to Mr. Motley some claims that the Bocks owed me; I had loaned them some money also.

Q. And he was to also get those? A. Yes, sir. 10

Q. Now, how did this transaction of which the bill of sale from Motley to Flynn arose, how did that begin; what was your first knowledge of that? A. It had been going on for a long time, the notes that Mr. Motley had were due on the 1st of April and there had been a suit brought against the Bocks by Mr. Nelson and judgment had been recovered, and they were endeavoring to pay off the note and did pay Mr. Motley, so that Mr. Darling came in to loan them enough money to pay off the notes and the judgment of Nelson, and then it was that Mr. Motley had to transfer his interest to somebody, as he held the legal title to the garage, etc., and it was at these conferences that it was decided that Mr. Motley was to turn over his interest to anybody who would pay him back the amount of money that he had loaned them. 20

Q. I have asked you what was the first that you had to do with this particular transaction out of which this bill of sale arose? A. That was in January, 1912—the loaning of the money. 30

Q. By whom? A. By Motley.

Q. Did that have anything to do with the transaction of the bill of sale from Motley to Flynn? A. Yes, sir; it was to get Motley back the money which he had loaned.

Q. That was when Motley first came into connection with the garage? A. Yes, sir.

Q. And Darling had nothing to do with the garage at that time? A. No, sir. 40

Complainant T. A. Spraggins' Rebuttal—Cross.

Q. That had nothing to do with the transaction out of which this bill of sale arose then; now, what was the first you had to do with this transaction out of which this bill of sale arose? A. I don't understand you.

10 Q. I am not asking how Mr. Motley first came into this matter; I am asking you what was the first that you had to do with the particular transaction out of which this bill of sale arose from Motley to Flynn? A. I gave this blank piece of paper with some writing of my own to Mr. Hayne, and sent him up to Mr. Simpson's office to get the two notes, one of \$500 and one of \$700, and \$297.42, I think it was in cash.

20 Q. Mr. Spraggins, now, that is with reference to the particular paper; now, I am asking you what was the first you had to do with the transaction out of which that bill of sale arose? A. The first transaction was endorsement of the note of Mr. Motley's, and the loaning to the Bocks of money.

Q. The first that Mr. Motley had to do with this garage was in January, 1912, when you endorsed the note and he let the Bocks have this money? A. Yes, sir.

30 Q. Now, as the result of that, what was done out of which this bill of sale to Flynn arose? A. Motley gave this bill of sale to Flynn when he gave him the notes and the check for the money.

Q. Was there anything happened in between? A. There were several conferences between the different people.

Q. Which was the first conference? A. They were meeting once or twice a week, and sometimes every day, with the Bocks and Mr. Darling and Mr. Flynn and Mr. Simpson and Mr. Milton.

Q. When did that begin? A. Some time in the latter part of March or the 1st of April.

Complainant T. A. Spraggins' Rebuttal—Cross.

Q. When was the first that Mr. Simpson came into it? A. That was probably the latter part of April.

Q. And prior to that, with whom did you have your conferences? A. With Mr. John Milton, and I don't remember any other lawyer.

Q. I am not speaking about lawyers, I am speaking about individuals. A. Mr. Flynn and Mr. and Mrs. Bock and Mr. Darling. 10

Q. Now, with whom did you first have your conference? The Bocks? A. Mr. Darling and the Bocks came to the office to see about the judgment; I don't remember the day.

Q. That was in reference to the Nelson judgment? A. Yes, sir.

Q. That was for rent, wasn't it? A. No, sir; that was for part purchase of the garage.

Q. And Mr. Nelson had a judgment against the Bocks? A. Yes, sir. 20

Q. And do you know with whom the Bocks first took up the question of that Nelson judgment and its payment? A. As I recall it now, Mr. and Mrs. Bock, Mr. Flynn and Mr. Darling came to the office downstairs to take care of the judgment of Nelson; there were, I think, one or two notes drawn.

Q. I am only trying to get the order of the transaction; the first conference, then, with reference to the Nelson judgment and its payment, of which you have knowledge, was between yourself, the Bocks, Flynn and Darling? A. Yes, sir. 30

Q. And out of that there grew an assignment from Nelson to Flynn of that judgment; is not that so? A. I would not say to Flynn.

Q. Wasn't the assignment drawn to Flynn? A. That I won't say, I don't remember anything about the assignment.

Q. Who prepared that assignment? A. I don't know. 40

Complainant T. A. Spraggins' Rebuttal—Cross.

Q. Now, that was the first, and you did not have to do with the actual assignment of that judgment?

A. No, sir.

Mr. Anderson: My recollection is, that that is not in evidence.

10 Q. Then what was the first in which Motley came into the transaction, and with whom did you have the first conference concerning that? Now, you have told us that Mr. Bock and Mr. Flynn and Mr. Darling came there about the Nelson judgment. Now, what was next, with reference to the transaction out of which this bill of sale arose? A. The next was conference between Mr. and Mrs. Bock, Mr. Milton, Mr. Darling and myself in the rear of a cafe that was kept by Mr. Flynn on Newark Avenue.

20 Q. And was Mr. Flynn present? A. Yes, sir, and Mr. Darling and Mr. Milton was present, and Mr. and Mrs. Bock and myself.

Q. What was the subject of that conference? A. I think when they were trying to get——

Q. Whom do you mean? A. Mr. and Mrs. Bock were trying to get some money from Mr. Darling to tide them over.

Q. Whom did you represent then? A. I represented Mr. Motley.

30 Q. And Mr. Motley was pressing for his money that was past due? A. I don't know that he was pressing; he had agreed that if part of his money was paid he would take a note for the balance, provided Mr. Darling would endorse it.

Q. Well, you were there to see about getting Mr. Motley money or security for it? A. Yes, sir.

40 Q. And that conference arose by reason of the demands of Mr. Motley, either for his money or for security? A. Not so much Mr. Motley as it was Mr. Nelson's judgment.

Complainant T. A. Spraggins' Rebuttal—Cross.

Q. That had been assigned at that time, hadn't it? A. I don't recall that it had; I did not finish my conversation with reference to the first meeting—

Q. Pardon me; now, were you there at Mr. Flynn's saloon at that time with reference to the Nelson judgment or with reference to Mr. Motley's claims? A. Both claims were brought up at the same time. 10

Q. And you say that the Bocks desired to get the money to take care of something; now, what was it that they wanted to take care of? A. Mr. Nelson's judgment and Mr. Motley's note.

Q. Had or had not the Nelson judgment been assigned at that time? A. I don't recall whether it had or not.

Q. Was any conclusion arrived at at that conference in Flynn's saloon? A. I don't know what the conclusion was. 20

Q. And so far as you can recollect, there was no definite conclusion which you can now state? A. No, sir; I don't recall.

Q. And what was the next conference that was had, with reference to the transaction out of which this bill of sale arose? A. Then we met in Mr. Simpson's office.

Q. How long was that after the conference in the saloon? A. I think only two or three days. 30

Q. And who were there? A. Mr. and Mrs. Bock, Mr. Milton, Mr. Simpson, Mr. Flynn, myself, and probably there may have been somebody else.

Q. And was any conclusion arrived at then? A. That was the time that we were to bring this Motley mortgage, or to bring Motley there for the purpose of giving a bill of sale or some paper, releasing his interest from the garage.

Q. And that was not completed at that time? A. No, sir. 40

Complainant T. A. Spraggins' Rebuttal—Cross.

