RODMAN M. PRICE

OF NEW JERSEY,

In Search of the Golden Fleece

HISTORY OF

A MILLION DOLLAR CLAIM

Rodman M. Price, of New Jersey, having instituted proceedings against me, ostensibly to recover *one million dollars, more or less*, as damages growing out of a real estate transaction of *twenty-seven years ago*, and as that matter, with precisely the same charges, was in 1864 determined upon its merits, and in my favor, by a court of competent jurisdiction, without legal or moral right of readjudication, the conviction becomes irresistible that his motive is to malign, and to serve some sinister design. His slanderous accusations having been paraded through the press in a sensational manner, I have exposed the author through the same medium. Those replies have been met with suits for libel. Being satisfied that the intent of these whole proceedings is purely defamatory, that they are instigated by parties in the interest of the Bonanza firm, and that this Price claim is a mere pretext and cover for further annoyances and slanderous accusations, I have deemed it due to my own dignity and to my respect for public opinion, to give a brief history of the origin and character of that claim. I wish its merits or its demerits to be understood by all, and the character and motives of the parties engaged in its revival, to be estimated as they deserve.

S. P. DEWEY.

PRICE'S REAL ESTATE.

In June, 1853, Rodman M. Price claimed to be the owner of certain real estate in the City of San Francisco the value of which was assessed for the purposes of taxation, for that fiscal year, at $73,400, no account being taken of the fact that much of said real estate was of doubtful and disputed title, and in possession of squatters and other adverse claimants.

This property was, on the 30th day of June, 1853, sold and conveyed by Price, through his agent and attorney in fact, Edmund Scott, to Payne & Dewey, for the sum of $135,000, and included several pieces to which other parties made adverse claim and, by subsequent legal proceedings, established the fact that they never had been the property of Price.

HOW ACQUIRED.

The basis of his claim to ownership is thus given in his complaint, to wit :

"My real estate was acquired and purchased within two or three years after the acquisition of California by the United States, namely, between the years 1846 and 1851, and during the early history and development of the City of San Francisco."

HIS INCOME.

Up to the time of the sale, the income from the property was insufficient to pay the interest, running at 4 per cent. per month, on a mortgage in favor of Godeffroy, Sillem & Co., for $30,000.

An agreement having been entered into between Price and said mortgagees that all rents, income and proceeds of sales should be paid over to the latter on account of their claim and interest, Price's agent paid to said mortgagees the whole of the net revenue, not only without effecting any reduction of the principal debt, but leaving delinquent and due on the 30th day of June, 1853, interest to the amount of $2,556.80.

HIS INDEBTEDNESS.

At page 16 of his complaint Price says:

"There were judgments against me to the aggregate amount of $84,196.56, which were liens upon my real estate, and had been obtained in the District Court of the Fourth Judicial District, in and for the then County of San Francisco, as follows, namely:

October 2d, A. D. 1851, by Francis Griffin, for $48,273, and ten dollars costs.

October 3d, A. D. 1851, by James T. Souter, for $20,000, and ten dollars costs.

October 29th, A. D. 1851, by Charles F. Mersch, for $5,176.50, interest at 10 per cent. per annum, and $233.90 costs.

December 19th, A. D. 1851, by Bowen & McNamee, for $10,378.33, interest at 10 per cent. per annum, and $348.76 costs.

There were mortgages upon portions of the said real property to the aggregate amount of $38,000, or thereabouts.

The attachment law in the State of California had been amended so that on and after the first day of July, A. D. 1853, creditors residing outside of the State of California could attach property of their debtors within said State as security for the debts due them, and there were unsecured claims against me to the aggregate amount of $100,000, or thereabouts, which were mostly in the hands of my personal friends, and easily manageable, but to secure which, on and after the date last aforesaid, could be levied upon my real estate."

HOW INCURRED.

Early in 1850, Price returned to the East from California, and shortly thereafter established himself in business in the City of New York, with Samuel Ward, under the firm name of Ward & Price, and subsequently through disastrous speculations and ventures, became utterly bankrupt. The claims of eastern creditors to a large amount soon after found their way to San Francisco, where they were put in judgment and formed the principal part of the liens existing against his estate on the date of the sale to Payne & Dewey.

HIS AGENTS IN CALIFORNIA.

In February, 1851, Edmund Scott, a gentleman of the highest integrity, the trusted agent of the Rothschilds and other large interests, was appointed by Price, his agent and attorney in fact. Scott continued such agency until the month of September, 1851, when in consequence of a contemplated visit to Chili, he resigned his authority to Price in person, who was at the time in California and who immediately substituted Captain E. D. Keyes of the U. S. A. Keyes represented Price as agent and attorney until the month of October, 1852, when, being ordered east on duty, and Scott having in the meantime returned

to San Francisco, the latter was requested by Keyes to resume the management of Price's estate, and act as agent until he could communicate with his principal. On the 31st of October, 1852, Scott addressed a letter to Price, requesting a power of attorney from him if he approved his appointment, and in reply to such request received a formal authorization, dated December 3d, 1851, in the words following, to wit :

"Know all men by these presents, that I, Rodman M. Price, have made, constituted and appointed, and by these presents do make, constitute and appoint Edmund Scott, of San Francisco, the State of California, for me and in my name, place and stead, to rent lease, sell and mortgage any real estate belonging to me in the State of California; also to collect, receive, receipt for all debts or moneys that may be due me, and with full power to sue for the same. Also to transfer any stock of any company or securities of mine in said State, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present, hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the 3d day of December in the year one thousand eight hundred and fifty-two.

RODMAN M. PRICE. [L. S.]

Sealed and delivered in the presence of

ALFRED G. JONES.

T. BAILEY MEYERS."

By virtue of such power Scott continued to act as the agent of Price until after the 30th of June, 1853, and as such agent and attorney in fact executed the conveyance to Payne & Dewey.

June 19th, 1853, Keyes returned to San Francisco from the east where he had had long consultations with Price relating to his pecuniary embarrassments and the best mode of extricating him from his difficulties. These interviews resulted in instructions to Keyes to do the best possible for Price's interests under the circumstances.

The following testimony given by Keyes, Scott and McAllister, in the suit instituted in New York, will explain the motives and reasons which governed the friend and agent of Price in making the sale to Payne & Dewey.

"IN THE SUPREME COURT

OF THE STATE OF NEW YORK, CITY AND COUNTY OF NEW YORK.

RODMAN M. PRICE, *against* SQUIRE P. DEWEY, THEODORE PAYNE, EDMUND SCOTT, and ERASMUS D KEYES.	Affidavit of E. D. Keyes.

City and County of San Francisco, ss:

Erasmus D. Keyes, of the City of San Francisco, State of California, being duly sworn, doth depose and say, that he is one of the defendants in the above entitled action; that he became acquainted with the said Price, the plaintiff in said action, on or about the month of April, A. D. 1849, in San Francisco aforesaid; and from that time until he learned of the injury and injustice done to his character for integrity by said Price, his relations with him were intimate, and his feeling toward him most friendly.

That said Price left the City of San Francisco for the Eastern States early in the year A. D. 1850, and returned from thence to California in or about May or June, 1851, having in the meantime, as deponent is informed and believes, ruined himself by banking, and speculations in steamboats, and other kindred operations. That deponent was, by the earnest solicitation of Price, induced to take the charge and management of his affairs in California, and received from said Price a power of attorney for that purpose, dated about September 9th, 1851.

That deponent relieved Edmund Scott, one of the above named defendants, who had previously acted as said Price's attorney, and who was about leaving San Francisco for South America.

That deponent remained in the charge and management of the affairs of said Price until the 14th day of October, A. D. 1852, and on the following day sailed for New York.

That when deponent took charge of the property of said Price, as aforesaid, it was heavily encumbered.

Among other encumbrances was a mortgage to Messrs. Godeffroy, Sillem & Co., for the sum of thirty thousand dollars, with an agreement that the said Godeffroy, Sillem & Co. should receive all the rents and income and proceeds of sales of his property after the first day of November, 1851, until their advances and interest should be paid. That an order from said Price upon deponent to pay over such rents, income and proceeds of sale was given by said Price to said Godeffroy, Sillem & Co.

That the interest stipulated to be paid was at the rate of four per cent. per month; that accordingly *deponent paid to said Godeffroy, Sillem & Co. all the*

net rents and income of said property and proceeds of sales in San Francisco, and this without succeeding in reducing the amount of the principal of said encumbrance.

During the period in which deponent had charge of the property of said Price, as aforesaid, said Price may be said to have had no income whatever, *the interest on his debts being much more than sufficient to consume the same.*

That deponent was in the habit, during the period of his management of the affairs and property of said Price, as aforesaid, to write to him very frequently (said Price having returned to the East), and to send him monthly statements of account.

That previously to deponent's sailing for New York, as above mentioned, he wrote said Price several letters requesting him to appoint another agent to relieve deponent in view of his departure. That said Price rarely replied to deponent's letters, and neglected to appoint another agent, as requested by deponent. That deponent attributed the silence of said Price to his discouragement at the deep involvement of his affairs.

