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NEW JERSEY COURT OF ERRORS AND APPEALS.

RALPH V. M. COOPER, appellant, *and* RICHARD FETTERS, appellee,	*On appeal from the final decree of Chancellor Williamson.*

ABSTRACT OF BILL.

Richard Fetters filed his bill of complaint in the Court of Chancery, on the 25th of March, 1853, against Ralph V. M. Cooper, Levi Nice, Joseph W. Cooper, executors of William Cooper, deceased, who was the surviving executor of Joseph Cooper, deceased, Isaiah Bryan, William Morris Cooper, and Caroline H. J. Cooper, his wife, Ralph V. M. Cooper, Samuel Nicholson, and Charles Gaskill, executors of Benjamin B. Cooper, deceased, and others, defendants, stating, "That on or about the thirteenth day of October, in the year of our Lord one thousand eight hundred and forty-eight, Ralph V. M. Cooper, of the county of Camden, and William Morris Cooper were seized, or pretended to be seized, of a certain tract of land and premises, situate in the township of Delaware, in the county of Camden, containing about one hundred and eighty-five acres of land, known and called the Matlack farm, Indian orchard, and Barrack lot, which they owned and held as tenants in common, the said Ralph V. M. Cooper being seized and entitled to the one equal undivided one-third part, and the said William Morris Cooper being seized and entitled to the two equal third parts thereof.

And that the said Ralph V. M. Cooper and William Morris Cooper, being so seized of said premises, on or about the day and year last aforesaid, agreed upon and appointed three commissioners, to wit, Benjamin W. Cooper, Ezra Evans, and Joseph A. Burroughs, to divide the said premises by metes and bounds, and to value and appraise the respective shares, and to whom, when, and how the difference in the valuation of said shares should be paid. And the said commissioners, on or about the first day of November, in the year of our Lord one thousand eight hundred and forty-eight, met and did proceed to divide and value said premises; and by their award in writing, bearing date on or about the day and year aforesaid, did partition and set off to the said Ralph V. M. Cooper the easterly part of the said premises, containing about eighty-four

acres and ninety-hundredths of an acre, being the same premises contained and embraced in the complainant's mortgages, herein after set out and described.

And to William Morris Cooper, the said commissioners did set off and assign the westerly part of the said tract of land and premises, by metes and bounds, as follows, to wit: all the westerly part of said farm, including all the other lots mentioned in said agreement, the whole being included in one general boundary, to wit, (describing the tract by metes and bounds).

10 And did award and determine that, in consideration of the said William Morris Cooper releasing all his right, title, and interest and claim of every kind whatsoever that he then had in and to the said premises set off to said Ralph V. M. Cooper, that the said Ralph V. M. Cooper was to pay, or secure to be paid, to the said William Morris Cooper the sum of two thousand one hundred and fifty dollars, a part of which was to be paid to said William Morris Cooper in cash, and a part thereof was to be secured by said Ralph V. M. Cooper to said William Morris Cooper by bond and mortgage upon that part of the premises by said commissioners set off 20 to said Ralph V. M. Cooper, herein after set out and described; which said mortgage, so to be executed by said Ralph V. M. Cooper, the said William Morris Cooper was to constitute the first lien and encumbrance upon the part of said premises so assigned and set off to said Ralph V. M. Cooper.

That said Ralph and William agreed, in writing, to stand to and abide said award and report so made by said commissioners, and, on or about the 16th of March, 1849, the said William Morris Cooper released, in writing under his hand and seal, to said Ralph V. M. Cooper that part of the said tract of land so set off to said 30 Ralph V. M. Cooper as aforesaid, whereby the said Ralph V. M. Cooper became indebted to the said William Morris Cooper in the sum of twenty-one hundred and fifty dollars, or thereabouts: and being so indebted, the said Ralph V. M. Cooper, in order to secure the payment of a part thereof, made and duly executed unto the said William Morris Cooper, under his hand and seal, on the 16th day of March, 1849, his certain bond or obligation in writing in the penal sum of two thousand dollars lawful money, being a part of the said sum so awarded, with a condition thereunder written to pay to the said William Morris Cooper the sum of one thou- 40 sand dollars, in two years and seven months from the date thereof, with lawful interest for the same from the twenty-fifth day of March,

in the year of our Lord one thousand eight hundred and forty-nine, the same to be paid annually.

And in order to secure the payment of the said principal sum of money mentioned in the bond, with lawful interest, executed an indenture of mortgage, bearing date the 16th of March, 1849, to said William Morris Cooper on the following described tract or piece of land (describing and setting out the mortgage in usual form).

