In Chancery of New Jersey.

Between

ALICE LEE, Executrix of the last will and testament of John Lee, deceased, Complainant,

AND

ELLEN DOLAN, as Administratrix of Michael Dolan, deceased, and, individually, John Dolan, William Dolan, Peter Dolan and Thomas Dolan, Defendants.

The Defendants hereby appeal from so much of the final decree made in this cause, as declares that the Complainant is entitled to the relief prayed by her bill 10 of complaint, or to any relief and to as much thereof as decrees that the said Ellen Dolan, Administratrix of the estate of Michael Dolan, deceased, do pay to the Complainant the sum of two thousand five hundred and fifty-eight dollars, seventy-six cents, alleged to be one-half of an amount expended by said Complainant to satisfy a certain judgment in the State of New York, therein referred to, with interest thereon, and to so much thereof as decrees that said Administratrix shall pay one-half of the expenses incurred in defending 20

said suit by said Complainant, with interest, that is to say, the sum of four hundred and eighty-seven dollars and twenty cents, and to so much thereof as decrees that she do pay the costs of said suit, and to so much thereof as decrees that said Administratrix shall pay any sum whatever to said Complainant and to so much of said decree as orders execution to issue in default of such payment, and to so much as gives leave to said Complainant to apply for an order upon said Defend-
10 ants to discover assets and to pay a porportionate amount of said sums out of the same unto said Complainant, and to the Court of Errors and Appeals in the last resort in all causes, &c.

Dated the thirteenth day of February, one thousand eight hundred and eighty-five.

T. F. McCORMICK,
Solicitor of Defendants.
CORTLANDT PARKER,
of Counsel.

20

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

CORTLANDT PARKER,
of Counsel with Defendants.

A true copy—G. S. Duryee, Clerk.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between ELLEN DOLAN, Administratrix of the Estate of Michael Dolan, dec'd., et. al., Appellants, AND ALICE LEE, Executrix of the last will and testament of John Lee, deceased, Respondent.	On Appeal.

THE ANSWER

Of the above named Respondent to the petition of appeal in the above stated cause:

This Respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless says and admits that a decree was, on the fifteenth day of January, eighteen hundred and eighty-five, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this 10 Respondent prays to refer thereto when the same shall be produced, and this Respondent is advised and believes that the said decree is agreeable to equity, and she prays that the same may be affirmed with costs to be adjudged to this Respondent.

McCARTER, WILLIAMSON & McCARTER,
Solr's. and of Counsel with Respondent.

IN CHANCERY OF NEW JERSEY.

To the Honorable Theodore Runyon, Chancellor of the State of New Jersey :

Humbly complaining shows unto your Honor, your Oratrix, Alice Lee, Executrix of the last will and testament of John Lee, deceased, of the City of Easton, in the State of Pennsylvania, that she is the widow of John Lee, who departed this life on the twenty-eighth day of
10 April, in the year of our Lord, one thousand eight hundred and eighty-one, leaving a last will and testament duly executed, wherein and whereby he did, among other things, appoint your Oratrix, Executrix thereof, and that afterwards, and on or about the twenty-fifth day of June, in the same year, your Oratrix did prove said will before the Surrogate of Warren county, New Jersey, and did enter upon and still is engaged in the work of executing the said will according to law.

And she further shows unto your Honor that the said
20 John Lee, at the time of his death and for many years previous thereto, had been a railroad contractor, engaged in the business of building and constructing railroads by contract, and that in the prosecution of said business in the month of September, eighteen hundred and sixty-nine, he did enter into a co-partnership with one Michael Dolan, then a resident of the City of Elizabeth, in this State, who was also a railroad contractor, and who was then engaged in constructing the Passaic Valley and Peapack Railroad, (known also as the New
30 Jersey West Line Railroad) being a duly organized corporation of this State, by the terms of which said Lee and Dolan should continue the construction of the said Passaic Valley and Peapack Railroad, in New Jersey, and should also undertake and complete the construction of a portion of The New Haven, Middletown and Willimantic Railroad, which was then about to be built in the State of Connecticut.