That deponent arrived in New York about November 8th, 1852, and saw said Price frequently during his stay at the East, and was received by him with great cordiality. That it was with great difficulty deponent prevailed upon said Price to appoint another agent in deponent's place; and it was only after positively refusing to have anything further to do with his affairs, that said Price was induced to send out to his old agent, Edmund Scott, the power of attorney referred to in the affidavit of said Price.

And deponent further saith, that during his stay at the East, he interested himself very actively with the creditors of said Price, endeavoring to negotiate with them for terms that would enable said Price, if possible, to work out of his embarrassments. That deponent especially interested himself with one Mr. Griffin, who held a judgment against said Price for forty-eight thousand two hundred and seventy-three dollars, or thereabouts, which was a lien upon the San Francisco property of said Price. That deponent endeavored to get a delay from said Griffin, so as to prevent the sacrifice of said Price's property under said judgment, but that said Griffin was apparently much embittered against said Price, and would give deponent no definite assurance respecting the matter. That deponent conversed with said Price fully from time to time respecting his affairs, and respecting his negotiations with said Griffin, and plainly told him that there was little hope of his being able to extricate himself from the heavy load of mortgages, judgments, attachments, and other incumbrances under which he was laboring, and that under this pressure his property must be sacrificed, and would not realize near its value, to say nothing of the heavy costs and expenses at that time attending forced sales in California. That said Price, however, had hopes still of inducing his creditors to grant him a delay, and otherwise of effecting a postponement of proceedings, and urged deponent, upon his return to San Francisco, to resume the care and management of his affairs and property.

That deponent left New York, on his return to San Francisco, on the 20th day of May, 1853, and had previously to that time promised said Price to resume the care and management of his affairs and property. That deponent requested said Price to have a power of attorney prepared in readiness for his departure on the said 20th day of May, 1853. But deponent says it is untrue that the form of said

power of attorney was agreed upon, or that the amount of his compensation was fixed, further than that deponent insisted that the power should be of the fullest description, and that deponent should be liberally compensated for his services, he having already sacrificed his own interest very much in his devotion to the interest of said Price, to which said Price assented.

And deponent further saith, that upon embarking at New York, upon said 20th day of May, 1853, he was met by said Price, and, to his surprise, was informed that the power of attorney was not ready, but that the same would follow deponent to San Francisco by the succeeding steamer; whereupon, deponent remarked to said Price that he should act, upon his arrival in San Francisco, the same as if said power of attorney had been made; that the delay of a single day might be fatal, and warned him, said Price, by no means to neglect the sending of said power of attorney.

That deponent arrived in San Francisco on the 19th day of June, A. D. '853, and immediately set himself about making inquiries respecting the affairs of said Price. That to the astonishment of deponent, he ascertained that *the interest due Messrs. Godeffroy, Sillem & Co. had fallen greatly in arrears, and their mortgage been put into Mr. Hall McAllister's, an attorney's, hands, for foreclosure. That said McAllister, who was also the attorney for said Griffin, had received peremptory orders from him to collect his judgment above mentioned, and had actually prepared lists of the property of said Price for advertisement and sale.* That John Ward & Co., of New York, who were creditors of said Price for over sixty-three thousand dollars, were diligently prosecuting their claim, and would, by the operation of a statute *to go into effect on the first day of July, A. D.* 1853, be enabled by attachment to make their claim a lien upon all said Price's property, and that nearly all others of said Price's creditors, having claims amounting to over sixty thousand dollars, were alarmed and pressing the collection of their demands with every means of despatch in their power. That it required but a short time to satisfy deponent that nothing could be done to save said Price's property, so that the same could be sold by deponent at private sale, and by detail, and that the most that could be expected would be to make a private sale of the same in bulk, and thereby realize, if possible, the amount of those claims which were already a lien upon the property, and save the enormous expenses and the ruinous sacrifice that must follow upon a forced sale of the property at sheriff's sale. That at that time all expenses attending judicial proceedings were most extravagantly high, and owing to the chaotic and unsettled state of titles in California, sheriff's sales attracted no bidders beyond the parties interested, except at figures so low that outsiders might be tempted to invest as a sort of gambling risk. That it is the opinion of deponent, if the property of said Price had been suffered to go to the hammer at forced sale, sixty thousand dollars would not have been realized; insufficient to pay the incumbrances of said Griffin, and said Godeffroy, Sillem & Co. *That the income of said Price from his property at that time would not much more than have half paid his current interest upon his indebtedness.*

That thereupon deponent at once attempted to find a purchaser for said property, of sufficient means and sufficient nerve to take the said property, and enable deponent to realize his design.

That deponent had consultations with said McAllister and said Scott, and both agreed with deponent that a sale was necessary and urgent, and should take place

before the first of July following, at which time, owing to the increase of liens that would be imposed upon the property, a private sale would be impossible.

And deponent further saith, that the defendants, Squire P. Dewey and Theodore Payne, were at that time associated together in business, as dealers in real estate and real estate auctioneers; were possessed of considerable means and credit, and were the most available, if not the only persons at that time in San Francisco, with whom deponent could make a transaction of such magnitude as that required with any hope of success.

That said Dewey and Payne offered deponent at first one hundred and twenty-five thousand dollars for the property, and after much negotiation this deponent succeeded in getting from them an offer of one hundred and thirty-five thousand dollars, with an additional five thousand dollars towards deponent's commissions for making the sale, which commissions deponent intended to charge at the rate of five per cent. upon the proceeds of sale, that being the customary rate charged in San Francisco at that time, and the same rate that deponent was constantly paying in his own business.

That the agreement for the sale of said property to the said Payne & Dewey was completed on the terms aforesaid, executed by them and said Scott, as attorney for said Price, and placed on record on the 30th day of June, 1853, but a few hours before the said 1st day of July, 1853. That in making the same, deponent did not execute the papers as attorney in fact, but acted as the agent and adviser of said Price, and in co-operation with said Scott.

That said sale was in every respect fair, upright, and *bona fide*, and this deponent was in nowise interested in the same or in the profits or results of the same, and has never realized, directly or indirectly, any benefit or advantage from the same, save his commissions of five per cent. above mentioned. That the property sold brought its full market value at that time, and realized very much more than could have been obtained in any other manner, and that the proceeds were applied, as he believes, to the extinguishment of the liens upon the property.

And deponent further saith, that *the said property so sold to Payne & Dewey was assessed for purposes of taxation for the year in which said sale was made at the sum of seventy-three thousand four hundred dollars*, and deponent considered such assessment very high, as compared with the value fixed to real estate for similar purposes in other cities.

And deponent says, at the time of said sale, property in San Francisco was low, and transactions stagnant. That said sale had a tendency of itself to give an impetus to speculation in real estate; that in the four years that have elapsed since that time, another revolution in values has taken place, and property at the present time in San Francisco is worth but little or nothing more than it was at the time of said sale. An immense number of men have been ruined, and thousands of disappointed adventurers have returned to the East, with their hearts crowded with envy and malice, and for a trifle, or perhaps for nothing, could be induced to swear away the reputation of the most upright of their fellow-citizens.

And deponent further says, that he never held out to said Price any inducements to hope that deponent could obtain, under the circumstances, the full market value of his property, the same that might be realized from it if free from

incumbrance and sold at leisure. But deponent knows that under the pressure of his embarrassments, the best that could be done for the interest of said Price was accomplished by deponent.

(Signed) E. D. KEYES.

Sworn to before me, September 18th, 1857.

ALEXANDER BOYD,

Commissioner for the State of New York."

"IN THE SUPREME COURT

OF THE STATE OF NEW YORK, CITY AND COUNTY OF NEW YORK.

RODMAN M. PRICE.

vs.

SQUIRE P. DEWEY, THEODORE PAYNE, EDMUND SCOTT, and ERASMUS D. KEYES. } Affidavit of Edmund Scott.

City and County of San Francisco, *ss.*:

Edmund Scott, one of said defendants above named, a resident of said City and County of San Francisco, being duly sworn doth depose and say: That on or about the end of February, 1851, Samuel Ward applied to deponent to take charge of the real estate and the affairs of R M. Price, alleging that he (said Ward) must be absent from the City of San Francisco. That thereupon deponent consented to become such agent. That on or about the 25th March, 1851, deponent received a power of attorney from said Ward substituting deponent in the stead of him (said Ward) as the attorney in fact of said Price, under which power he managed and improved the estate until about the 6th September, 1851. That in the interim, say about the month of June, 1851, said Price arrived from the East, and in September, 1851, deponent being desirous to visit Chile, resigned his management of the estate, to the great regret of said Price, as he expressed himself. That on or about the 8th September, 1851, Capt. E. D. Keyes, U. S. A., was appointed, under power of attorney, to act as said Price's agent, and continued so to act until on or about the 14th October, 1852, when said Keyes returned to the East, and requested this deponent to act as agent for said Price, to which deponent consented. That on the 31st day of October, 1852, deponent wrote to said Price, requesting him to send out to deponent a power of attorney, always providing that he (said Price) approved of said Keyes' appointment; to which letter an answer from said Price was received, enclosing a power of attorney in favor of deponent, bearing date December 31, 1852. That on or about the 19th of June, 1853, the said Keyes returned from the Eastern States, where he had had long consultations with said Price relating to his pecuniary embarrassments, and the best mode of extricating him from his difficulties.