Stating that the mortgage was duly acknowledged, on the 7th of November, 1849, before Richard W. Howell, esq., and was on the same day duly recorded in the clerk's office of Camden. 10

States that, on the 3d of January, 1851, William Morris Cooper, for valuable consideration, assigned the mortgage to the complainant.

States that said Ralph V. M. Cooper, on the 16th March, 1849, to secure the payment of a further part of the purchase money, with interest, executed to William Morris Cooper another bond, in the penal sum of fifteen hundred dollars, conditioned for the payment of the sum of seven hundred and sixty-two dollars in one year and seven months from the date thereof, with lawful interest from the twenty-fifth of March, one thousand eight hundred and forty-nine. And to secure the payment of the said money, executed, on the same day, a mortgage to the said William Morris Cooper on all the following described tract of land (describing it, and setting out the mortgage in usual form). 20

States that it was duly acknowledged before Richard W. Howell, on the seventh day of November, one thousand eight hundred and forty-nine, and sale recorded on the same day in the clerk's office of Camden county.

Stating that William Morris Cooper, on the 5th of February, 1850, assigned the said bond and mortgage to Oliver H. P. Conover, and Conover assigned them to the complainant. 30

States that the interest on the said bond first above described has been paid and satisfied up to the 2d of January, 1851, when said Ralph V. M. Cooper paid to the said William Morris Cooper the sum of one hundred and six dollars and fifty cents, in full for the interest due on said bond up to that date, and that the interest on the said bond last above set out and described has been paid up to the thirty-first day of December, in the year of our Lord one thousand eight hundred and fifty, when the said Ralph V. M. Cooper paid to the said Oliver H. P. Conover the amount of interest due on the last mentioned bond up to that date; and that all 40

the principal money mentioned in the said bond, together with the interest thereon from the 3d of January, 1851, and on the other from the thirty-first day of December, 1850, still remains due and unpaid, by means whereof the estate of the complainant has become absolute in the premises.

States that, on or about the tenth day of March, 1850, one Mahlon Matlack, who pretended to own the said premises, as well the part set off to the said Ralph V. M. Cooper (and embraced in your orator's said mortgage) as the part set off to the said William Mor-
10 ris Cooper, and herein before set out and described by metes and bounds, or some part thereof, made and executed a mortgage on a part of the said premises, embracing the whole of the part set off to the said Ralph V. M. Cooper and a large part set off to William Morris Cooper, to one Rebecca Wills, administratrix of Richard Wills, deceased, to secure the payment of six hundred dollars, which said premises are described in said mortgage executed by said Mahlon Matlack to said Rebecca Wills, as follows, to wit, (describing it).

States that this mortgage has been assigned to Levi Nice, and
20 charges that, by the award of the commissioners, it was awarded that William Morris Cooper was to pay two-thirds, and Ralph V. M. Cooper one-third of said mortgage.

States mortgage from William Morris Cooper to George F. Risdon.

States mortgage from Mahlon Matlack to Joseph Cooper, dated January, 1815, for $600; charges it has been paid.

States mortgage, dated 1817, from Mahlon Matlack to Sarah Matlack, wife of Benjamin B. Cooper and mother of Ralph V. M Cooper and William Morris Cooper, to secure the sum of $260;
30 charges it has been paid.

States that the said Sarah Matlack, to whom the said Mahlon Matlack executed the said last mentioned mortgage, was the wife of the said Benjamin B. Cooper, and that the said Mahlon Matlack, by a declaration of trust shortly after the execution of the mortgage last aforesaid, and the one herein after mentioned and set out, and by said Mahlon Matlack executed to the said Benjamin B. Cooper, declared that he held the said premises set out in said mortgages, to wit, the Matlack farm, for and in trust for the said Sarah Matlack during her life, and after her decease for the
40 said Benjamin B. Cooper during his natural life, if he should survive his said wife, and then in trust for their children or some other trust; that Sarah Cooper departed this life on or about the year

of our Lord 1830, leaving her husband Benjamin B. Cooper her surviving, who died about the 15th of March, 1835, having first made his will; that no letters of administration have ever been taken out upon the estate of the said Sarah Cooper, deceased; charges that this mortgage was paid.

States mortgage from Mahlon Matlack to Joshua Jones, dated 13th September, 1813; charges that it has been paid.