Q. Was that after the last conference before you closed the matter on the 2nd of May? A. I think so.

Q. Was that the only conference at which Mr. Simpson was present up to that time? A. I would not say the only one.

10 Q. You have not mentioned him as being present at any of the preceding ones as to which I have asked you; now, I want to give you an opportunity to say whether, according to your best recollection, this conference was the first one that Mr. Simpson was present at? A. I think Mr. Simpson was present more than once; I could not swear to it.

By the Court.

20 Q. The question is, whether this was the first conference he was present at, that you recall? A. I don't know that.

Further cross.

Q. When you stated the persons present at the various conferences preceding this one, you stated your best recollection as to those who were present, and all of them? A. Yes, sir; that is my best recollection.

30 Q. And as to this conference which you can specifically remember and of which you specifically told us, Mr. Simpson was not present as far as you recollect? A. There were several conferences at which Mr. Simpson was not present.

Q. Do you know the date of this conference at Mr. Simpson's office? A. I think it was on May 1st, or perhaps it might have been a day or two before that.

40 Q. Was Mr. Motley present? A. I don't think he was.

Complainant T. A. Spraggins' Rebuttal—Cross.

Q. You were negotiating the transactions for him? A. Yes, sir.

Q. Now, was Mr. Darling present— A. Yes, sir; Mr. Darling was.

Q. You did not mention him before? A. Well, I may have skipped his name.

Q. Was he present on the 1st of May? A. Yes, sir; at the last conference at which Mr. Simpson was there, I remember Mr. Darling being there distinctly. 10

Q. Who else were there? A. Mr. and Mrs. Bock, Mr. John Nelson, Mr. Flynn.

Q. Could you explain why, when I asked you to tell us all that were there, you did not name Mr. Darling; and then when I asked whether Mr. Darling was present, you then say he was? A. Oh, I may forget it; it was five or six years ago.

Q. You think you forgot it at first, but then when I put the direct question to you, then you remembered it? A. It may be so. 20

Q. Now, when did you prepare this bill of sale? A. Oh, some time before the 7th of May; I don't just remember what day it was.

Q. You have told us about the conference at Mr. Simpson's office either the day before or two days before, at which all these people were present; was the bill of sale prepared at that time? A. I think it was. 30

Q. And had the name of the grantor been filled in then? A. No, sir.

Q. Now, was the name of the grantee talked about at this conference in Mr. Simpson's office? A. It may have been.

Q. I am asking you as to your best recollection. A. I don't remember directly whether it was or not.

Complainant T. A. Spraggins' Rebuttal—Cross.

Q. So that you have no recollection that at that time there was any instruction to leave the name blank? A. I cannot remember that.

Q. When was your telephone conversation with Mr. Simpson which you have testified to; was it before that conference or after? A. On the day that the bill of sale was executed.

10 Q. That is the 2nd of May? A. Yes, sir, in the morning, about 10 o'clock.

Q. Did you call Mr. Simpson or did he call you? A. Mr. Simpson called me.

Q. What did he say? A. He asked me to send up Mr. Motley with the papers or with the bill of sale, I don't recall which.

Q. He asked you before that with reference to Mr. Motley's papers, showing his title? A. Yes, sir, and I told him what papers we had.

20 Q. Did he ask you to send them up to him so that he might see them? A. I don't remember whether he specified any particular papers or not.

Q. Now, Mr. Spraggins, what was Mr. Motley to convey by this bill of sale? A. The bill of sale speaks for itself.

Q. Answer the question. A. Such right or title or interest in the property as he acquired on the 5th of January, 1912, under two bills of sale, one from Mr. Crawley and one from Bock.

30 Q. Was it explained to Mr. Simpson or Mr. Flynn at any of these conferences as to what this interest was? A. Yes, sir.

Q. What was said? A. That Mr. Motley's interest in the business was to the extent of the amount of money due from the Bocks to him, and the amount for which I had assigned my claims to him——

Q. To whom was that said? A. It was said in the conference where we were when Mr. and Mrs. Bock were there; Mr. Milton was there, and I don't

Complainant T. A. Spraggins' Rebuttal—Cross.

recall—Mr. Milton was in the conferences, and it was generally thought that was all that Mr. Motley had; so that in preparing the bill of sale I put it in there.

Q. So that Mr. Flynn undertook to take, not the full title to this garage, but only such title as Mr. Motley might have? A. Yes, sir.

Q. And you say positively now that that was all he was to get? A. That is all he was to get, just such title as Mr. Motley had. 10

Q. Had Mr. Motley possession at that time? A. No, sir.

Q. Who had possession? A. The Bocks.

Q. And was Mr. Flynn to get possession under this bill of sale? A. We said nothing about possession.

Q. So that all he was to get was simply the same interest that Motley had—without possession? A. Just such interest as Mr. Motley had. 20

Q. When did you tell Mr. Flynn that? A. I don't know that I told Mr. Flynn so at all; I wrote in the bill of sale—wanting to be very careful about it—that Mr. Motley was only giving them such interest in the garage as he had, and that is set up in this bill of sale.

Q. Did you tell Mr. Simpson that? A. I don't recall that I told him at all; I was not there at the time when the bill of sale was executed. 30

Q. You had a conference— A. I was not there at the time the bill of sale was executed.

Q. You had a conference before that, and I ask you whether you told Mr. Simpson at the time that all Mr. Flynn was to receive was simply the right, title and interest which Mr. Motley had? A. I don't recall having told Mr. Simpson that.

Q. Was there ever anything said at any time to anyone outside of what the bill of sale contains, with 40

Complainant T. A. Spraggins' Rebuttal—Cross.

reference to the title that Mr. Flynn was to receive under this bill of sale? A. I did not know that Mr. Flynn was going to receive any title at all.

Q. Pardon me; we won't dispute about that; was there ever anything said to anyone outside of what was contained in this bill of sale, on behalf of Flynn or Mr. Darling, or to Mr. Simpson, that all that
10 either one of them was to get was the right, title and interest that Mr. Motley had? A. Oh, yes, it had been talked about nearly every time we had a conference.

Q. Was it explained what Mr. Motley's interest was? A. Yes, sir.

BOTH SIDES REST.

20

Transcript of proceedings taken before Hon. VIVIAN M. LEWIS, at the Chancery Chambers, Jersey City, on February 11, 1918.

Appearances as before noted.

Mr. Simpson: I want to put in evidence the official records of the trustee, between the trustee
30 and complainant, taken from the Bankruptcy Court. I offer it.

Mr. Anderson: I desire to reserve all objections.

The Court: Certainly.

Mr. Anderson: I hope we are not going to get too big a record in this case; certainly, this long schedule in bankruptcy is not to go in.

Mr. Simpson: I offer in evidence the petition of
40 George L. Bock in bankruptcy filed in the United

Case.

States District Court for the District of New Jersey
on May 7, 1912.

(Marked Exhibit D-1.)

I also offer in evidence the petition of Charles
C. Kelly, trustee in bankruptcy, the sixth paragraph
(reading the same).

10

(Marked Exhibit D-2.)

I also offer in evidence the order directing the
sale. That order was filed July 12, 1912.

Mr. Anderson: I would like to make a further
objection at this time, and that is that we were not
a party to that waiver.

Mr. Simpson: I offer in evidence the order con-
firming the sale containing these words: "It is
thereupon on the thirty-first of July, 1912, ordered
that the offer of said Charles Flynn to pay the sum
of Nine hundred dollars in cash for the right, title
and interest" (reading same).