That said Keyes consulted with deponent immediately on his arrival as to the circumstances and situation of the business and estate of said Price, and as to the best means of freeing him from his heaviest and most importunate creditors. That deponent stated, and agreed with said Keyes, that a sale of the real estate of said Price would be the best thing that could be done for his interest, but doubted much if the same could be effected, for two reasons: the one, that *Mr. Hall McAllister was foreclosing the mortgage belonging to Messrs. Godeffroy, Sillem & Co.*, and held other large judgments and liens against the estate; and the other, that in the then depressed condition of real estate, it would be next to impossible to find a party with sufficient means or nerve to enter into so large a purchase. That, after much negotiation, Messrs. Payne and Dewey offered to take the estate for one hundred and thirty-five thousand dollars, and five thousand dollars additional towards commissions, paying off from such sum all judgments and mortgages that might be a lien against the said estate. That an arrangement to this effect was finally agreed to on the afternoon of the 30th June, 1853. That *the dispatch of this sale was rendered most urgent by the circumstance, that on the following day, July 1st, 1853, a law of the State of California would go into effect, allowing foreign creditors to attach property for the security of their demands, in which case a large additional amount of liens would have been created, and the sale of the property of said Price, under sheriff's hammer, would have been inevitable*, thereby sacrificing the same for a much less sum than was realized from said Payne and Dewey, besides entailing a very large amount of costs and expenses.

And deponent further saith, that had he allowed said estate to be brought under the sheriff's hammer, in his opinion it would not have brought more than sixty thousand dollars. That *the titles to many of the lots were disputed, and much of it was in possession of squatters, with whom deponent was then in litigation.*

That *all moneys received by deponent were duly credited to said Price, and that an account current was duly rendered to him enclosed in a letter dated the 30th July, 1853, a copy whereof is hereto annexed, the receipt of which said Price never acknowledged in writing, although deponent knows from circumstances that he must have received the same, and was so informed in the month of August last by said Price himself.*

And deponent further saith that he had no interest whatever in the said sale to said Payne and Dewey.

That sometime in August, 1854, Mr. John S. Hagar an attorney of San Francisco, informed deponent that he held a power of attorney from said Price, and was authorised to demand and receive such papers as said deponent might have in his possession, belonging to said Price, in consequence of which all papers, notes, etc, belonging to said Price, and then in possession of deponent, were handed to said Hagar, on the 29th day of August, 1854. That on the 30th August, 1854, deponent communicated in a letter to said Price his transfer of such papers to said Hagar, and sent him an account current in full, showing a balance to his debit of $99.72, and handed said letter and account open to said Hagar to be sent to said Price. And deponent further says that he has read a copy of the affidavit of said E. D. Keyes, sworn to before Alexander Boyd, Com-

missioner of Deeds, September 18th, 1857, and that all and singular the statements in the said affidavit of said Keyes, so far as they relate to deponent, or he has any means of knowledge, are true.

And deponent further saith, that it was a part of the agreement of sale with said Payne and Dewey that deponent should put them into possession of the property sold. That many of the lots sold were in the possession of squatters, who were many of them desperate men, stopping at no means, however criminal of maintaining their adverse possession.

That in assisting deponent to give possession of one of the lots sold, the deputy sheriff of San Francisco County, who was in company with deponent, was shot by the squatters and very seriously wounded. That during the course of deponent's management of the estate of said Price, deponent was constantly obliged to take great personal risks, and his life was often threatened. That deponent was actually afraid, and never dared venture to visit certain very valuable portions of the property sold to said Payne and Dewey, without first fully arming himself, and that it was his constant practice so to do. That these circumstances were notorious, and together with the litigations instituted to recover possession, had the effect to depreciate the value of a very considerable portion of said Price's property.

And deponent further saith, that said sale to said Payne and Dewey was fairly conducted in every respect, and brought its full market value, and that more was realized from the same than could have been possibly obtained by deponent by any other course.

EDMUND SCOTT.

Sworn to before me, this 17th day of November, 1857.

ALEXANDER BOYD,

Commissioner for the State of New York."

"IN THE SUPREME COURT

OF THE STATE OF NEW YORK, CITY AND COUNTY OF NEW YORK.

RODMAN M. PRICE,
against
SQUIRE P. DEWEY
and others.

Affidavit of Hall McAllister.

City and County of of San Francisco, *ss:*

Hall McAllister, of the City of San Francisco, State of California, being duly sworn, doth depose and say, that he is acquainted personally with the plaintiff and defendants in said action. That deponent is an attorney at law, practicing in San Francisco, and was so practicing during the year A. D. 1853. That

deponent in said year was the attorney employed for the collection of a mortgage of thirty-two thousand five hundred and fifty six 80-100 dollars, held by Messrs. Godeffroy, Sillem & Co., covering a large portion of the estate of said Rodman M. Price, the plaintiff in the above entitled action. That the interest on said mortgage was at the rate of four per cent. per month, and had fallen largely in arrear. That deponent had instructions from his clients sometime before the 30th day of June, A. D. 1853, to prosecute the foreclosure of said mortgage with dispatch, and was prosecuting the same with all the speed possible. That deponent was also, in the spring of said year, A. D. 1853, the attorney employed to collect a judgment obtained in the District Court of the Fourth Judicial District of the State of California, by Francis Griffin against said Rodman M. Price, and which was on said 30th day of June, A D. 1853, a lien upon all the real estate of the said Price in San Francisco; said judgment was for the sum of $48,000 or thereabouts, upon which there was due the sum of $43,767 71-100; was docketed on or about October 2d, A. D. 1851, and bore interest at the rate of ten per cent. per annum. That *deponent had instructions from his clients to collect the said judgment as speedily as possible, and was using every means in his power to realize said judgment at the earliest moment: and had lists of said property prepared shortly prior to the said 30th day of June, 1853, for the purpose of advertisement and sale of the same at sheriff's sale.* And deponent further saith that he was the attorney for Messrs. John Ward & Co., of New York, and obtained judgment for them against said Rodman M. Price, docketed about July 7th, 1853, for the sum of $63,000 or thereabouts. And deponent further saith, that at the same time he also was the attorney for the collection of other claims against the said Rodman M. Price, which he was also earnestly pressing. And deponent further saith, that upon the return of Capt. E. D. Keyes, one of the defendants above named, to San Francisco, in said June, 1853, he, together with Edmund Scott, another of said defendants, frequently applied to deponent to delay the proceedings which he had set on foot, so as to enable them to sell said Price's property at private sale, but that deponent was bound by the instructions of his clients to proceed with all possible dispatch, and therefore peremptorily declined acceeding to their request.

And deponent further saith, that he is to some extent familiar with the circumstances of the sale made by said Scott and Keyes to the said Payne and Dewey, and he has no hesitation in saying that the same was, under the circumstances, a very advantageous sale to the said Price's interest. That the said property realized its then market value, and *had such a sale not been made, the entire property must have been sacrificed at sheriff's sale for a much less price.* That the expenses attending official sales at that time were great: and that owing to the uncertainty of titles to real estate, and the circumstance that some of said Price's property was occupied by "squatters," so called, no bidders outside of the parties in interest would have been probably at any public sale, except at very low figures. That, in deponent's opinion, had said property been suffered to come under the sheriff's hammer, but little more than the amounts of the Godeffroy, Sillem & Co. mortgage, and Francis Griffin judgment, could have been realized. That on the 16th of April, 1853, he advised his client, one George Griffin, in New York, that he had doubts of being able to fully realize the amount of his judgment. That the following is an extract of deponent's letter to said Griffin, of said date:

"I cannot but agree with you upon the inexpediency of Mrs. Griffin's purchasing property under the judgment, and therefore it is, that though once or twice upon the point of ordering a levy sale, I have postponed it in hope, which has now matured into a certainty, of inducing Messrs. Godeffroy, Sillem & Co. to foreclose their mortgage; *a sale under the judgment before such foreclosure must eventuate in the purchase of the whole property by Mrs. Griffin.* In the exercise, therefore, of my best judgment, I cannot but advise a delay, even should it be of some months I am aware that the condition of your son's estate calls for the prompt collection of this judgment against Price: but it seems to me that a sale before a foreclosure of the Godeffroy mortgage would in no way facilitate matters. The continued rise of property, with no prospect of retrogression, renders the collection of Mrs. Griffin's claim each day more certain."