States that, on the 15th of February, 1830, Ralph V. M. Cooper executed a mortgage to Joseph Fifield to secure the payment of two thousand one hundred and twenty dollars; charges it has been paid. 10

States that, on the 27th of August, 1817, Mahlon Matlack, on the same premises embraced in your orator's said mortgage, and a part of the same premises set off by said commissioners to the said William Morris Cooper to the said Benjamin B. Cooper, the father of the said Ralph V. M. Cooper, and William Morris Cooper, to secure the sum of four thousand one hundred and sixty-eight dollars and seventy-five cents, which said last mentioned mortgage remains uncancelled; charges that the same has been paid and satisfied, and is not a valid and subsisting lien on the premises. But, 20 without this, your orator shows to the court that Mahlon Matlack, having, by his declaration of trust as aforesaid, stated and declared that he held the said premises mentioned in the said mortgage to and for the benefit of the said Sarah Cooper and the said Benjamin B. Cooper and their children; and the said Benjamin B. Cooper, surviving his said wife, and being seized of the said premises, that the said premises were thereby fully discharged, not only from the mortgage held by Benjamin B. Cooper but also from the one held by the said Sarah as aforesaid, if they have not been paid and satisfied. 30

States that, on the 15th of March, 1835, Benjamin B. Cooper departed this life, having first made his will; and that Ralph V. M. Cooper and Samuel Nicholson, together with one Charles Gaskill, of Pennsylvania, three of the executors named therein, proved the said will, (the other executors named therein renouncing,) and took out letters testamentary thereupon; the said Charles Gaskill only so far as related to property in the state of Pennsylvania, he being confined and limited by said will to said estate in Pennsylvania, and the said Samuel Nicholson and Ralph V. M. Cooper so far as related to property situate in the state of New Jersey. 40

States other mortgages, and charges that they are paid.

States judgments against Ralph V. M. Cooper, and that they are paid.

And the bill concludes in the usual form of a bill of foreclosure of a mortgage.

The answer of the defendant, Ralph V. M. Cooper, admits all the matters and facts set forth in the bill, except the particulars set forth and referred in the parts of the answer herein after recited.

And this defendant in further answering says, that he denies that he executed the said bond and mortgage to the said William Mor-
10 ris Cooper on the sixteenth of March, in the year of our Lord one thousand eight hundred and forty-nine, as is erroneously stated in said bill; but he says that he executed and delivered the said bond and mortgage to the said William Morris Cooper on the seventh day of November, 1840.

And this defendant further says, that the consideration for which said mortgage was given by this defendant to the said William Morris Cooper in part failed, and that said defendant gave up part of the property set off to William Morris Cooper to said William Morris Cooper on or about the twenty-first day of October, in the
20 year of our Lord one thousand eight hundred and forty-eight, and that he paid to William Morris Cooper, about the first of November, in the year of our Lord one thousand eight hundred and forty-eight, about four hundred dollars on that part of the farm set off to him. And that the said William Morris Cooper gave to this defendant an article of agreement, signed and sealed, therein and thereby agreeing that he would make to this defendant, forthwith, a deed for said property, and which the said William Morris Cooper wholly failed and neglected to do until the seventh day of November, in the year of our Lord one thousand eight hundred and forty-
30 nine, at which time the deed was made by said William Morris Cooper to this defendant for said premises; and this defendant thereupon, and on the same day, executed the said two bonds and mortgages in the complainant's bill mentioned, and on which this suit is brought; but notwithstanding the said William Morris Cooper held the said property mentioned in said mortgage in possession, and held the said four hundred dollars in cash, yet inasmuch as his attorney said that if he antedated said mortgage, and dated it on the sixteenth of March, in the year of our Lord one thousand eight hundred and forty-nine, as each party held their pro-
40 perty on that day, it would make a final settlement of the matter: and the said bond and mortgage was antedated accordingly.

DEPOSITIONS.