20

(Marked Exhibit D-3.)

I also offer in evidence an order made in the
same matter and filed July 15, 1918, wherein it was
ordered that the meeting of the creditors of the
above-named bankrupt be held at the Bankruptcy
Court room (reading same).

30

(Marked Exhibit D-4.)

I also wish to offer in evidence the first report
of the trustee filed in the above matter on Septem-
ber 4, 1912, and filed in the Bankruptcy Court Jan-
uary 7, 1915, containing these words (reading). I

40

Case.

would like to amend that by saying it was filed September 5, 1912, with the Referee in Bankruptcy, and subsequently filed on January 7, 1915, in the office of the Clerk of the Court.

The Court: Anything further?

10 Mr. Simpson: I offer Schedule A, made part of the first report of the trustee above named, containing these words: "To cash received from Charles Flynn for the right, title and interest of George L. Boch, \$900.00." Paid on July 10, 1912; and also the trustee's final report filed with the Referee in Bankruptcy October 10, 1912, in the office of the Clerk of the United States District Court on January 7, 1915.

The Court: Is there anything further to offer?

Mr. Simpson: No, sir.

20 The Court: I will submit those things to Mr. Anderson.

Mr. Anderson: I am already familiar with them.

30

40

Exhibit C-5.

MEMORANDUM OF AGREEMENT, made this twenty-fifth day of April, nineteen hundred and twelve, between CECELIA D. BOCK and GEORGE L. BOCK, of Jersey City, parties of the first part, and H. I. DARLING, of the same place, party of the second part.

WHEREAS, the said Cecelia D. Bock is indebted to one John Nelson in the sum of approximately nine hundred four dollars (\$904.00) being the amount of a certain judgment recovered in the New Jersey Supreme Court by the said Nelson with the costs and interest thereon. 10

And WHEREAS the said Cecelia D. Bock is also indebted to one Richard A. Motley in the sum of nine hundred dollars (\$900), being the amount of a loan advanced by the said Motley to her, the said Cecelia D. Bock. 20

And WHEREAS the said Motley holds in his name the title to the automobile business formerly conducted by the said Cecelia D. Bock and George L. Bock at the northwest corner of Hudson County Boulevard and Communipaw Avenue in Jersey City, including the automobiles, equipment and stock used therein.

And WHEREAS the said Bocks are desirous of securing the moneys necessary to pay the Nelson judgment and to liquidate the Motley indebtedness. 30

And WHEREAS the said Darling has this day discounted two notes of the said Bocks, one for four hundred fifty dollars (\$450.) payable in two months and the other for four hundred seventy-five dollars (\$475) payable in three months which said notes were discounted by the First National 40

Exhibit C-5.

Bank of Hoboken and the proceeds thereof are now to be used, in the extinguishment of the Nelson judgment.

10 And WHEREAS the said Darling has this day endorsed a note made by the said Bocks to the order of Richard A. Motley for seven hundred dollars (\$700.) payable in four months, and it being the desire of the said Bocks to secure the said Darling against loss by reason of the advancement of said moneys and the endorsement of said notes.

20 Now, THEREFORE, this agreement WITNESSETH: That the said Bocks agree upon the adjustment of the claim of Richard A. Motley to cause to be executed a chattel mortgage in the sum of two thousand dollars (\$2000.00) to the said H. I. Darling, which said chattel mortgage shall be a lien upon all of the automobiles used in said business and the stock and equipment used in connection therewith, of which an itemized statement or inventory shall be immediately made, which said mortgage shall be for the sum of two thousand dollars (\$2000.00) and shall also include as the property upon which it is a lien, lease for said premises heretofore made by the said John Nelson to Cecelia D. Bock.

30 It being understood that the amount represented by the said mortgage shall be payable by the said Bocks to the said Darling in monthly installments of fifty dollars (\$50.00) each and that whatever amount may be paid by the said Bocks on account of the seven hundred dollar (\$700.) note above mentioned, shall be credited upon the production of the proper receipt therefor on account of the face amount of the said mortgage.

40 It being further understood that whatever payments are made by the said Bocks to the said Darling shall be credited upon the indebtedness evi-

Exhibit C-5.

denced by the said mortgage and that the said mortgage shall bear interest at the rate of six per cent.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year aforesaid.

CECILIA D. BOCK 10
GEORGE L. BOCK
H. I. DARLING

Signed sealed and delivered
in the presence of

JOHN MILTON.

(Endorsed)

Cecilia D. Bock and George L. Bock 20
and

H. I. Darling

MEMORANDUM OF AGREEMENT

Dated April 25th, 1912.

30

40

Exhibit C-6.

KNOW ALL MEN BY THESE PRESENTS, That We,
 George L. Bock and Cecilia D. Bock, of the City of
 Jersey City, County of Hudson and State of New
 Jersey, of the First Part, for and in consideration
 of the sum of One (\$1.00) Dollar and other good
 and valuable considerations, lawful money of the
 United States, to us in hand paid, at or before the
 10 ensealing and delivery of these presents, by Rich-
 ard A. Motley, of the same place, of the Second
 Part, the receipt whereof is hereby acknowledged
 have bargained and sold, and by these presents do
 grant and convey, unto the said party of the second
 part, his heirs, executors, administrators and as-
 signs, ALL the goods and chattels particularly de-
 scribed and mentioned, to wit: One Oakland Auto-
 mobile, 40 horse power, Model 1912. No. To
 20 HAVE AND TO HOLD, the same unto the said party of
 the second part, his heirs, executors, administrators
 and assigns forever. AND We do for ourselves our
 heirs, executors, and administrators, covenant and
 agree, to and with the said party of the second part,
 to warrant and defend the sale of the said goods
 and chattels hereby sold unto the said party of the
 second part, his and assigns, against all and every
 person and persons whomsoever.

IN WITNESS WHEREOF, we have hereunto set our
 hands and seals the fifth day of January in the year
 of Our Lord One Thousand Nine Hundred and
 30 Twelve.

CECELIA D. BOCK
 GEORGE L. BOCK

Sealed and Delivered
 in the presence of

TRAVERSE A. SPRAGGINS

One Oakland Automobile
 Model 40 1912 No.
 Horse Power

40

CECILIA D. BOCK }
 GEORGE L. BOCK } ss. :

Exhibit C-6.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON } ss. :

BE IT REMEMBERED, that on this Fifth day of January, 1912, before me the Subscriber, An Attorney at Law, of N. J., New Jersey, personally appeared, George L. Bock and Cecelia D. Bock, who I am satisfied are the grantors in the within Bill of Sale, to whom I first made known the contents thereof; there upon they did each acknowledge, that they signed, sealed and delivered the same as their voluntary act and deed. 10

And the said Cecilia D. Bock, being by me privately examined separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. 20

TRAVERSE A. SPRAGGINS,
 Attorney at Law of
 New Jersey.

(Endorsed)

BILL OF SALE.

George L. Bock and Cecelia D. Bock 30

To

Richard A. Motley.

Dated, January 5th, 1912.

Exhibit C-7.