That on the 15th July, 1853, deponent again wrote Mrs. George Griffin as to the Griffin judgment, an extract from which said letter is as follows: "Since last writing, we have begun a foreclosure suit upon the Godeffroy mortgage. This has aroused the agents of Price, Messrs. Scott and Keyes, and they have partially, if not entirely, effected a very advantageous sale of the whole estate. The amount realized from the sale will probably be about $128,000, net. The purchasers take the property, subject, of course, to all mortgages, judgments and liens. The first payment is proposed to be made within a month from the present date, and will be sufficient to liquidate the entire Godeffroy mortgage, as also a portion of Mrs. Griffin's judgment, say about $20,000 thereof. The remainder of the judgment, should the proposed arrangement be carried out, will be paid in he course of three months. One thing you may rely on, that there is not *the slightest doubt* of the recovery of every dollar of the judgment, and that, too, within a few months. For even should the present purchase by any accident fail to be consummated, a levy and sale will readily produce sufficient proceeds to discharge the indebtedness in question. Having control of the Godeffroy mortgage, your judgment and two other judgments—one of 5 and the other of over $60,000—we have been consulted as to the purchase above mentioned, and have promised to aid the purchasers so far as we can consistently with the interest of the creditors we represent. We have made it a *sine qua non* that the Godeffroy mortgage should be forthwith paid, and at least $20,000 on your judgment; this will make the balance of the judgment the first lien upon the whole estate, and bearing an annual interest of ten per centum."

And deponent further saith, that owing to the incumbrances upon said property of said Price, and the embarrassments surrounding it, a sale of the same in detail at private sale was impracticable.

Deponent further says, that this affidavit has been drawn in some haste; that it is not as full and particular as he would desire to have it, but that, so far as it goes, it is correct.

HALL McALLISTER.

Sworn to, etc., September 19th, 1857."

THE PRICE SUITS.

In the preceding pages is given a brief history of matters pertaining to the financial situation and real estate interests of Rodman M. Price, in the City of San Francisco, from which resulted the sale to Payne & Dewey, on the 30th day of June, 1853, the most remarkable circumstance connected with which is the personal controversy and litigation on the part of the man to whom that sale was chiefly beneficial.

In May, 1854, about a year after said purchase, I removed to the city of New York, and took up my residence in the Metropolitan Hotel, then the largest and most frequented hotel in that city, and continued to reside there with my family until June, 1857. During that time, I frequently met Rodman M. Price. On the 20th June, 1857, exactly four years, less ten days, from the date of the conveyance of the property to Payne & Dewey, as I was about leaving my hotel to embark for Europe, in the steamer to sail at 12 o'clock, noon, of that day, I was arrested at the instance and on the complaint of Price, upon the charge of having, with Theodore Payne, entered into a fraudulent combination with his, Price's, friend, General E. D. Keyes, and Edmund Scott, his agent and attorney in fact, to cheat and defraud him out of his real estate. I had barely time to procure the requisite bonds and reach the steamer before her departure, leaving my defense in the hands of John T. Doyle, Esq., now a resident of California, but at that time practicing his profession in the city of New York.

As I had been for more than three years a resident of New York, to the full knowledge of said Price, without the intimation or assertion of any claim on his part; as I was abundantly able to respond to any demand he could assert against me; as his proceedings by arrest were taken at the moment of my departure, and as I knew him to be conscious of the groundlessness of the charge, I felt convinced, as did all my friends, that he was actuated by sinister motives. In fact, the only motive that could be inferred from the facts was a belief that rather than incur the expense and trouble of defending the suit, or the vexation of leaving it pending during my absence from the country, I

would pay a few thousand dollars by way of compromise or blackmail. The expression of this sentiment in my card, published in the *Evening Post* of April 3d last (hereto annexed), upon the renewal of the same old baseless and vexatious assault, has been made the ground of a suit by him for libel.

In February, 1858, having returned from Europe, I resumed my residence in California, leaving this suit pending in the Courts of New York. Notwithstanding the wishes and exertions of myself and counsel to effect a speedy trial and determination of this pretended claim, delays and hindrances were interposed which kept the cause at issue for seven years, and until the autumn of 1864, when, a trial being had, a jury found Price's allegations unfounded, and rendered a verdict in my favor.

On the first day of the present month, the same plaintiff brought suit against me, reviving and reasserting the same claim for the same pretended cause of action, and with the same allegations of fraud, as were set forth and determined in the suit in New York, sixteen years ago. A great parade of the same as a million-dollar suit appeared in all the San Francisco newspapers. The charges of fraud and dishonesty were published at length, and in so conspicuous and sensational a manner as to demand from me some notice through the press, without waiting the tedious delay of legal proceedings for my vindication.

Moreover, I was satisfied the movement was mainly instigated by some of the defendants to the Burke suits, in which I am interested, and that their malice and Price's mercenary motives had united to assail my honor and standing in a community whose respect I prized Acting under these reflections, I caused to be published in the San Francisco papers the following cards:

A CARD FROM SQUIRE P. DEWEY REGARDING THE SUIT BROUGHT AGAINST HIM BY RODMAN M. PRICE.

(Alta California, April 3d, 1880.)

One Rodman M. Price has commenced an action against me, formidable in the number of pages of the complaint, and in the amount of damages claimed, to wit: a million or two of dollars.

The gist of the allegation is that in 1853 I purchased his property in San Francisco for less than its value, and that in doing so I corrupted his agents and attorneys in fact, General E. D. Keyes and Edmund Scott.

In the complaint, Price confesses that at that time he was in a terribly bankrupt condition, with judgments to right of him and judgments to left of him, and mortgages on top of him.

In 1857, while I was in New York, en route to Europe, Price brought suit in the Supreme Court of that State for the same cause of action and in almost the identical language of the present complaint, and with the same allegations of fraud. That suit was there tried on its merits before a jury, and a verdict rendered against Price, and the same was affirmed by the New York Court of Appeals, where a final judgment against Price and in my favor was rendered for $3512 costs.

That judgment stands unsatisfied, and can be bought cheap. The facts are that the property was purchased at its full market value, as was proved in the former suit by the testimony of Hall McAllister, James T. Boyd, Horace P. Janes, C. V. S. Gillespie, John Middleton, J. P. Manrow, Henry L. Dodge, George H. Howard, J. D. Stevenson, Michael Reese, Ephraim Leonard, George Gordon, and Henry S. Fitch, all of whom were witnesses therein.

The following is a copy of the judgment in that case:

Supreme Court, County of New York—Rodman M. Price, plaintiff, *vs.* Squire P. Dewey, impleaded with Erasmus D. Keyes and Edmund Scott, defendants: This cause having come on to be tried at the May term of this Court, before his Honor, Justice Foster, and a jury, and the jury having found a verdict in favor of the defendant, Squire P. Dewey, against the plaintiff, Rodman M. Price, it is now, on motion of the attorneys for the said defendant, ordered, adjudged and decreed, that the said defendant, Squire P. Dewey, have and he hereby has judgment against the plaintiff, Rodman M. Price, for the sum of $3512.67 costs, as adjusted by the Clerk of this Court, and that the said defendant have execution therefor.

Filed December 9th, 1864, 10 h., 28 m.

(Signed) HUBERT P. THOMPSON, Clerk.

The present suit is, without doubt, an instigation of malice, originating as a flank movement on the part of defendants in the bonanza suits, with the prosecution of which I am connected. That those defendants were pregnant with this conception was made manifest some months ago by certain anonymous and scurrilous publications given to the public.

The complaint on its face is sufficiently preposterous to warrant me in treating it with contempt. It involves the assumption that the well-known honorable gentlemen who were the agents of Price accepted bribes to be unfaithful to their duty; that the dozen or more eminent San Franciscan real estate experts were ignorant of or testified falsely concerning the value of real estate in this city in 1853, and that Price, of New Jersey—who, by his own admissions, had not been here since 1848—was better acquainted with it than any and all of such experts, and yet had tamely acquiesced in that act of spoliation, and for twenty-seven years had not discovered the injury he had suffered.

That he would lend himself to the purposes and schemes of other parties with whom I have pending issues is not a surprise to me when I consider the published decisions of the highest Court in his own State, relating to his fraudulent administration of his father's estate, and the misappropriation of that portion which belonged to his own mother, sister and children—a full account of which is to be found in New Jersey Equity Reports, vol. 23, p. 428.

S. P. DEWEY.

THE PRICE SUIT.

[Evening Post, April 3d, 1880.]

This suit originated in an attempt to blackmail the defendant, and was originally brought in almost precisely the words of the present complaint in 1857, four years after the transaction complained of. Notwithstanding the most strenuous efforts by my counsel to bring the action to a trial, it was kept by Price dragging and delayed for a period of seven years. When, at length, I was able to get the issues before the Court and jury, the whole fabric of the complaint vanished like a vapor. The jury decided the allegations to be false, and the Court of Appeals affirmed the justness of the verdict in the following decision:

Supreme Court, County of New York—Rodman M. Price, plaintiff, *vs.* Squire P. Dewey, impleaded with Erasmus D. Keyes and Edmond Scott, defendants: This cause having come on to be tried at the May term of this Court before his Honor Justice Foster and a jury, and the jury having found a verdict in favor of the defendant, Squire P. Dewey, against the plaintiff, R dman M. Price, it is now, on motion of the attorneys for the said defendant, ordered, adjudged and decreed that the said defendant, Squire P. Dewey, have, and he hereby has, judgment against the plaintiff, Rodman M. Price, for the sum of $3,512 67-100 cost as adjusted by the Clerk of this Court, and that the said defendant have execution therefore.