Richard W. Howell, a witness produced upon the part of the defendants, being duly sworn according to law, doth depose and say, being shown *Exhibit B, ex parte* complainant—This mortgage was drawn and witnessed by me; it bears date March 16th, 1849; it was executed originally upon the day it bears date, I think, but not delivered. According to my recollection, the parties were not prepared to exchange the papers at the time they agreed to do so, and the papers remained in my possession, each party charging the other with neglect. My recollection is that Ralph V. M. Cooper 10 came to me alleging *laches* on the part of his brother, William Morris Cooper, and I think wanted his bonds and mortgages given up to him. The *laches* upon the part of Morris was, that he had not prepared and executed a deed for the part of the Matlack farm he was to convey to Ralph. I declined giving up the bonds and mortgages without Morris' consent, and advised him to let them remain with me; but at Ralph's request I struck out the certificate of acknowledgment bearing even date with the mortgage. Subsequently their agreement was carried out between them, and the bonds and mortgages re-executed the 7th of November, eighteen 20 hundred and forty-nine, and delivered. When the bonds and mortgages were first executed (16th of March, eighteen hundred and forty-nine,) they were conditioned for the payment of the principal money in two years—one in one year, and one in two. At and before the re-execution of the bonds and mortgages, they were altered, and the time of payment extended seven months on each. This extension of seven months was insisted upon by Ralph, because of the delay of the execution of the deeds to him. *Exhibit No.* 1, *ex parte* defendant, being shown witness, he says—This deed was drawn by me, to be executed by William Morris Cooper 30 and wife to Ralph V. M. Cooper, for that part of the Matlack farm set off to Ralph, upon a division thereof between him and said William Morris Cooper, under the agreement of 13th of October, 1848, which agreement is here produced, offered in evidence, and is marked by me *Exhibit No.* 3, *ex parte* defendants. This agreement is drawn by me, witnessed by me, and acknowledged before me. *Exhibit E, ex parte* complainant, was made in consequence of this agreement, *Exhibit No.* 3, *ex parte* defendants.

And being cross-examined on the part of the complainant, said—I know the Matlack farm by name; I have never been on it to my 40

knowledge. At the time this agreement was made, I suppose it was held by Ralph V. M. Cooper and William Morris Cooper as tenants in common. I think Ralph Cooper occupied it at the time of the agreement and valuation. He continued to occupy it until the division. I have understood, from Ralph, that he now occupies, and has continued to occupy, that part of the farm set off to him by the commissioners. The property occupied by Ralph, and set off to him by the commissioners, is the same as embraced in the complainant's mortgages. So far as I know, the papers were ex-
10 changed, when they were exchanged, by the mutual consent of the parties, and to carry out the agreement between them; I have no doubt about it. Originally the farm was held in three parts, in common by Ralph V. M. Cooper, his sister Sarah Ann C. Lee, and their brother William Morris Cooper. At the time of the division, William Morris Cooper held two-thirds, and Ralph one-third, William Morris having purchased his sister's share.

A paper writing, purporting to be a memorandum of the boundaries of the Matlack and Chews Landing farm, being shown witness, he says—The handwriting upon the whole of the paper is
20 the proper handwriting of the late William N. Jeffers. This paper is offered in evidence, and is marked by me *Exhibit No.* 4, *ex parte* defendants. (Mr. Dudley, counsel for complainant, objects to the whole of witness' testimony, as herein given, as wholly illegal and irrelevant).

RICHARD W. HOWELL.

Sworn and subscribed, this 25th day of July, A. D. 1853, before me.

WM. HALSTED, Jr., *M. C.*

William Morris Cooper, a witness produced upon the part of the
30 defendants, (counsel for complainant objecting to the testimony of this witness, he being one of the parties to this suit,) being duly sworn according to law doth depose and say—I spoke to Jesse Smith to negotiate a mortgage for one thousand dollars for me. I told him I wanted to obtain some money on a bond and mortgage, and if he would get it for me I would throw off $100 of the principal money. He said he would try to get it, and let me know in a few days. I saw him again, and he gave me the whole amount of $1000, and I gave him for his commission one hundred dollars out of the one thousand dollars. He gave the money to me in State
40 Bank at Camden notes. The assignment was executed to Richard

Fetters, before Richard W. Howell; the assignment was executed the day it bears date. There was no agreement between Mr. Smith and myself that he was to hand me the whole one thousand dollars, and that I was to hand him the one hundred dollars back. He handed me the one thousand dollars, and I handed him the one hundred dollars back. I thought it a little odd, at the time, that he should give me the whole one thousand dollars, because I told him I would give him the one hundred dollars.

Exhibit A, ex parte complainant, being shown witness, and his attention directed to the receipt endorsed upon the back of same, 10 he says—This is my receipt; I took Ralph's bond for the interest included in this receipt and for some money I loaned him. I once told Mr. Fetters there was some old mortgages against the property.