KNOW ALL MEN BY THESE PRESENTS, That I, Cecelia D. Bock and George L. Bock, her husband, of the City of Jersey City, Hudson County, State of New Jersey, in consideration of One (\$1.00) Dollar and other good and valuable considerations, Dollars, lawful money of the United States, to us duly paid by Richard A. Motley, of the same place, the receipt whereof is hereby acknowledged, have
 10 sold, assigned, transferred, and set over, and by these present do sell, assign, transfer, and set over unto Richard A. Motley, his executors, administrators, and assigns, a certain Indenture of Lease, bearing date the Fifteenth day of August in the year One Thousand Nine Hundred and Ten, made by John Nelson, Lessor and Cecelia D. Bock, lessee, with all and singular the premises therein mentioned and described, and the buildings thereon, together with the appurtenances. TO HAVE AND TO
 20 HOLD the same unto the said Richard A. Motley, his executors, administrators, and assigns, from the Twenty-seventh day of January in the year Nineteen hundred and twelve for and during all the rest, residue and remainder of the term of three years mentioned in the said Indenture of Lease, with privilege of two years renewal, subject nevertheless, to the rents, covenants, conditions and provisions therein also mentioned. AND We do hereby covenant and agree with the said Richard A. Motley
 30 that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments, and incumbrances whatsoever.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this fifth day of January in the year One Thousand Nine Hundred and twelve.

CECELIA D. BOCK LS

GEORGE L. BOCK LS

40 Signed, Sealed and Delivered
 in the presence of
 TRAVERSE A. SPRAGGINS.

Exhibit C-7.

STATE OF NEW JERSEY,)
 COUNTY OF HUDSON,) ss. :

BE IT REMEMBERED, that on this fifth day of January, 1912, before me the subscriber, an Attorney at law of N. J., personally appeared, Cecelia D. Bock and George L. Bock, her husband, who, I am satisfied, are the grantors named in the within Assignment of Lease, to whom I first made known the contents thereof; thereupon they did each acknowledge, that they signed, sealed and delivered the same as their voluntary act and deed. 10

And the said Cecelia D. Bock, being by me privately examined separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed. 20

TRAVERSE A. SPRAGGINS,
 Attorney at law of
 New Jersey.

(Endorsed)

ASSIGNMENT OF LEASE.

Cecelia D. Bock and
 George L. Bock, her husband. 30

To

Richard A. Motley.

Dated, January 5th, 1912.

Exhibit C-12.

KNOW ALL MEN BY THESE PRESENTS, That Charles Flynn of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the first part, for securing the payment of the money herein mentioned, and in consideration of the sum of One Dollar, to me duly paid by Henry I. Darling, of the City of Jersey City, County of Hudson and State
10 of New Jersey, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do bargain and sell, unto the said party of the second part, his executors, administrators and assigns, all the goods and chattels mentioned in the schedule hereunto annexed and now in the premises occupied as a garage on the northwest corner of Hudson County Boulevard and Communipaw Avenue, in
20 the City of Jersey City, County of Hudson and State of New Jersey,

TO HAVE AND TO HOLD, all and singular the said goods and chattels above bargained and sold or intended so to be, unto the said party of the second part, his executors, administrators and assigns, forever, AND I, the said party of the first part, for myself, my heirs, executors and administrators all and singular the said goods and chattels above bargained and sold, unto the said party of the second
30 part, his executors, administrators and assigns, against the said party of the first part, and against all and every person or persons whomsoever shall and will warrant and forever defend.

UPON CONDITION, that if I the said party of the first part, shall and do well and truly pay unto the said party of the second part, his executors, administrators and assigns, the just and full sum of twen-

Exhibit C-12.

ty-eight hundred dollars by the payment of one hundred dollars on the first day of each and every month hereafter until the whole of said sum of Twenty-eight hundred shall be paid, then these presents shall be void. AND I the said party of the first part, for myself, my heirs, executors, administrators and assigns, do covenant and agree to and with the said party of the second part, his executors, administrators and assigns, that in case default shall be made in the payment of the said sum above mentioned, or in case the said part of the first part shall, at any time before the day of payment herein provided for, remove the said goods and chattels, or any of them, or permit or suffer any attachment or other process against property to be issued against me or permit or suffer any judgment to be entered up against me then the said sum of money herein mentioned shall become instantly due and payable, and then it shall and may be lawful for, and I the said party of the first part do hereby authorize and empower the said party of the second part, his executors, administrators and assigns, with the aid and assistance of any person or persons, to enter my garage, dwelling-house, store and other premises, and such other place or places whatsoever in which the said goods and chattels, or any of them, are or may be placed and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money arising therefrom, to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto me the said party of the first part, his heirs, executors, administrators or assigns.

IN WITNESS WHEREOF, I, the said party of the first part have hereunto set my hand and seal the Sec-

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Exhibit C-12.

ond day of May, in the year of our Lord, One Thousand Nine Hundred and twelve.

CHARLES FLYNN L.S.

Sealed and delivered in
the presence of

10

JOHN W. WARNKE.

Schedule.

The following is a Schedule of the goods and chattels referred to in the foregoing Mortgage and is hereby made a part thereof to wit: One 1912 Oakland Touring Car, one (1) Buick Touring car, one (1) Oakland car (40), one (1) Cadillac Car, one (1) Pope Hartford, all the goods and chattels consisting of automobile supplies, such as oils, gasoline, tools, the good will of the automobile business and garage business and all other goods and chattels now in the premises No. 2395 Boulevard, Jersey City, N. J., also the lease of the premises made by John Nelson to Cecilia Bock dated August 10th, 1910, assigned by Bock to Richard A. Motley and assigned this day by said Richard A. Motley to Charles Flynn.

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CHARLES FLYNN

Witness

JOHN W. WARNKE

Exhibit C-12.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss.:

HENRY I. DARLING, the mortgagee in the foregoing mortgage named, being duly sworn, on his oath, says that the true consideration of said mortgage is as follows: viz, the said Henry I. Darling has endorsed several certain promissory notes aggregating twenty-four hundred and twenty-five dollars and is liable for the payment of the same by virtue of such endorsements and this chattel mortgage is given to secure the payment of such notes by the said Henry I. Darling with the several installments provided to be paid hereunder, and deponent further says that there is due on said mortgage the sum of Twenty-eight hundred dollars, besides lawful interest thereon from the date hereof.

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H. I. DARLING.

Sworn and subscribed this 2nd day
 day of May, A. D., 1912, before
 me, at Jersey City, N. J.

JOHN W. WARNKE,
 Master in Chancery
 of New Jersey.

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Exhibit C-12.

STATE OF NEW JERSEY }
 COUNTY OF HUDSON, } ss. :

10 BE IT REMEMBERED, That on this Second day of May, in the year of our Lord, One Thousand Nine Hundred and twelve before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Charles Flynn, who, I am satisfied, is the mortgagor mentioned in the within Instrument to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

JOHN W. WARNKE,
 Master in Chancery of
 New Jersey.

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(Endorsed)

MORTGAGE.

On Goods and Chattels

Compared Charles Flynn to Henry I. Darling.

Dated, 19

30 Received in the Registers Office of the County of Hudson, N. J. on the 3rd day of May, A. D. 1912, at 11.34 A. M. o'clock, in the forenoon, and Recorded in Book 302 of Chattel Mortgages for said County on pages 178, &c.

JOHN J. MCMAHON,
 Register.

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Exhibit D-1.

To the Honorable Joseph Cross & John Rellstab,
Judges of the District Court of the United States
For the District of New Jersey.