And your Oratrix further shows that before the formation of said co-partnership, the said Lee and the said
40 Dolan had both gone to the City of New York to en-

deavor to obtain a sub-contract for the construction of a portion of the said New Haven, Middletown and Willimantic Railroad, from a firm known as Fielder, Spencer & Co., who had the contract of building the entire road bed of the said New Haven, Middletown and Willimantic Railroad, and it was while they were negotiating with the last said firm for a sub-contract that the above mentioned partnership of Lee and Dolan was formed, and that said partnership was confined to the construction of two said railroads, and that whatever other work was thereafter done by said Lee or said Dolan was on the sole respective responsibility of each of them, and had no connection with the firm of Lee & Dolan.

And your Oratrix further shows unto your Honor that the said firm, in pursuance of the partnership agreement above mentioned, entered upon the work of constructing and actually did complete the portion they had contracted for, of the said New Haven, Middletown and Willimantic Railroad, and in compensation therefor received in round numbers the sum of one hundred and twenty thousand dollars, which was divided up between said partners after paying expenses, in the manner and proportion agreed upon between them.

And your Oratrix further shows that on or about the first day of April, in the year eighteen hundred and seventy-one, the said Michael Dolan departed this life intestate, and that letters of administration were thereafter, on the tenth of April, granted to Ellen Dolan, widow of the said Michael Dolan, by the Surrogate of the County of Union, in said State of New Jersey, and the said Ellen Dolan then entered upon the administration of her deceased husband's estate. That said Dolan left him surviving Ellen, his widow and Administratrix, and John Dolan, William Dolan, Peter Dolan and Thomas Dolan, his sons, all being of lawful age, as your Oratrix is informed, except the said Thomas, who is a minor, his only heirs at law.

And your Oratrix further shows that after the death of Michael Dolan the affairs of the late firm of Lee &

Dolan were on examination found to be in a very confused state, and the accounts so unsettled that no satisfactory agreement could be had between said John Lee, surviving partner, and Ellen Dolan, Administratrix as aforesaid, as to the basis for a proper settlement between them, and that finally, after much dispute, the matter was referred to three so-called arbitrators, whose names are P. A. Fritchman, Charles M. Gibson and Dennis Reilly, to settle the accounts of the late firm of
10 Lee & Dolan, and to determine how much was due to or from the estate of Michael Dolan. That on or about the ninth day of August, eighteen hundred and seventy-three, the said arbitrators did make a report of the following purport:

"We, the arbitrators in the matters of accounts between John Lee and Ellen Dolan, administratrix of Michael Dolan, deceased, do hereby report and declare as follows, viz: That we have examined all the accounts
20 between said parties carefully and unbiased, and find that the said John Lee is indebted to the said Ellen Dolan, Administratrix, &c., to the amount of two hundred and sixty-four 45-100 dollars ($264.45) on account of the co-partnership of Lee & Dolan, also three hundred and sixty-six 81-100 dollars ($366.81) for note of Thomas Smith and endorsed by him, making a total of six hundred and thirty-one 26-100 dollars ($631.26) and we do further report and declare that the bonds of
30 the N. H. M. & W. R. R. Co., held by John Lee, viz: twenty-three hundred dollars ($2300) 1st mortgage bonds, and twenty thousand dollars ($20,000) 2nd mortgage bonds, are to be equally divided between the said parties, as well as a further sum of five thousand dollars ($5,000) 1st mortgage bonds due from the R. R. Co., to be equally divided when received, and that the said Ellen Dolan, Administratrix, &c., shall equally divide the seventeen thousand dollars ($17,000) bonds of the N. J. W. L. R. R. Co., now held by her with the
40 said John Lee.

In testimony whereof we have hereunto set our hands this twenty-ninth day of August, A. D. 1873.

P. S. Fritchman,
Chas. M. Gibson, } Arbitrators.
Dennis Reilly,

And your Oratrix further shows unto your Honor that in pursuance of said report the several sums therein adjudged to be due said Lee and said Ellen Dolan, Administratrix, &c., respectively, were paid by the party owing the same, and that in witness thereof the said Lee and said Ellen Dolan did on or about the fourteenth day of November, eighteen hundred and seventy-three, execute under their hands a memorandum in duplicate, one part of which now in possession of your oratrix is a follows ;

" We the undersigned do hereby acknowledge that all matters appertaining to the contracts of Lee and Dolan with The New Jersey West Line Railroad Company and the New Haven, Middletown and Willimantic Railroad Company, are this day fully settled and adjusted, and with the exception of five thousand dollars of first mortgage bonds of the New Haven, Middletown and Willimantic Railroad Company, and when the whole or any part of said bonds are received they are to be equally divided between the said parties, all reasonable costs and expenses of procuring the bonds to be charged equally between us.