Exhibit C, ex parte complainant, being shown witness, he says—I assigned this paper to Oliver H. P. Conover. Mr. Smith said he would get the money for Ralph on this mortgage. Ralph told me he had not the money to give Mr. Smith for getting it, and as I had guaranteed the payment to Mr. Conover, I loaned Ralph twenty dollars to give to Mr. Smith to obtain the money for Ralph; what 20 Ralph did with it I don't know. I think Mr. Smith admitted to me he had received the money from Ralph.

(Counsel for complainant objects to all that part of witness' testimony touching the transaction between him and Jesse Smith, and the conversations between witness and Ralph Cooper, and the transactions between him and Ralph V. M. Cooper, complainant not being present). I have understood, from Ralph V. M. Cooper lately, that the mortgage from Mahlon Matlack to Benjamin B. Cooper, dated August 27th, 1817, to secure the payment of $4168.75, has not been paid, but have always been under the im- 30 pression it was of no effect. My mother died when I was six months old; I always understood her maiden name was Sarah Van Mater; I never heard she had any other maiden name. The letters V. M., in Ralph's name stand for Van Mater, after his grandfather Ralph Van Mater.

And being cross-examined upon the part of the complainant said—At the time this transaction in relation to these bonds and mortgages took place, it was agreed between Ralph and myself that all old mortgages upon the place, including Sarah Matlack's mortgage, should be cancelled by Ralph V. M. Cooper. It is ad- 40 mitted by Ralph V. M. Cooper that the Sarah Matlack mortgage does not embrace the Matlack farm and mortgaged premises set out

in complainant's bill. I understood from Robert Howie that Ralph had these old mortgages in his possession; it made me uneasy about it, and I searched into the matter, and found them of record. I called on Ralph after I found them of record, and asked him about it; he did not tell me he had all these old mortgages; he told me, when I called upon him and afterwards, they had been all paid. I think the understanding was that all these old mortgages were to be cancelled at the time the division was made, except the Levi Nice mortgage. Ralph V. M. Cooper is one of the execu-
10 tors of my father's estate; the other executors are Samnel Nicholson and Charles Gaskill. My father's name was Benjamin B. Cooper. When I said Ralph told me all the old mortgages were to be paid, I mean all except the Levi Nice mortgage. I paid the two-thirds of the Levi Nice mortgage July 5th, 1853, two-thirds of the principal and interest. At the time of my father's death there were but three children; they are all living now, *viz.* Ralph, Sarah Ann, and myself. The consideration for complainant's bonds and mortgages were given for part of the award of the commissioners; these constituted only a part of the award of the commissioners;
20 the balance of the award (about three hundred and eighty-eight dollars) was settled by Ralph with me when the papers were exchanged, or about the time the deed was executed from Ralph to me for the Holly Swamp tract. The settlement was made for the consideration at the time these papers were exchanged. Ralph occupied the Matlack farm at the time this agreement was made between us for a division of the farm. At the time the division was made, Ralph occupied the whole of the Matlack farm, as well the part set off to him by the commissioners as the other part; he continued to occupy during the year 1849, and up to the present time,
30 the part set off to him by the commissioners; he did not deliver up at the time the commissioners made the award that part of the farm set off to me.

(This cross-examination objected to as not a cross-examination to any matter examined to upon the matter in chief). He delivered up possession of the part set off to me by commissioners about the spring of 1850. He has never paid me any rent for any part of the Matlack farm since he has lived upon it, or for that part set off by the commissioners. The consideration of the mortgage in complainant's bill has never failed in any part. At the time the bonds
40 and mortgages were delivered to me by Ralph, it was the understanding they were given to carry out the original agreement; and they were to draw interest from March 25th, 1849; and they were

to be considered as executed and delivered as of the day they were dated. This was the understanding between Ralph and myself at the time and in conformity with the original agreement. He has since told me all these old mortgages were in his possession. He has most of the papers belonging to my father's estate, including the mortgage to Benjamin B. Cooper, as he has told me.

W. Morris Cooper.

Sworn and subscribed, this 25th day of July, A. D. 1853, before me.

Wm. Halsted, Jr., *M. C.* 10

A paper writing, purporting to be a deed from William Morris Cooper and Caroline H. J. his wife to Ralph V. M. Cooper, bearing date the fifteenth day of March, eighteen hundred and forty-nine, for and in consideration of three thousand and eighty-three dollars and forty-two cents, for certain property situate in the township of Delaware and county of Camden, is offered in evidence upon the part of the defendants, and is marked by me *Exhibit No.* 1, *ex parte* defendants.