THE PETITION of George L. Bock of Jersey City,
in the County of Hudson and District and State of
New Jersey

RESPECTFULLY REPRESENTS, That he has had his
principal place of business (or has resided, or has
had his domicile) for the greater portion of six
months next immediately preceding the filing of
this petition at Jersey City within said judicial dis-
trict; that he owes debts which he is unable to pay
in full; that he is willing to surrender all his prop-
erty for the benefit of his creditors except such as is
exempt by law, and desires to obtain the benefit of
the acts of Congress relating to bankruptcy. 10

That the Schedule hereto annexed, marked A, and
verified by your Petitioner's Oath, contains a full
and true statement of all his debts, and (so far as
it is possible to ascertain) the names and places of
residence of his creditors, and such further state-
ments concerning said debts as are required by the
provisions of said acts: 20

That the Schedule hereto annexed, marked B, and
verified by your Petitioner's Oath, contains an ac-
curate inventory of all his property, both real and
personal, and such further statements concerning
said property as are required by the provisions of
said acts: 30

WHEREFORE YOUR PETITIONER PRAYS, That he may
be adjudged by the Court to be a Bankrupt, within
the purview of said acts.

GEORGE L. BOCK

JOHN WARREN,
Attorney,
15 Exchange Pl.,
Jersey City.

Exhibit D-1.

Schedule A-2.

CREDITORS HOLDING SECURITIES.

NAME OF CREDITORS	RESIDENCES (if unknown, that fact must be stated)	DESCRIPTION OF SECURITIES
Richard A. Motley	92 Ege Ave., J. C.	Lease for premises N. W. corner of Hudson Boulevard & Communipaw Ave., J. C.
		1—1911 Oakland Car
		1—1912 " "
		1—1911 Buick "
		1—1907 Cadillac "
		1—1906 Pope Hartford "
		Stock & equipment used in premises at above address

WHEN AND WHERE DEBTS WERE CONTRACTED	VALUE OF SECURITIES	AMOUNT OF DEBTS
In the month of January 1912 at Jersey City	3500	800.

NAME OF CREDITORS	RESIDENCES (if unknown, that fact must be stated)	DESCRIPTION OF SECURITIES
Charles Flynn	648 Newark Ave., Jersey City	It is understood that above securities were transferred by Motley to Flynn on about May 2, 1912
		GEORGE L. BOCK, Petitioner

Schedule B-2.

PERSONAL PROPERTY.

C—Stock in trade in business of automobile garage—consisting of 5 automobiles, supplies, stock & equipment lease, at Boulevard & Communipaw Ave., J. C. of the value of\$3500

Schedule B-4.

PROPERTY IN REVERSION, REMAINDER OR EXPECTANCY, including Property held in Trust for the Debtor or subject to any Power or Right to Dispose of or to charge.

Exhibit D-1.

PROPERTY HERETOFORE CONVEYED FOR BENEFIT OF
CREDITORS.

What portion of debtor's property has been conveyed by deed of assignment or otherwise, for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor. 10

Automobiles & lease above mentioned transferred to Richard H. Motley in January, 1912 as security for debt of \$800. It is understood that Motley transferred his interest to Charles H. Flynn May 2, 1912. Flynn ejected petitioner from place of business May 3, 1912 & is now in possession of all of said property. 20

GEORGE L. BOCK,
Petitioner.

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Exhibit D-2.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

IN THE MATTER

OF

GEORGE L. BOCK, Bankrupt.

In Bank-
ruptcy. Peti-
tion of Trustee

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(4) That one Charles Flynn who claims certain interests in and to certain of the bankrupt's assets by virtue of a bill of sale &c., which is in dispute and which has not been as yet determined and that since the refusal of the court to confirm said sale, the said Charles Flynn has made an offer in writing to your petitioner.

(5) That the offer above referred to of the said Charles Flynn is to pay the sum of nine hundred dollars (\$900) in cash for the assets of the bankrupt, which were sold on July ninth last at two o'clock in the afternoon and to waive all claim or demand which he, the said Charles Flynn may, might or could have against the said George L. Bock or the assets of his estate, and particularly, with reference to the bill of sale standing in his name therein.

(6) That in furtherance of the said offer, the said Charles Flynn has deposited with your petitioner the sum of nine hundred dollars (\$900) in cash.

CHARLES C. KELLY,
Petitioner.

Exhibit D-3.

UNITED STATES DISTRICT COURT,

FOR THE DISTRICT OF NEW JERSEY.

<p style="text-align: center;">IN THE MATTER</p> <p style="text-align: center;">OF</p> <p style="text-align: center;">GEORGE L. BOCK, Bankrupt.</p>	}	<p>In Bankruptcy. Order Confirming Sale, etc.</p>	<p>10</p>
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Upon the duly verified petition of Charles C. Kelly, trustee in bankruptcy in the above entitled matter, and upon ten days' notice to creditors fixing Friday, the twenty-sixth day of July, nineteen hundred and twelve, at eleven o'clock in the forenoon as the time, and the Bankruptcy Court, 75 Montgomery Street, Jersey City, New Jersey, as the place, to show cause why the offer of Charles Flinn to buy the assets of the above named bankrupt as set forth in the petition of Charles C. Kelly, Trustee as aforesaid, and no objection being made on the return day of said notice, to wit, July 26th, 1912:

IT IS THEREUPON, on this 31st day of July, A. D. Nineteen Hundred and Twelve, ORDERED, that the offer of said Charles Flinn to pay the sum of Nine Hundred (\$900.) Dollars in cash for the right, title and interest of the bankrupt in the assets which were sold on July 9th, 1912, he, the said Charles Flinn to waive all claims or demands which he, the said Charles Flinn, may, might, or could have against the said George L. Bock, or the assets of

Exhibit D-3.

his estate, and particularly with reference to an outstanding Bill of Sale standing in his name in reference thereto, be accepted and confirmed and the said Charles C. Kelly, trustee herein, be authorized and empowered to accept such offer and to surrender the possession of his interest as trustee in said assets to said Charles Flinn.

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GEORGE R. BEACH,
Referee in Bankruptcy.

A TRUE COPY

GEORGE R. BEACH,
Referee in Bankruptcy.

Filed July 31, 1912.

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Exhibit D-4.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

IN THE MATTER OF

GEORGE L. BOCK,

Bankrupt.

In Bank-
ruptcy.
Order.

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Charles C. Kelly, trustee duly appointed in the above entitled matter, has filed his petition in and by which it appears that he received an offer from one Charles Flynn to pay \$900 to said trustee for all of his right, title and interest in the business formerly owned by George L. Bock and the said Charles Flynn to waive all claims which he may have against the bankrupt estate. Further petitioning that a meeting of creditors be held for the purpose of considering said matter,

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IT IS on this 15th day of July, A. D. 1912, ORDERED, that a meeting of creditors of the above named bankrupt be held at the Bankruptcy Court Room, 75 Montgomery St., Jersey City, in said district on Friday, July 26, 1912, at 10 o'clock in the forenoon for the purpose of considering the offer of the said Charles Flynn as is more particularly set forth in a petition now on file in this matter, and to show cause why the same should not be accepted.

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GEORGE R. BEACH,
Referee in Bankruptcy.

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48 NOV. T. 1918

New Jersey Court of Errors and Appeals

Between

RICHARD A. MOTLEY,
Appellant-Complainant,

and

HENRY I. DARLING and CHARLES
FLYNN,
Respondents-Defendants.

On Bill, &c.

BRIEF OF APPELLANT.

Statement.