Filed December 9, 1864, 10h. 28 min.
(Sig ned) HUBERT O. THOMPSON,
Clerk."

This judgment to this day stands unsatisfied. As an illustration of the groundless cause of action in that suit, I need only quote the following from the testimony of General E. D. Keyes and Hall McAllister therein:

THE TESTIMONY OF GENERAL E. D. KEYES.

"When I reached San Francisco, (June 19, 1853) I found Price's estate encumbered by judgments, mortgages and liens to the amount of over $110,000, with interest as high as four per cent. per month, and that the income from it at that time would not more than have half paid the current interest upon his indebtedness, some of the mortgages in foreclosure and the judgment creditors pressing to a sale under execution, with lists of the property made ready for the Sheriff's advertisement, etc.; that other suits for many thousand dollars were in progress to judgments, and that on the 1st of July, eleven days after my arrival, a law would go into effect by which these plaintiffs in these new suits would be able to attach Price's property; hence that the only hope of saving anything for him and prevent an execution sale (at which it would not probably bring one-fourth its value), was to find a purchaser of sufficient means and nerve to purchase the whole estate and pay $50,000 or $60,000 cash down, to stay the most urgent of the creditors; that Payne & Dewey were large real estate dealers and auctioneers; that after thoroughly trying the market, and holding out for the

highest price I could obtain, I finally sold the property on the 30th of June to Payne & Dewey for $135,000, of which they paid a large sum in cash, and paid the whole within sixty days. This was the full value of the estate at the time. The property had been assessed for the purposes of taxation for the year in which said sale was made, at the sum of $73,400, and deponent considered said assessment very high compared with the value fixed to real estate in other cities for similar purposes; and the sale made by Scott and myself was the very best thing we could have done for Price's interest. The property was covered by doubtful titles, and a sale of it, except in gross, was impossible."

TESTIMONY OF HALL MC ALLISTER

"In the spring of 1853, deponent was the attorney for creditors of Price, and held claims against his estate amounting to over $120,000; that on two of these —to wit: one in favor of Messrs. Goleffroy, Sillem & Co., for $32,566, and another in favor of George Griffin for $43,767, judgment had been obtained, and shortly prior to the 30th day of June, 1853, (the date of sale to Payne & Dewey) lists had been prepared of all Price's property for the purpose of advertisement and sale by the sheriff. Messrs. Keyes & Scott, on behalf of Mr. Price frequently applied to me to delay the proceedings which I had set on foot so as to enable them to sell said property at private sale; but being governed by the instructions of my clients to proceed with all possible dispatch, I peremptorilly declined acceeding to their request. I was familiar with the prices of real estate in the city of San Francisco, and a short time prior to June, 1853, made a particular examination of the whole of Price's property for the purpose of ascertaining how far it would go toward paying incumbrances, the Griffin judgment and others. The titles to much of saidproperty were doubtful, and in dispute, and I considered it hardly sufficient to pay the Griffin judgment and the prior lien of Goleffroy, Sillem & Co. On the 16th day of April, 1853, (only forty-five days prior to the sale to Payne & Dewey), I advised my client, (Griffin) in New York, by letter, that I had doubts of being able to fully realize the amount of this judgment, and that to force a sale subject to the prior lien of Goleffroy, Sillem & Co., must eventuate in the purchase by him (Griffin) of the whole property. At the time of the sale to Payne & Dewey, in my opinion, $100,000 was afair price, and the full value of said property, free from mortgages, judgments and all incumbrances."

Like opinions as to the value of the property were testified to by John Middleton, James E. Wainright, J. P. Manrow, James T. Boyd, Horace P. Janes, C. V. S. Gillespie, George H. Howard, Jonathan D. Stevenson, Henry L. Dodge, George Gordan, Ephraim Leonard, Michael Reese, Henry S. Fitch, and others, among the most prominent real estate owners and experts at that time.

All the matters of the present suit having been fully determined in the former one, there can be no other motive for its inception than a malicious one, by whomsoever inspired.

My contempt for the nominal party to the proceeding is somewhat molified by the pity I feel for a man who, having once occupied a distinguished position, should fall so low as to become a subservient tool to ventilate the malice of others.

S. P. DEWEY.

PRICE vs. DEWEY—PRICE'S LIBEL PROCEEDINGS.

[Alta California, April 5th, 1880.]

The questions between Rodman M. Price and myself seem to have drifted into a revival of two issues upon which the highest tribunals of two States have already passed judgment. The one is the allegation by Price of fraudulent purchase of his property by me, concerning which the final Court of Appeals of New York State rendered a decision in the following language:

"The theory upon which Payne & Dewey were defendants in the action, viz: that they conspired with Keyes and Scott to obtain a conveyance of the property at a price below its value, knowing that the sale was a violation of the instructions of Price, was not supported by the evidence, and was conclusively negatived by the verdict of the jury.

"The case was submitted to the jury as to all the defendants, but the circumstances relied upon to establish the charge of fraud or collusion on the part of Payne & Dewey were so trivial that a verdict against them would not have been justified."—New York Reports, vol. 62, p. 387.

And the other is an arraignment of Price for his peculiar method of administering his father's estate, by reason of which the Court of Chancery of his native State, New Jersey, removed him from the trust, these being the words of the Chancellor's judgment:

"The defendant, Rodman M. Price, has received and managed almost all the estate, the greater part of which is in New Jersey. It consisted of sundry mortgages, amounting to $215,900; lots in Elizabeth, sold for $13,000; and a farm at Ramapo.

"It appears, by his own testimony, that he has wasted or misappropriated the amount in his hands, and refuses to answer how or where.

"This appears to me clearly to be such a case as requires that the further management of this estate should be taken out of his hands by the appointment of a Receiver."—New Jersey Equity Reports, vol. 23, p. 428.

It occurs to me that Price's action and proceedings for libel should have been rather directed against the Chancellor of New Jersey.

S. P. DEWEY.

In publishing the above cards, I felt that it was just to myself that I should inform my friends and the public of San Francisco how the plaintiff had conducted himself in buisness matters in his own state, and that the fact of his having been Governor of New Jersey should not be used to give credibility to his pretences, nor to screen him from merited odium and contempt; hence my allusions to the case quoted from the New Jersey Equity Reports, vol. 23, p. 428, copy of which will be found annexed.

Thereupon Price instituted the libel proceedings referred to.

As the facts and the provocation have warranted all and more than I have stated in the published cards, I have no fears of the result of any

issue institigated by the malice of such a man or of those who are behind him.

The annexed letter from my counsel, John T. Doyle, Esq., fully sustains the views herein expressed of the Price claim and suits.

SAN FRANCISCO, April 30th, 1880.

JOHN T. DOYLE, ESQ.,

Dear Sir:—Will you please examine carefully the complaint of Rodman M. Price against me, filed in the Superior Court on the 1st. inst., and state whether it differs in any respect from the action he brought against me in New York, in 1857, and wherein you defended me. I should be glad also to have your statement of the proceedings in that New York suit and its results.

Respectfully Yours,

S. P. DEWEY.

SAN FRANCISCO, May 3d, 1880.

S. P. DEWEY, ESQ.,

Dear Sir:—In compliance with your request I have compared Mr. Price's recent complaint against you in the Superior Court of this city with that filed in the Supreme Court of New York in 1857, *and find the two causes of action alleged in them to be identical.* The New York suit was commenced June 20th, 1857. Your defence was conducted by me, subsequently by Judge Samuel E. Lyon. The trial was delayed much against our wishes till as late as 1864, but when it took place the jury acquitted you entirely. *The verdict was followed by a judgment in your favor which has never been disturbed or assailed* The case afterwards came before the Court of Appeals, on proceedings taken by the other defendants and in giving the judgment that Court says:

"The theory upon which Payne & Dewey were made defendants in the action, viz.: that they conspired with Keyes and Scott to obtain a conveyance of the property at a price below its value, knowing that the sale was a violation of the instructions of Price, was not supported by evidence, and was conclusively negatived by the verdict of the jury."

"The case was submitted to the jury as to all of the defendants, but the circumstances relied upon to establish the charge of fraud or collusion on the part of Payne & Dewey were so trivial that a verdict against them would not have been justified."

Of course, the New York decision is final and conclusive of the controversy.

There would be no security for property or rights of any kind if, after the decision of a controversy on the merits, by a Court of competent jurisdiction, it could be reopened at the instance of the defeated party, when he chanced to find his adversary within some other jurisdiction. The Law on this subject is uniform the world over.

Respectfully Yours,

JOHN T. DOYLE.

In this aspect of the facts and the law, the question naturally presents itself, under what influence and actuated by what motive has Price, after a lapse of 16 years, sought to revive so groundless a claim

while even the judgment rendered against him for the costs in the former suit remains unsatisfied.

He certainly does not lack the cunning nor the experience to know that he cannot blackmail nor extort money from me under any plea or pretext, and that his sworn complaint cannot make truth out of falsehood nor influence tribunals that are governed by the law.