Counsel for defendants also offer in evidence a paper writing, purporting to be a deed from Ralph V. M. Cooper and Louisa S. 20 his wife to William Morris Cooper, bearing date the ninth day of February, eighteen hundred and forty-nine, for and in consideration of the sum of four hundred and eighty-three dollars, for certain property situate in the township of Delaware, and county of Camden, is offered in evidence, and is marked *Exhibit No.* 2, *ex parte* defendants.

Exhibits No's 3 and 4, *ex parte* defendants, are set out as offered in evidence upon pages 5 and 6 of the depositions hereto annexed.

A paper writing purporting to be a release from Daniel R. Stoy to Ralph V. M. Cooper, dated the eighth day of March, eighteen 30 hundred and forty-nine, and acknowledged before Richard W. Howell, master in chancery, the sixteenth day of March, 1849, is offered in evidence *ex parte* defendants, and is marked by me *Exhibit No.* 5, *ex parte* defendants.

Defendants also offer in evidence a paper writing, purporting to be a certificate (under the hand and seal of Henry Bradshaw, clerk of the county of Gloucester,) of certain mortgages against Mahlon Matlack unsatisfied at date of said certificate. This paper is marked by me *Exhibit No.* 6, *ex parte* defendants.

Wm. Halsted, Jr., *M. C. C.* 40

INTERLOCUTORY DECREE.

The interlocutory decree was taken on the fifteenth day of February, in the year of our Lord one thousand eight hundred and fifty-four, wherein it was stated and decreed "that the four mortgages mentioned and set out in the complainant's bill of complaint given by the said Mahlon Matlack—one, dated the twenty-fifth day of January, 1815, for $600, to Joseph Cooper; another, dated the 13th day of September, 1817, for $1000, to John Jones; another, dated the 6th day of December, 1817, for $260, to Sarah Matlack; and the other, dated the 27th day of August, 1817, for $4068.78, to
10 Benjamin B. Cooper, are satisfied by lapse of time," and must be so decreed, and are, therefore, no lien upon said mortgaged premises—it was

Ordered, adjudged, and *decreed*, that the matters in question be referred to William D. Cooper, esquire, one of the masters of this court, to take an account, and report, in the first place, the amount that said Levi Nice is entitled to have raised and made out of the mortgaged premises mentioned in complainant's mortgage, to wit, the sum of two hundred dollars, with interest on this sum from the twenty-seventh day of April, eighteen hundred and forty-four. In
20 the second place, the amount of principal and interest due Joseph Fifield, on his mortgage for ten thousand one hundred and twenty dollars, dated February fifteenth, eighteen hundred and thirty-eight, if the same has not been released by said Joseph Fifield, so far as the mortgaged premises in question are concerned. And, to enable the master to determine the same, leave is granted to the complainant to produce proofs before the said master to show that said Joseph Fifield has released his said mortgage, so far as the premises in question are concerned. In the third place, the amount of principal and interest due the complainant on his two mortgages—on
30 the one thousand dollars mortgage first set out in his bill of complaint, the interest to be calculated from the third day of January, eighteen hundred and fifty-one, up to the time of making his report, and on the seven hundred and sixty-two dollars mortgage secondly set out in the bill of complaint, the interest to be calculated from the thirty-first day of December, eighteen hundred and fifty, up to the time of making his report. In the fourth place, the amount of principal and interest due the defendant, Henry Allen, on his said mortgage referred to in the complainant's bill of complaint, and set out in his said answer. And that the said master do

proceed to make report with all convenient speed, to the end that such final decree may be made as justice and equity require; and all further equity is reserved until the coming in of the said report.

B. WILLIAMSON, *C.*

MASTER'S REPORT.

The master made report, on the 23d of February, 1854, that there was due to Levi Nice, for principal and interest on his bond on this day, the sum of $317.77, that being the one-third part of the said bond and mortgage, the other two-thirds having been paid by William Morris Cooper, and the interest calculated from the twenty-seventh day of April, 1844. And the solicitor of the com- 10 plainant produced before me the two bonds and mortgages set out in his bill of complaint, by me heretofore marked as exhibits in this cause, and I have calculated the interest in the mortgage of one thousand dollars from the third day of January, eighteen hundred and fifty-one, up to this day, and I find there is due the said complainant, for principal and interest on said mortgage on this day, the sum of one thousand and one hundred and eighty-eight dollars and thirty-three cents. And that I have calculated the interest on the mortgage for seven hundred and sixty-two dollars, secondly set out in his said bill of complaint, from the thirty-first day of Decem- 20 ber, eighteen hundred and fifty, up to the present date, and I find there is due the complainant, for principal and interest on said last mentioned mortgage on this day, the sum of nine hundred and six dollars and one cent. And that there is due the complainant, for principal and interest on his two mortgages as aforesaid, on this the day of making my said report, the sum of two thousand and ninety-four dollars and thirty-four cents. And I do certify and report that the schedule, hereunto annexed, and marked No. 2, and making part of this my report, contains a statement and account of the principal and interest money due to the complainant on his 30 said two mortgages, and to which I refer.