The bill of complaint was filed to establish two promissory notes, one for \$500 and one for \$700, and for a decree declaring the amounts due thereon to complainant. The learned Vice-Chancellor has so decreed.

In making the decree, the Court allowed to the defendant the sum of \$900 and interest by way of reduction of complainant's claim. Appeal has been taken from this part of the decree.

The complainant, by a bill of sale, conveyed to the defendant, Flynn, all his, the complainant's, right, title and interest in and to a garage and its contents for the sum of \$1,479.42 and received \$279.42 in cash, and the two notes in question for \$500 and \$700 represented the balance of the consideration.

After the bill of sale, one Bock filed a petition in bankruptcy and set forth that the garage and its contents were his, Bock's, property, and that complainant held a bill of sale and an assignment of the lease of the garage as security.

The learned Vice-Chancellor in his opinion advised a decree for the amount of the notes, plus interest, less the amount paid Flynn, to the trustee in bankruptcy to perfect title, plus interest from the date of such payment. Subsequently, the defendant, Darling, offered in evidence the record in bankruptcy showing that Flynn paid \$900 to the trustee for Bock's interest in the garage.

POINTS.

I.

Complainant sold only "all his right, title and interest in and to the goods and chattels mentioned in the bill of sale."

Schedule A annexed to bill, p. 9 of State of Case, ll. 33 to 40.

"The bill of sale from Motley to Flynn, "which was the consideration for the notes, "merely conveyed the right, title and interest of Motley to Flynn."

State of Case, Opinion, p. 30, ll. 8 to 10.

Where only "the title or interest the vendor had in the property" is transferred, "no warranty of title will be implied."

Gould v. Bourgeois, 51 N. J. L., 361.

This *Motley* case is parallel to and on all fours with the *Gould* case, only that Motley gave and Flynn received full value, while in the *Gould* case the consideration failed entirely.

II.

Flynn did not pay a fair price for the automobiles, garage and lease. These were valued at \$5,000. He only paid for Motley's interest \$279.42 in cash and was to deliver the two notes for \$500 and \$700.

Darling's testimony:

"I thought it was a good thing. There was a good property in the garage then. There was five thousand dollars worth of automobiles and more—assets."

State of Case, p. 65, ll. 9 to 13.

III.

The answer of defendant Darling sets up that Darling lost his security given by Charles Flynn to Darling as security for the endorsement of said notes.

It is not true that Darling lost his security. On the day the bill of sale for the garage was delivered and possession of the garage given and on the day the notes were signed, Flynn delivered to Darling a mortgage for \$2,800 covering the identical automobiles, garage and its contents and lease trans-

ferred by Motley to Flynn, and the chattel mortgage covered nothing else.

State of Case, p. 146, and Schedule, p. 148;
p. 110, ll. 9 to 24.

It will be noticed that the mortgage is for practically twice the amount of the consideration of the bill of sale by Motley to Flynn.

Flynn perfected his title when he bought the interest of the trustee in the Bock bankruptcy, and his, Flynn's, title became unquestioned, and Darling's mortgage was perfected and became a first lien on the garage and its contents. Instead of losing his security by Flynn's action, Darling's mortgage, as a security, was complete, and he had in 1912 and now has a good, valid and subsisting mortgage which covered \$5,000 worth of property.

State of Case, p. 108, ll. 8 to 10.

IV.

Both Darling and Flynn knew what title Motley had to the garage.

Darling himself held at one time a judgment for \$900 against Bock, which had been assigned to Darling, and in turn assigned to Flynn.

State of the Case, p. 66, ll. 28 to 33; p. 67,
ll. 15 to 33.

Darling actually signed an agreement under seal reciting Motley's interest in Bock's garage.

Exhibit C-5, Case, p. 139, ll. 21 to 31.

This agreement, Exhibit C-5, was made on April 25, 1912, seven days before the Motley notes were drawn.

See also the following testimony :

“Mr. Bock was in possession of the garage and did not want to give it up.”

Case, p. 75, ll. 17 to 40; pp. 76, 77; p. 81, ll. 24 to 34.

“Prior to April 22, 1912, ten days before the bill of sale and the garage were delivered to Flynn, Flynn was informed of Motley’s interest.”

Case, p. 103, ll. 14 to 38.

V.

Defendant may claim that Motley said he, Motley, had absolute title to the garage.

Case, p. 95, ll. 10 to 27.

“Q. Did you tell Flynn it didn’t belong to you absolutely? A. No, sir; I had a bill of sale proving that it was. * * * I gave Mr. Flynn the same title that was given to me, an absolute title.

Q. Did you tell Flynn he was getting an absolute title? A. He knew it through Mr. Spraggins. I don’t know if I told him or not.”

Ibid.

Here is nothing but Motley’s idea of what legal title he had. He was seventy-one years old (Case, p. 91, l. 14). There is no representation or warranty or inducement to Flynn and he did not rely on it. The whole transaction was put through under advice of able counsel, who knew Motley’s interest full well.

VI.

Motley did not know that Flynn was buying the title of the trustee in bankruptcy.

That part of the decree appealed from should be reversed.

Respectfully submitted,

JOSEPH ANDERSON, SR.,
Of Counsel with Appellant-Complainant.

[15044]

New Jersey Court of Errors and Appeals

Between

RICHARD A. MOTLEY,
Appellant-Complainant,

and

HENRY I. DARLING and CHARLES
FLYNN,
Respondents-Defendants.

On Appeal.

APPELLANT'S REPLY TO RESPONDENTS' BRIEF.

Certain statements in respondents' brief seem to call for a reply, not so much because of lack of testimony in the case in favor of appellant or lack of statement in appellant's brief, but because of the insistments of respondents' counsel not borne out by the testimony.

I.

Counsel for respondent claims that the defendant did not know appellant's title, or, as stated in the brief, "There is no proof that defendant or Flynn knew title was defective."

Motley, with his attorney, Hayne, went to Mr. Charles E. S. Simpson's office and met Flynn, Dar-

ling and Warnke, the latter being the attorney who put through the transaction on behalf of Flynn and Darling. It took about seven hours to do all the work in the matter.

State of Case, p. 77, lines 9 to 12.

Warnke, Darling and Flynn all knew that Bock had possession and that Motley was only conveying his right, title and interest in the garage.

Warnke testified that

“There seemed to be some question as to whether we could get possession of the garage, the legal title being in Mr. Spraggins, I believe, and the possession was in one Bock, and therefore I retained the notes until we got down to the garage, and Mr. Hayne retained the bill of sale, and the papers were to be exchanged there when possession was given.”

State of Case, p. 73, lines 20 to 28.

“Q. Had there been a good deal of waiting about this transaction? A. There was about getting possession of the garage. Mr. Bock was in possession of the garage and he did not want to give it up.”

Ibid., p. 75, lines 18 to 22.

See also pp. 72 to 77, inclusive.

Besides Exhibit C-5, wherein Darling under seal stated Motley's interest, Darling testified as follows:

“Q. You (meaning Darling) had some interest in this garage that these notes were given for? A. I had paid a \$900 chattel judgment on it.

Q. And you had a chattel mortgage on it?

A. No, I was promised a chattel mortgage, but I did not get it.

Q. Who was the owner of the garage? A. I think it was Mr. Bock, but Flynn came and told me that Mr. Motley had a bill of sale of it, and I really did not know, and then he said he was getting possession of it under this bill of sale and he was taking a bill of sale from Motley, and he asked me to endorse the notes."