With no probability or expectation of success to his willing wickedness, I have reason to believe he is but a tool in the hands of the only men whom, in all my California experience, I have found it necessary to hold up to public scorn.

For months past the bonanza firm have sought to lessen my zeal in the prosecution of the important pending suits against them by threats of this very Price proceeding. A vulgar pamphlet announced the coming of Price to California for this purpose. A succession of low and scurrilous *News Letter* articles trumpeted the same threat; and since Price's arrival other facts have come to my knowledge which confirm the belief of that firm's complicity in this infamous scheme.

It is a weak and cowardly effort, an inspiration of fear and a confession of guilt.

VALUE OF PRICE'S ESTATE IN 1858.

EXTRACTS FROM DEWEY'S ANSWER TO PRICE'S COMPLAINT IN THE FORMER SUIT.

And this deponent further says that subsequent events have shown that the sum paid for said property by the said Payne and deponent was far above its then actual value; and deponent has no doubt that if the property were now sold at public auction in San Francisco, under the most favorable circumstances, it would not bring enough to pay the sum paid for it by said Payne and deponent, and the sums since expended or incurred on it for taxes, assessments, improvements, litigations, and quieting titles, with interest at the rates current there on the best securities. *And deponent would be willing now, and hereby offers to contract to get back for said Price the whole of said property on those terms, each party to give the other good security for the performance of the engagement.* In fact, of all the purchases and speculations made at about that period by said Payne and deponent, this purchase of said Price's property absorbed more capital, and involved more labor and attention and pecuniary and personal risk, and yielded a less profit in proportion to the capital invested in it than any other; and it drew deponent and said Payne into contests with squatters, involving risk of life and limb.

* * * * * * * * * * * *

Sworn before me this 2d June, 1858.

JAMES W. HALE,
Commissioner of Deeds.

THE $1,000,000 SUIT.

KEYES' REPLY TO PRICE.—HE SHOWS UP THE CASE.

(Alta California, April 6th, 1880.)

EDITORS ALTA :—The *Alta* of the 2d instant contains a conspicuous notice of a suit recently commenced in the Superior Court, by Rodman M. Price, against Squire P. Dewey.

The published complaint associates my name with alleged fraudulent acts in connection with the sale of Mr. Price's real estate in San Francisco in the month of June, 1853. I am charged in terms, or in effect, with conspiracy, collusion, venality, faithlessness to trust and friendship. The same charges were preferred against me over twenty years ago, by the same party, in a suit against me in New York, based upon the said sale of his property. I have repeatedly denied all the charges and insinuations made against me, under oath, and I herein renew my denial in the most solemn manner; and I hereby declare that all and each of the charges and insinuations of conspiracy, fraud, breach of trust and faithlessness toward Rodman M. Price, made by him and others against me, are false.

I furthermore solemnly declare that my motives were honest in all I did in connection with said sale, and that I acted with a conscientious regard to the interests of Mr. Price. I favored the private sale of his property to Payne & Dewey simply because it must otherwise, after July 1st, have been sold by the Sheriff under mortgages and judgments about to run out.

$50,000 SAVED BY PRIVATE SALE.

I thought then, and I think now, that the private sale netted to him between $40,000 and $50,000 more than by a sale under execution. Many of his lots were in the possession of squatters, and many of his Alcalde titles had not been declared legal.

The agreement of sale was signed June 30, 1853, by the late Edmund Scott, who was acting under a power of attorney from Price, which I had never seen. Price sent him the power from New York after I had urgently, on several occasions, demanded to be relieved from the responsibility of his business.

CREDITORS QUIETED.

While in New York, in the Winter of 1852-53, at his instance I used my influence with Mr. Griffin and others of his creditors to stay their pressure upon him, and I hoped to be able to quiet them. He requested me to renew my charge on my return to California, and promised to have ready a new power of attorney. The power was not ready when I embarked, May 20th, but it was sent after me, and arrived in San Francisco about the 8th of July. I arrived in

San Francisco June 19th, and found a new attachment law, enacted the previous month, was to go into effect July 1st, and that all his property was to be advertised for sale under the Griffin judgment. Consequently there was but one alternative—to sell at private sale or allow the estate to go under the Sheriff's hammer and be sacrificed to an enormous extent.

DIFFICULTY OF FINDING A PURCHASER.

Scott and I acted with entire concurrence of opinion, and he authorized me to try and find a purchaser and negotiate a sale. I spoke to many persons, who, knowing the desperate condition of Price's affairs, would pay no heed to what I said. When I went into Payne & Dewey's office, and began to discuss Price's affairs, *I spoke to Squire P. Dewey for the first time in my life.* I had seen him before in California, but had never seen him in New York, nor had I ever seen Mr. Payne there. Payne was opposed to the purchase, because he thought it too risky. After the purchase, real estate rose rapidly, and during the last half of 1853 there was a wild speculation.

I received five per cent of the amount of purchase for my services, and no more. Nothing more was claimed by me or offered to me by Payne or Dewey, or by any other human being. All charges and insinuations that I intrigued with the purchasers, or was in collusion with them, or that I was promised any other benefit or profit from the sale, except my commissions, are as false as anything ever uttered by man.

I never learned that my motives or conduct were impugned till February 1, 1854, at the moment I was embarking at San Francisco for New York. I lost no time in writing to Mr. Price to demand that he should investigate the whole business and I would aid him. He paid no attention to my communication, and in June, 1857, he commenced the much discussed suit against Payne and Dewey, Keyes and Scott in the Supreme Court of New York.

TRIAL IN 1864.

The case came to trial late in the spring of 1864, and the trial lasted three weeks. Judge Foster was on the bench, and the famous James T. Brady appeared for the plaintiffs, and, notwithstanding several witnesses for the prosecution were violently hostile to Mr. Dewey, none of them ventured to perjure himself by saying he knew of any corrupt practices on the part of defendants. The alleged cause of action was collusion and bribery in the sale. The claim was declared groundless by the jury, who rendered a verdict in favor of Dewey, Payne being dead. But by some theory of transcending powers or instructions, or for selling below the true value, a verdict for *damages* was brought in against me and Scott.

FOSTER'S JUDGMENTS SET ASIDE.

I fought that verdict in the courts sixteen years, until finally it was set aside and a new trial granted by the Court of Appeals. After that, being nearly disabled by a disease of the liver, contracted in the war, I committed the case to my son Edward, with full discretion. He, not wishing to incur the expense and risk of a new trial in New York, where my witnesses could not attend in person, procured its dismissal for a moderate consideration. Now, I desire to call the

attention of those honorable conductors of the press who have scattered my name over the world in connection with this dismal conflict, and to ask them respectfully to publish this explanation, and also the opinion of Judge Donohue, of the New York Supreme Court, which is subjoined. Mr. Donohue is one of the most able and best known of all judges in New York, and he was one of the three judges who heard the cause at the general term. He studied it enough to understand it, and his opinion, which does not spare Judge Foster, helped greatly to save my reputation and property from utter confiscation.

I have delayed this explanation to enable me to find the opinion of Judge Donohue, which I had mislaid. E. D. KEYES.

OAKLAND, April 5, 1880.

JUDGE DONOHUE'S OPINION.

The opinion of Judge Donohue, of the New York Court of Appeals, above referred to, is occupied mainly with remarks intended for the guidance of the inferior Court, on a new trial, and are of little interest to the general public. The following passages, however, bear with much force on the merits of the case, viz:

INJUSTICE TO KEYES.

"It seems to me gross injustice has been done the defendants, Keyes and Scott."

PRICE BANKRUPT.

"The plaintiff [Price] was largely, if not hopelessly, in debt."

"He had no means whatever to pay, and only hoped to tide over to better times."

PRICE'S TITLE FRAIL.

"His own letters, the whole of the letters, from 206 to 210, show, beyond all question, the plaintiff's own knowledge by what frail tenure he held the land, even before the attachment law was passed to take it from him."

SCOTT'S CONDUCT CORRECT.

"It would be, it seems to me, an outrage on law if an agent placed as Scott was, acting as he did, and communicating, as he did, his act to his principal, and getting no answer, could be held years after to answer as here." Price accused Keyes of conspiring with Scott to defraud him, Price.

JUDGE FOSTER'S MISTAKES.

"By the whole of the Judge's [Judge Foster's] charge, the jury were led away from the only real ground on which the case should have been put. * * * He says nothing to the jury calling their attention to plaintiff's embarrassed condition at the time he got the notice, the certainty of his property being sacrificed if these defendants did not act, and tells the jury that if they think there was a fraud, the plaintiff was not bound to do anything until twenty years after, if Keyes and Scott had stayed so long in California. * * * We must come to the fair doctrine that where a man is dissatisfied with what his agent does, he must act promptly and disaffirm."

PRICE AS AN ADMINISTRATOR.

[From New Jersey Equity Reports, Vol. 23. p. 498.]

PRICE'S EXECUTRIX *vs.* PRICE'S EXECUTORS.