And I do further report, that the solicitor of the defendant, Henry Allen, produced before me the bond and mortgage set out in the answer of the said defendant, Henry Allen, and that I find there is due the said Henry Allen, for principal and interest on his said mortgage on this day, the sum of five hundred and eighty-seven dollars and eighty-nine cents. And I do certify and report that the schedule hereunto annexed, and marked No. 3, and making

part of this my report, contains a statement and account of the principal and interest money due to the defendant, Henry Allen, on his said mortgage, to which I pray leave to refer.

And I do further certify and report, that the solicitor of the complainant produced before me a certified copy of a deed of bargain and sale from the defendant, Joseph Fifield, to Ralph V. M. Cooper, bearing date the seventeenth day of April, in the year of our Lord one thousand eight hundred and forty-five, conveying all the right, claim, title, and interest of the said Joseph Fifield in and to the
10 Matlack farm, by metes and bounds, to the said Ralph V. M. Cooper, which said deed appears to have been properly acknowledged before William N. Jeffers, esquire, one of the masters in chancery of the state of New Jersey, on the seventeenth day of April, in the year of our Lord one thousand eight hundred and forty-five, and on the fourteenth day of May in the same year, duly recorded in the clerk's office of the county of Camden, in Book A of Deeds, page five hundred and seventy-five, &c., which said certified copy of deed I have marked as *Exhibit No.* 1, on the part of the complainant, the premises in question set out and described
20 in the complainant's said mortgages being a part of the Matlack farm, the same that are conveyed by the said Joseph Fifield to the said Ralph V. M. Cooper and the said Joseph Fifield having conveyed all the "right, claim, title, and interest which he has in or to the same to the said Ralph V. M. Cooper by the said deed of bargain and sale, I am of the opinion, and do therefore so certify and report to the Chancellor, that the said mortgaged premises are released by said deed, and that the mortgage held by the said Joseph Fifield is therefore now no lien upon the said mortgaged premises in question.

30 All which is most respectfully submitted. Dated, at Camden, this twenty-third day of February, in the year of our Lord one thousand eight hundred and fifty-four.

WILLIAM D. COOPER, *M. C.*

DECREE.

It is therefore, on this fourteenth day of March, one thousand eight hundred and fifty-four, on motion and behalf of Thomas H. Dudley, of counsel with complainant, by Benjamin Williamson, Chancellor of the state of New Jersey, ordered, adjudged, and decreed, and the said Chancellor, by virtue of the power and au-

thority of this state, doth order, adjudge, and decree, that the said report, and all the matters and things therein contained, do stand satisfied and confirmed, and that said complainant is entitled to relief. It is accordingly further ordered, adjudged, and decreed, that the mortgaged premises mentioned in the complainant's mortgage be sold to pay, in the first place, the amount so as aforesaid reported to be due the said defendant, Levi Nice, on his said mortgage, with his costs to be taxed; in the second place, the amount so as aforesaid reported as due to the complainant on his two bonds and mortgages as aforesaid, with his costs to be taxed; in the third 10 place, the amount so as aforesaid reported to be due the defendant, Henry Allen, on his said mortgage, with his costs to be taxed; and, in the fourth place, the amount of costs due the two defendants, William Halsted and Isaiah Bryan, to be taxed. And that a writ of *fieri facias* do issue for that purpose out of this court, directed to the sheriff of the county of Camden, commanding him to make sale, according to law, of the said mortgaged premises; and that, out of the money arising from said sale, he pay to the defendant, Levi Nice, or to his solicitor, in the first place, the sum of three hundred and seventeen dollars and seventy-seven cents, together 20 with the lawful interest thereon, to be computed from the twenty-third day of February last past, being the date of the master's report, with the costs of the said Levi Nice to be taxed; and that, in the second place, out of the moneys from said sale, he pay to the said complainant, or to his solicitor, the sum of two thousand and ninety-four dollars and thirty-four cents, the amount due the complainant on his two bonds, with the lawful interest thereon, to be computed from the said twenty-third day of February last past, being the date of the said master's report, together with the complainant's costs in this cause to be taxed. And that, in the third 30 place, out of the moneys arising from said sale, he pay to the defendant, Henry Allen, or to his solicitor, the sum of five hundred and eighty-seven dollars and eighty-nine cents, being the amount due said defendant on his said mortgage, together with the lawful interest thereon, to be computed from the twenty-third day of February last past, being the date of the said master's report, with the costs of the defendant, Henry Allen, in this case to be taxed. And in the fourth place, to the defendant, William Halsted, and the defendant, Isaiah Bryan, their respective costs in this case to be taxed. And that in case more money should be raised by the said 40 sale than shall be sufficient to answer such payments, that such surplus be brought into this court, to abide the further order of the