State of Case, p. 66, lines 28 to 40.

"Q. Oh, you wanted to wipe out Motley's bill of sale? A. No.

Q. And take a chattel mortgage on that garage? A. No, I paid the judgment and it was pointed out that Motley's bill of sale interfered, and then Flynn told me he would buy out Motley—I had assigned my judgment to Flynn, I admit, foolishly, and then he said he would get the bill of sale from Motley and get possession."

Ibid., p. 67, lines 12 to 20.

Further references to Motley's right, title and interest.

Pp. 40 and 41, lines 1 to 18; pp. 49 to 51, inclusive; p. 103; p. 127, lines 18 to 27.

"Q. Now, Mr. Spraggins, what was Mr. Motley to convey by this bill of sale? A. The bill of sale speaks for itself.

Q. Answer the question. A. Such right or title or interest in the property as he acquired on the 5th of January, 1912, under two bills of sale, one from Mr. Crawley and one from Bock."

P. 134, lines 24 to 29.

“Q. So that Mr. Flynn undertook to take, not the full title to this garage, but only such title as Mr. Motley might have? A. Yes, sir.

Q. And you say positively now that that was all he was to get? A. That is all he was to get, just such title as Mr. Motley had.

Q. Had Mr. Motley possession at that time? A. No, sir.

Q. Who had possession? A. The Bocks.”

P. 135, lines 7 to 15; see rest of p. 135 and p. 136, lines 1 to 15.

There is not one word of testimony in the case nor in the printed book from cover to cover that Motley, at the time of passing of his, Motley's, right, title and interest in and to the garage, told Flynn and Darling, or either of them, that he, Motley, had anything other than the right, title or interest he conveyed to Flynn, or that Flynn and Darling, or either of them, relied on anything other than what was said and done at the time of execution of the papers or delivery of possession of the garage.

Neither Flynn nor Darling asked for nor made any provision for warranty or covenants of title. Motley's bill of sale recited that he “warrant and defend his right, title and interest in the sale of “said goods and chattels.”

State of Case, p. 10, lines 10 and 11.

And Schedule A, annexed to bill, recites:

“It is intended hereby to sell * * * all the “right, title and interest;”

and:

“It is only intended by this Bill of Sale “to convey such property or the title thereof “as was acquired or purchased by me at the

“time and by reason of the above Bills of
“Sale; * * *.”

State of Case, p. 11, lines 1 to 20.

The only condition Flynn and Darling made was that Motley was to go to the garage, and if Flynn could get possession he was to pay Motley \$279.42 in cash, or by check equivalent to cash, and the transaction was to be complete. This was done.

II.

Respondent's counsel claims defendant Darling lost his security.

This is not so. Flynn only got from the trustee in bankruptcy such claim as Bock may have had, and of which defendant had knowledge. Flynn's claim to the garage by virtue of his bill of sale is expressly recognized by the trustee in bankruptcy, and Flynn, in order to get the trustee's interest, and as part consideration therefor, waived his claim against Bock or the assets of his estate.

State of Case, p. 154, lines 26 to 30; p. 155,
lines 36 to 40.

Motley knew nothing about Flynn's paying any money to the trustee nor waiving his, Flynn's, claim under Motley's bill of sale.

State of Case, p. 137, lines 16 to 18.

III.

**That "complainant does not come into
"court with clean hands."**

Motley knew nothing, and knows nothing, about this charge, nor is it in any way brought home to him in the case. He was not connected with any fictitious mortgage, nor is it shown that he knew that the alleged mortgage referred to was fictitious.

IV.

Claim is attempted to be made that only \$800 is involved in the consideration. Were this true, it would make no difference, but it clearly appears what the consideration was for the bill of sale.

"Q. And Mr. Motley was interested to what extent? To get out this \$800? A. Yes, sir.

Q. Anything more? A. And then I had assigned to Mr. Motley some claims that the Bocks owed me; I had loaned them some money also.

Q. And he was to also get those? A. Yes, sir."

P. 127, lines 5 to 10.

V.

It is hardly necessary to cite decisions to show that anything that Motley said when he was a witness in the bankruptcy proceedings of Bock after the bill of sale by Motley to Flynn had been delivered and the transaction completed was mere dicta. This Honorable Court has before it the brief of

Frederick W. Gnichtel, counsel for appellant in Case No. 30, of *Harry F. Gihon v. Morris*, argued at the present term of this court. To be sure, there is a broad distinction between the *Gihon* case and this *Motley* case. In the *Gihon* case the language in question was used at the time the actual negotiations of warranty were made of Motley's interest, and it was only Motley's characterization after the transaction was completed of what he thought he, Motley, had that the question has at all arisen in this case.

No appeal has been taken by the respondent on Point 9 of respondents' brief.

Respectfully submitted,

JOSEPH ANDERSON, SR.,
Of Counsel with
Appellant-Complainant.

[15150]

The first part of the report
 deals with the general
 situation of the country
 and the progress of
 the work during the
 year. It is followed by
 a detailed account of
 the various projects
 which have been carried
 out during the year.
 The report concludes
 with a summary of the
 results achieved and
 a statement of the
 work planned for the
 next year.

The second part of the
 report deals with the
 financial statement of
 the year. It shows the
 income and expenditure
 of the organization and
 the balance sheet at
 the end of the year.
 The report also contains
 a statement of the
 assets and liabilities of
 the organization.

The third part of the
 report deals with the
 personnel of the
 organization. It gives
 a list of the staff
 members and their
 duties. It also
 contains a statement
 of the salaries and
 allowances paid to
 the staff members.

The fourth part of the
 report deals with the
 general remarks of the
 committee. It contains
 the views of the
 committee on the
 work of the organization
 during the year and
 the suggestions for
 improvement.

The fifth part of the
 report deals with the
 accounts of the
 organization. It
 contains a list of the
 donors and the amount
 received from each of
 them. It also contains
 a statement of the
 expenses incurred by
 the organization.

New Jersey Court of Errors and Appeals.

)	
Between)	
)	
RICHARD MOTLEY,)	
)	
Appellant-Complainant)	On Bill, Etc.
)	Brief of
and)	Defendant,
)	Henry I.
HENRY I. DARLING)	Darling.
)	
and CHARLES FLYNN;)	
)	
Respondent—Defendants)	
)	

STATEMENT.

Complainant sold defendant Flynn certain garage property (chatels.) To enable Flynn to purchase, defendant endorsed two notes for him secured by chattel mortgage on the property. The title to the property failed and Flynn returned the notes to Darling. Flynn to perfect title had to purchase an outstanding interest at a bankruptcy sale at a cost of \$900. By reason of the failure of title and the bankruptcy proceedings Darling had lost the security of his mortgage when the notes were surrendered to him by Flynn. The Vice Chancellor held in view of the fact that

the notes were to have gone to complainant, the note should be reinstated and that Darling should pay the same less the cost of perfecting the title.

Complainant contends that he did not promise to give absolute title and is therefore not responsible for failure of title.

POINTS.

1. Complainant was to give Flynn absolute title to the garage.

a. Complainant in his bill alleges "that your orator had title to certain," etc. State of case page 3, lines 15 and 16.

b. This court when this cause was previously before it found "that the bill sets up that complainant owned the lease of a garage property and also owned certain automobiles and other personal property therein" and that complainant "has parted with his property," 86 New Jersey Equity page 185.

c. The evidence shows that the complainant claimed an absolute title which absolute title he was to convey to the defendant Flynn.