"This was an application on part of the complainant, the widow, and one of the executors of Francis Price, deceased, in a suit brought by her against the defendants, Rodman M. Price, Edward L. Price, and Zachariah Price, her co-executors, for an account. The application was founded upon the testimony taken in the cause for the final hearing.

Mr. Garretson, for application.

Mr. A. B. Woodruff, contra.

THE CHANCELLOR.

The testator, Francis Price, by his will, gave to the defendant, R. M. Price, *in trust for his children*, one-half of all his estate, deducting $16,000 in pecuniary legacies, which he directed to be paid out of the half given to Rodman in trust. The other half he directed to be divided equally amongst his widow, and his son Edward, and his daughter Frances; Edward and Frances to have the principal of the one-third left to their mother, upon her death. The shares of the complainant and Frances were to be paid to trustees, and the share of Frances, at her death, was limited over to her children, infant defendants.

The complainant and the defendants, Rodman M., Edward, and Zachariah, were appointed executors. The complainant, only, proved the will in the city of New York, where the testator resided at his death. All the executors proved the will in this State, and had letters testamentary issued by the Surrogate of the county of Bergen.

The defendant, Zachariah Price, has done nothing in the administration of the estate, except receiving $1,000 for his services in being executor.

The defendant, Edward L. Price, has done nothing in administering the estate, except taking $19,000 in bonds, as executor, nominally for payment of debts, but which he appropriated. He afterwards was declared a bankrupt.

The defendant, Rodman M. Price, has received and managed almost all the estate, the greater part of which was in New Jersey. It consisted in part of a mortgage for $200,000; *another for* $15,000; *a third for* $900; *some lots at Elizabeth, sold for* $13,000, *and a farm at Ramapo*, the title of which was in the name of the testator, but which is claimed by Rodman M. Price to be in him, as trustee for his children. Rodman M. Price has answered, and rendered an account. By this it appears, as admitted by the bill, that the mortgage for $200,000 was disputed by the Weehawken Ferry Company, the owners of the mortgaged premises; that a compromise was made by the executors with the Company, by which one hundred and seventy-five bonds of the Company, for $1,000 each, were received in satisfaction of the mortgage.

These were received by R. M. Price. By the account annexed to his answer, it appears that he received from other sources, in cash, $28,950, and paid out $26,608.16, leaving in his hands a cash balance of $2341.84. This account further shows, that with the bonds he paid $6,000 to counsel, for services either to the testator or the executors; that he paid the $16,000 legacies charged upon the half of the estate given to him in trust; that he paid the trustee of the complainant, and her daughter Frances, $40.000; that he paid Edward L. Price, on his share, $20,000, and gave him, as executor, $19,000; and gave to Zachariah $1000 for his services; and that the *residue of these bonds*, or $73,000, *are in his hands or unaccounted for.*

In his examination as a witness in the cause, he claims to hold these as trustee for his children, or rather that he did hold them as such, none of them being now held by him.

He refuses to answer as to what he has done with them, on the ground that being held by him as trustee for his children, he is not bound to account for them in this suit, or to anwer any question concerning them.

The $6000 of these bonds paid to counsel must, on this application, be taken to be rightly appropriated; so, also, the $1000 paid to his co-executor. This leaves $168,000 to be accounted for.

Of this, E. L. Price has taken and wasted $19,000, leaving (if R. M. Price is not charged with this sum) $149,000 to be equally divided between R. M. Price, trustee, and the dowees of the other half of the estate.

If from one-half of this is deducted the legacies, amounting to $16,000, directed by the will to be paid out of his half, it leaves only $58,500 belonging to him as trustee for his children.

The other $14,500 *of the* $73,000 *not accounted for belong to those to whom the other half of the estate was given. This he holds, besides the* $2,341—*balance of cash.*

I do not intend to express an opinion that he is not accountable for the $19,000, which, in one part of his testimony, he says he paid over to Edward, and in another part says that Edward took from a common depository without his consent, although in his presence.

It appears from his own testimony that he has wasted or misappropriated the amount in his hands, and he refuses to answer how or where.

If, as he claims, he can permit a co-executor, now insolvent, to take funds of the estate without being responsible, and has once permitted this, it is sufficient cause to take from him the power of doing so again. If he is responsible, it adds so much to the amount of his deficiency.

This appears to me clearly to be such a case as requires that the further management of this estate should be taken out of the hands of these defendant executors, by the appointment of a Receiver, to whom all the assets of the estate shall be delivered, and to whom alone all debts due to the estate shall be paid. This only to extend to property or assets in this State, and debts due from residents here, or secured upon property in this State.

The complainant as sole executrix in the State of the testator's domicile, to whom the administration in this State is only ancillary, will be entitled to receive all assets not administered here, to be accounted for and administered under the direction of the Courts of the domicil of the decedent.

ORDER APPOINTING A RECEIVER.

IN CHANCERY OF NEW JERSEY.

Between MARIA L. PRICE, Executrix, Complainant, and RODMAN M. PRICE, Executor, etc., et als., Defendants.	On Bill for an Account. Order appointing Receiver.

Upon motion made to the Court by Abram O Garretson, solicitor and of counsel with the complainant, in the presence of Absalom B. Woodruff, Esquire, of counsel with the said Rodman M. Price, and upon reading the evidence already taken in this cause, and the matter having been argued by the counsel for the respective parties aforesaid, it is, on this twenty-eighth day of April, A. D. 1873, ordered, that Bennington F. Randolph, Esquire, of the county of Hudson, be and he is hereby appointed a receiver in this cause, to whom all the assets of the estate of Francis Price, deceased, shall be delivered, and to whom alone all debts due to the estate shall be paid, this only to extend to property or assets in the State, and debts due from residents here, or received upon property in the State.

The said receiver shall not have power to take possession of, or interfere with, the farm on which Rodman M. Price now resides, but shall have power to take all necessary measures to prevent a sale thereof under the mortgage upon said farm now being foreclosed, or under which the same is now advertised for sale. To report to this Court from time to time of his proceedings as such receiver, and in all respects to act under the control and authority of this Court, under powers to be hereafter enlarged or diminished at the pleasure of the Court, and that the receiver be allowed for his services just compensation to be allowed by this Court.

A. O. ZABRISKIE,
Chancellor.

IN CHANCERY OF NEW JERSEY.

Between MARIA L. PRICE, Executrix, Complainant, and RODMAN M. PRICE, Executor, etc., et als., Defendants.	On Bill, etc. Order.

It is ordered by the Court, that the receiver appointed in the above entitled cause give bond, with sufficient sureties, in the penal sum of ten thousand dollars, conditioned for the faithful performance of his duty as such receiver, before entering upon his duties as such receiver.

Dated April 28th, 1873.

A. O. ZABRISKIE,
Chancellor.

I, Henry S. Little, Clerk of the Court of Chancery of New Jersey, the same being a Court of Record, do hereby certify that the foregoing is a true copy of the order appointing a receiver in the cause wherein Maria L. Price, Executrix, etc., is complainant, and Rodman M. Price, Executor, etc., et als., are defendants, now on the files of my office.

In testimony whereof, I have hereto set my hand, and affixed the [SEAL.] seal of said Court.

H. S. LITTLE,
Clerk.

A MORE SERIOUS CHARGE AGAINST PRICE.

CONVICTED BY HIS OWN TESTIMONY.

Amongst the property conveyed by Price to Payne & Dewey, under the sale of June 30th, 1853, were four fifty-vara lots, situated on First, Folsom and Fremont streets, in the city of San Francisco, and numbered 718, 719, 722 and 723, on the official map of the city. These lots bore a large proportion of the value of the whole property, and constituted a very material inducement to the purchase. They were sold by Payne & Dewey, shortly after their purchase, for sums amounting in the aggregate to $32,000, of which sales purchasers to the amount of $28,000 received warranty titles from Payne & Dewey. Subsequently, a suit was instituted against their grantees by Captain Samuel F. Dupont, to recover possession of said lots, on the ground that though the apparent title of the same stood in the name of Price, he held them in trust for him, Dupont.

On the trial, Price was produced as a witness on behalf of Dupont, and gave the following testimony:

"I am acquainted with the following-described property, viz.: Fifty-vara lots Nos. 718, 719, 722, 723, as designated on the official map of the City of San Francisco, and at one time had the management of said property for Captain S. F. Dupont, who was the owner. On or about the 22d day of December, 1849, I made a transfer of said property to one A. M. Van Nostrand, when I was about leaving San Francisco, having been ordered by the Government to Washington. *I received no consideration for the transfer.* At the time it was not safe to leave property in San Francisco without somebody to protect it, and I, as agent of Captain Dupont, did not like to leave it unprotected. And as I could not communicate with Captain Dupont I decided to leave the property in the hands of my clerk and agent, A. M. Van Nostrand; and in order that he could authoritively control it, and keep squatters off, I made the conveyance of the property to him, he having the option it keep it for the $8000 expressed in the conveyance or I would take it off his hands again. This was the object of the conveyance, and these were the circumstances under which it was made, and it was made for the purposes aforesaid and for none other.