court, unless otherwise previously disposed of by the order of this court; and that the said sheriff make return without delay of his proceedings by virtue of the said writ. And it is further ordered, adjudged, and decreed, that all the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said mortgaged premises, when sold as aforesaid, by virtue of this decree.

B. WILLIAMSON, *C.*

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

RALPH V. M. COOPER, appellant,
and
RICHARD FETTERS, ET AL., appellees,

On bill and petition of appeal.

To the Honorable the Court of Errors and Appeals in the last resort in all causes at law.

The humble petition of Ralph V. M. Cooper, the appellant in the above stated case, respectfully shows that your petitioner finds himself aggrieved by an interlocutory decree, made in the Court of Chancery by his Honor Benjamin Williamson, Chancellor of New Jersey, bearing date on the fifteenth day of February, in the year of our Lord one thousand eight hundred and fifty-four, wherein the said Richard Fetters was complainant, and Ralph V. M. Cooper, Joseph W. Cooper, surviving executor of Joseph Cooper, deceased, Isaiah Bryan (and others are defendants) in this respect, to wit, that the said interlocutory decree adjudges that the mortgage mentioned in the bill of complaint, bearing date on the twenty-seventh day of August, in the year of our Lord one thousand eight hundred and seventeen, given by Mahlon Matlack to Benjamin B. Cooper to secure the payment of the sum of four thousand one hundred and eighty-eight dollars and seventy-eight cents is satisfied by lapse of time. And your petitioner humbly appeals from that part of said interlocutory decree of the Chancel-

lor which decrees as aforesaid, upon the ground that the same is erroneous, for that there is no legal or competent evidence to prove the payment of the said mortgage, and for that the said mortgage is not paid and satisfied, but is a valid and subsisting encumbrance on the premises. Your petitioner therefore prays that the said interlocutory 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.

WM. HALSTED,
Solicitor and of counsel with appellant.

Dated March 17, 1854.

No one appears to claim under the mortgage given by Mahlon Matlack to Joseph Cooper, or the one given to John Jones. The former bears date the 25th January, 1815, and the latter, September, 1817, will be decreed satisfied by lapse of time. The same decree will be made as to the Sarah Matlack mortgage, which bears date December 8, 1817.

As to the Benjamin B. Cooper mortgage, the bill charges that, after the execution of this mortgage, Mahlon Matlack, the mortgagor, executed a declaration of trust, declaring that he held the premises embraced in this mortgage in trust for Benjamin B. Cooper and Sarah his wife and the survivor, and after the death of such survivor then for their children in fee. Sarah Cooper died in 1830, and Benjamin B. Cooper died in March, 1835, leaving three children, the defendants, Ralph and W. Morris Cooper and a daughter. If these are the facts, the mortgage was extinguished. The complainant has made no proof of the declaration of trust; but Ralph Cooper, in a mortgage executed by him to Isaiah Bryan, refers to this declaration of trust as having been been made by Matlack to Sarah Cooper, on the 18th day of May, 1820, which declares the property to be held in trust for Sarah and her children. If this latter trust was the one upon which the property was held, that deed of trust did not affect the mortgage made to Benjamin B. Cooper. It appears that this deed of trust is on record. The complainant ought to have produced it in evidence. The answer of Ralph Cooper is evasive in reference to this matter. He was one of the executors of his father, and could have told whether this mortgage was a lien on the premises. He says he does not know, and does not admit that the mortgage has been paid and satisfied. The personal representatives of Benjamin B. Cooper are before the court. They do not set up any claim under the mortgage, but permitted a decree *pro confesso* to pass against them. The bond and mortgage are not produced. William Morris Cooper testifies the debt has been paid.