"Q. Did you consider that you had title to these automobiles and the lease and the articles in the garage so that you could sell them? A. I understood that, by the papers that were passed upon with my Attorney, and was so told that if he failed to pay this that at any time it was due I had a perfect right to sell them." (Testimony page 79—34 to 38; also page 80 line 1-2.)

Q. When you made that bill of sale to Flynn did you go down to the garage with Flynn? A. I did. Q. What did you go

down for? A. To give him possession. (Testimony page 81—23 to 26.) Q. At the time you purchased the garage, did you purchase from a Mr. Crowley? A. From Bocks, George L. Bock and Cecilia Bock, his wife. Q. They made the bill of sale? A. Yes. (Testimony page 84, line 24 to 27.) Q. What did you go there for? A. I went there with Mr. Flynn to put him in possession of the garage he had bought. (Testimony page 90 lines 35, 36, 37).

Mr. Hayne gave me the papers of authority to put Flynn in possession of the garage. I handed them to Mr. Flynn and told him the garage was his. (Testimony page 91 lines 21 to 23). A. I had sold the garage and everything that had belonged to me.

Q. YOU MEAN EVERYTHING BELONGED TO YOU ABSOLUTELY? A. Yes. Q. DID YOU TELL FLYNN THAT IT DIDN'T BELONG TO YOU ABSOLUTELY? A. NO SIR, I HAD THE BILL OF SALE PROVING THAT IT WAS. Q. DIDN'T YOU TELL FLYNN THAT YOU HAD ABSOLUTE TITLE? A. YES. Q. And you told Flynn he would get an absolute title? A. I told Mr. Spraggins as Mr. Spraggins knew the papers by which I got an absolute title and it is recorded and I gave Mr. Flynn the same title that was given to me, an absolute title. (Testimony page 95 lines 10-23.)

d. The Vice Chancellor in his opinion finds "The bill is for a discovery as to the execution of

two notes which were to have been signed by defendant Flynn and endorsed by defendant Darling and were to be delivered to the complainant as the consideration for the sale and delivery by him of certain personal property. Case page 28 lines 20 to 25.

e. The bill of sale from complainant to defendant Flynn contains a covenant of warranty. Case page 10 lines 7 to 15.

f. The case of Gould vs. Bourgeois—51 N. J. L. page 361 sets up the rule that upon the sale of personal property the action of selling is an affirmation by the vendor that he is the owner and is therefore an implied warranty of title. It is not authority for the proposition advanced by complainant.

2. **Flynn paid a fair price for the property.** Flynn paid almost \$1,500.00 for the garage. Case page 93 lines 15-19. That this was not an insufficient price is shown by the fact that the garage was afterwards sold for \$900. Case page 157 line 16, defendant Darling who was not an expert, was mistaken when he thought there was \$5,000 worth of property.

3. **The Vice Chancellor found, as a matter of fact, that it was necessary to perfect the title which Motley had agreed to deliver to Flynn.**

“If the notes were still in existence, there can be no doubt that a decree would lie requiring the delivery of these two notes to Motley, subject to an adjustment being made by Motley for amount which Flynn was required to pay to the trustees in bankruptcy **to perfect the title which Motley had agreed**

to deliver to Flynn."..Opinion page 30, line 38—40, page 31 lines 1 to 10.

4. Defendant Darling lost his security.

It is no answer to this positive failure of consideration by showing that Flynn purchased the title from the receiver in bankruptcy. That is no answer to the proposition, that the title under Motley's bill of sale to Flynn had been taken away from Flynn by a court of competent jurisdiction and that thereby the consideration for the bill of sale failed. It would be monstrous if a man could agree to give absolute title to chattels and upon that title failing, under a decree of a Court of competent jurisdiction, that the vendor could still recover upon the notes given in consideration of the sale upon the ground that the purchaser had gone into the open market and had purchased the title from the person in whom that court held the title to be. It would be still more monstrous to hold as in this case as a result of the litigation over the title, the chattels were dissipated and became of no value, and that the holder of a chattel mortgage given by the purchaser at the time of the original sale to him must pay notes endorsed by him and given as part of the consideration because the mortgagee had purchased the outstanding title.

5. There is no proof that defendant or Flynn knew title was defective.

Complainant attempts to prove that Flynn knew that Motley only had a defeasible title and that he told Flynn that all the right that he had was to collect \$800.00 from the Bocks and that a re-conveyance could be compelled by them upon the payment of that sum. The absurdity of

contending that this statement was made is apparent. Flynn paid almost \$1,500.00 for the garage. That this was not an insufficient price is shown by the fact that the garage was afterwards sold for \$900.00. IS IT LIKELY THAT FLYNN WOULD PAY \$1,500.00 FOR THE RIGHT TO COLLECT \$800.00. There is no answer to this. This statement shows conclusively that Flynn paid \$1,500.00 for good title. No reasonable man would pay \$1,500.00 for the opportunity of collecting \$800.00. Motley agreed to give title and Flynn paid for good title.

6. **Complainant claimed that he had absolute title.** In answer to the question "If everything belonged to him absolutely," complainant said it did. Case 95 lines 12—13. Complainant's counsel takes the unique position of saying that we should not rely upon his client's unfavorable testimony because he is an old man. If we are to believe complainant in one instance, we should believe him in all instances.

Complainant's counsel, Traverse A. Spraggins, testifies that he did not know whether he told defendant Flynn about the condition of the title. Case page 135 lines 22—23.

7. **Defendant Darling can get benefit of defect in title.**

The Court finds, as a matter of fact, that there was a privity of contract between Motley and Darling and that the chattel mortgage to Darling made at the same time was a further step in carrying out the agreement between all parties and furnished consideration for Darling's endorsement. See opinion page 29, lines 27—40.

The Court also found as a matter of fact that

Motley had delivered the conveyance and possession of property to Flynn. Opinion page 30 lines 31—32.

The Court also found as a matter of fact that Motley had agreed to deliver title to Flynn which was necessary that Flynn should have perfected. Opinion page 31, lines 4-5.

It appearing from the above that the Court having found this was one transaction and that Darling was privy to the transaction it must follow that he cannot be held to pay for endorsements on notes when the security which he received at that time was depreciated by the act of the complainant. If the complainant had given good title bankruptcy proceedings would not have been instituted and Darling's mortgage would have been a good lien.

The Court has found that Flynn, the principal, is not worth anything. Opinion page 10, line 17.

8. Complainant does not come into court with clean hands. As a sample of what the complainant and his then counsel Traverse A. Spraggins in connection with this garage property were doing is indicated by the way that said counsel had a fictitious mortgage made and then foreclosed and bought in by the complainant. This is shown by the testimony page 100, commencing at line 22 through page 102.

9. No costs should be taxed defendant Darling
This defendant in his answer sets up that the complainant did not sell and convey to said Charles Flynn said goods and chattels, but the same were taken away from the said Charles Flynn by a superior title to the said complainant, whereby this defendant lost the security given by

Charles Flynn to this defendant as security for the endorsements of said notes. Answer page 23 line 23—30.

The contention of the answering defendant being sustained by the Court, this defendant insists that no costs should be imposed upon this defendant.

Defendant submits that the decree be affirmed with the exception of such part thereof as adjudges costs in favor of complainant.

CHARLES E. S. SIMPSON

GEORGE J. McEWAN

of Counsel with Defendant,
Darling.

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