"I have no personal knowledge of any disposition Van Nostrand made of the property. I am informed, however, he assigned the conveyance I made to him of the property back to me. I was not in California at the time that this was done, but was residing in New Jersey—viz.: August 13th, 1850. *There was no consideration for this assignment or conveyance*, and no agreement for any con-

sideration, Mr. Van Nostrand having assigned it back to me without my knowledge.

"I only know on information that this property stood in my name in 1853. I did not consider myself as owning it, and did not intend to include it in any power of attorney given by me to Keyes or Scott for any purpose. If it stood in my name it stood so as the property of Dupont."

Subscribed and sworn to before me this 19th day of March, 1857.

T. BAILEY MYERS,
Commissioner.

The case went to the Supreme Court, where

Field, Justice, delivered the opinion of the Court. Terry, Chief Justice, concurring:

"The power of attorney from Dupont to Price authorized a sale of the premises. It did not authorize a gift of the property, or its transfer for any purpose except in completion of a sale. The deed to Van Nostrand was not executed upon any sale. No consideration was paid or stipulated to be paid. Both Price and Van Nostrand agree in this respect in their testimony. Price states that he transferred the property in order that Van Nostrand might control it and keep off trespassers, giving to him the privilege of retaining it for $8,000. He did not elect to retain it, nor did he offer to pay any portion of this sum. Van Nostrand states that the conveyance was made to him in trust for the wife or some member of Price's family. It is immaterial for what purpose the deed was given, as it was not executed upon a sale. The power was special, and the deed not being in pursuance of the power, could not pass any title from Dupont to Van Nostrand. Nor was there any ratification of this conveyance by Dupont. He was not aware of its existence. No information was communicated to him on the subject. It is true, $4,000 was sent to him on account of his property generally, but not on account of the proceeds of any sale. No presumption of ratification can be indulged in, as knowledge of the alleged sale, with its attendant circumstances, was not brought home to him.

As between Dupont and Van Nostrand, the conveyance had no more effect than if it had recited on its face that Price was only authorized to sell the property, but for reasons best known to himself, made the conveyance without a sale. No parade of authorities could give to such an instrument any operative force in favor of a subsequent purchaser. These facts existing, though not apparent on the face of the deed, the same result must follow as between the parties. As between them it was a nullity. In appearance it conferred title, while in fact no title passed.

The question of protection to a *bona fide* purchaser without notice, relying upon the form of a deed, cannot arise unless some conveyance was subsequently executed by Van Nostrand; and this involves an inquiry into the effect of the assignment indorsed on the back of the deed. It is as follows:

"Know all men by these presents that I, the within-named Aert M. Van Nostrand, of the City of San Francisco, State of California, in consideration of $8,000 paid to me by Rodman M. Price of the City of New York, have assigned to the said Rodman M. Price and his assigns, all my interest in the within instrument and every clause, article or thing therein contained; and I do constitute the said Rodman M. Price my attorney in my name, but to his use, to take all legal measures which may be proper for the complete recovery and enjoyment of the assigned premises, with the power of substitution.

"Witness my hand and seal this 30th day of August, 1850.

A. M. VAN NOSTRAND."

This instrument was executed during the absence of Price from the State, and without his knowledge, and without any consideration therefor, and was never delivered.

It is not under seal, and contains no words conveying any estate in the land. It would seem a waste of time to cite authorities on the position that this instrument did not pass the legal title. And if we admit that the instrument was delivered, and the consideration paid, it could only create in Price an apparent equity; and the rule is well established that the purchaser of a real equity even is bound by a prior equity. The purchaser of an equitable title takes the property subject to all existing equities. He is not within the rule which protects a *bona fide* purchaser for value, and without notice, of the real or apparent legal title.

He must take the imperfect title, with all its imperfections.

How, then, stands this case? Price by the assignment acquired an equity against Van Nostrand. The vendees of Price took only this equity, if anything. Upon inquiry, they would have found that the equity was only apparent; that the title was, in appearance, in Van Nostrand, but really in the plaintiff; that the conveyance to Van Nostrand, in fact, passed nothing, because not executed upon any sale in pursuance of the power to Price.

The purchasers from Price stood in his shoes, and as he had no legal title, he conveyed none, and as against the plaintiff, neither Price nor Van Nostrand possessed either legal or equitable title.

It is unnecessary to pursue the consideration of the points of the appellant any further. The views we have taken go to the marrow of the case, and conclude the defense."

On this determination, Payne & Dewey made good the title to their grantees by purchase of the property from Dupont. After so clear and emphatic a decision, which could not have failed to fix itself upon the memory of Price, and which was in the main founded upon his own affidavit that he did not own, and never had owned, the lots in question, what conclusions are to be drawn of the moral instincts of a man who now, in his complaint against me, swears that he was the bona fide owner in fee of these very lots, and that I defrauded him in the purchase of them? The following extracts from the complaint in the present suit of Price against Dewey, sworn

to before William Harney, a notary public, and dated April 1st, 1880, will illustrate how memory may be made to serve the purposes of malice, even under the solemnities of an oath :

"The above-named plaintiff, Rodman M. Price, complains against the above-named defendant, Squire P. Dewey, and for cause of action says :

"That on or about the 9th day of September, A. D., 1851, plaintiff was the owner in fee and entitled to the possession and possessed all of those certain pieces or parcels of land situate, lying and being within the territorial boundaries of the then City of San Francisco, the present City and County of San Francisco, State of California, and described as follows, to wit :

* * * * * * * * * * *

"Commencing at the northeast corner of Folsom and Front streets, thence eastward along the southerly line of Folsom street 275 feet to the westerly line of Fremont street, thence southward along the westerly line of Fremont street 275 feet, thence westward and parallel with Folsom street 275 feet to the easterly line of First street, and thence northward along the easterly line of First street 275 feet to the point of commencement, being the four fifty-vara lots numbered, respectively, 718, 719, 722 and 723 on the official map of said City and County of San Francisco."

The schedule of property in the complaint which Price swears to having owned and possessed September 9, 1851, embraces not only property which on the trial referred to he swore he never had owned, but it also includes lots which it was proved he had sold long previously, and to which at that date he had no right, title, interest or possession.

PRICE'S LIBEL PROCEEDINGS.

It will be observed that my card in the *Evening Post* of April 3d (see page 20) characterized Price's proceedings in connection with original suit brought against me in 1857 (which are set forth on page 17 herein) as an attempt at blackmail or extortion. Also, that my card in the *Alta* of same date (on page 18)—referring to his administration of his father's estate, to the complaint of his mother relating to that administration. to his refusal to answer concerning the appropriation of the funds belonging to the estate, to his removal from the trust by the Chancellor, and to the publication of the whole proceedings in the New Jersey Equity Reports—characterized his conduct in that matter as a fraud upon the rights of his mother, sister and children. Whether my conclusions were correct may be best determined by a perusal of the decision itself, which is quoted at length on page 29.

On account of these publications, Price instituted suits for libel, claiming in each case that his reputation had been damaged to the extent of $5,000.

Referring to his contradictory statements under oath, which in his sworn complaint against me, and in his affidavit in the Dupont suit, are in positive conflict, the public may judge whether he has not over-estimated the damage done to his reputation by the milder references to his acts in those cards—references which are but natural deductions from official and documentary evidence, and which are herein presented that the reader may judge how far they were justified. Moreover, those references were made only from the necessity of exposing the author of a cruel and slanderous attack on my character, who has revived at this late day, charges which had been long since adjudicated upon their merits and pronounced by courts and juries to be false and groundless.

SAN FRANCISCO,
MAY, 1880.

P. S.—That it may not be supposed that I am the only San Franciscan who entertains opinions not complimentary to the conduct and character of Rodman M. Price, I will add, as a postscript to this paper, the following extract from the testimony of Hall McAllister, Esq., taken in the former suit of Price against me, in answer to the following interrogatory of plaintiff:

"State how long you have known the plaintiff to this suit; whether you know him personally, and how long you have known him. When did you first become acquainted with him. Are your relations with him friendly or unfriendly? Are you on intimate terms with him? Have you ever had any quarrel or controversy with the plaintiff, and when? Have you ever used harsh or vindictive language towards, or when speaking of the plaintiff?

Answer—"I have known the plaintiff since 1849. Have received legal business from him, and from his agents, at various times. My relations with him have always been of a friendly character; I cannot say that I have ever been on very intimate terms with him. I have never had any quarrel with plaintiff, and the only controversy I ever had with plaintiff was of a slight character, and grew out of my purchase of fifty-vara lot No. 432 of him, which he sold to me as being a good title, shortly after my arrival here, at a time when I knew but little about titles, and which turned out to be defective. I have never used any vindictive language toward the plaintiff, that I remember; may have spoken of him harshly, and doubtless did, when his character was discussed. I remember having talked with Lafayette Maynard about him, and told Maynard that I considered him a man destitute of honesty and integrity, in which opinion Maynard concurred with me. I may have used similar expressions about him in conversation with others, but all my remarks of this character arose in casual conversations, when his name was under discussion, and were not dictated by personal hostility, because I am not conscious of having any animosity against him, although I have no respect for him."