November 14, 1873.

John Lee,
Ellen Dolan, Administratrix."

Witness :
George H. Roper.

And your Oratrix further shows unto your Honor that said last mentioned paper writing was not under the seals of the parties thereto, nor was it—any sense a release or bar of any claim that might thereafter arise between the said parties, but was simply a receipt or acknowledgment that the parties had followed out the award above mentioned and was by its terms confined to the claims and disputes then existing between the

parties thereto, in relation to the settlement of the accounts of the late firm of Lee & Dolan.

And your Oratrix further shows unto your Honor that in the month of December in the year eighteen hundred and seventy-four, about one year after the signing of the paper writing above mentioned, the said John Lee to his surprise learned tha a judgment had been entered by default against him as surviving partner of the firm of Lee & Dolan, in the Superior Court of the
10 City of New York for a sum over two thousand dollars, at the suit of one Michael W. Derham. That said Lee immediately investigated the matter and discoverd the following facts :

That in the negotiations had between said Michael Dolan and the said firm of Fielder, Spencer & Co., in procuring from the latter the sub-contract for building a portion of the New Haven, Middletown and Willimantic Railroad, the said Dolan had, it was claimed, employed the services of one James B. Jackson, a con-
20 tract broker, to further his interests in securing said sub-contract, and had promised to pay said Jackson two per centum on the amount he, Dolan, should realize out of the contract, if consummated. That said Jackson claimed he placed the parties together in such a way that the arrangement hereinbefore mentioned between Fielder, Spencer & Co., of the first part, and Lee & Dolan of the second part, for the construction of a portion of The New Haven, Middletown and Willimantic Railroad was the result. That said Jackson had
30 never received his commissions of two per centum as promised by said Dolan, but had assigned his claim therefor, to one Alfred W. Ladd, and subsequently said Ladd assigned the same claim to the said Michael W. Derham, the Plaintiff in the suit against said Lee, surviving partner &c., in which judgment had been entered by default.

And your Oratrix further shows that as soon after the discovery of the above facts as possible, and on or about the fifteenth day of January eighteen hundred
40 and seventy-five, the said Lee by his attorney in New

York City, caused said judgment to be opened and a defence in the form of a general denial to be put into said claim, and also gave notice thereof to said Ellen Dolan, Administratix, &c., who, however, disclaimed all connection with or liability to, said suit, on the ground that the said Lee as surviving partner of the late firm of Lee & Dolan, was the only and proper person to defend the said suit.

And your Oratrix further shows that the ground of the defence of said Lee, to said action, was in the fact 10 that the only dealings said Jackson had ever had in negotiating the said contract were with Dolan alone. That said Lee had no interview or dealings whatever with Jackson, and he was entirely ignorant of his services in procuring the consummation of said contract. That afterwards, when the partnership of Lee & Dolan, was formed, and from thence, until the time of his death, said Dolan had never mentioned or referred to the services, or alleged promise to pay commissions to said Jackson, and that therefore the said Lee by the 20 advice of counsel determined to resist the said claim as being groundless and not founded in law.

And your Oratrix further shows that in the defence to said action a very long time was consumed and during its prosecution the said John Lee having died, and your Oratrix as his Executrix as aforesaid, was by order of the Court of Appeals of the State of New York, where said action was at that time pending, substituted in his place, and the said action was continued against your Oratrix. And the said Michael W. Der- 30 ham, plaintiff therein, also having departed this life intestate on or about the fifth day of February, in the year eighteen hundred and seventy-five, and letters of administration having been granted to his widow, Sarah Derham, the said action was continued in the name of the said Sarah Derham against your Oratrix and one John B. Sunderland, who at the time of the revival of said action in the name of Sarah Derham was made a co-defendant with your Oratrix in said action, as he claimed to be the owner of said Jackson claim, by 40

assignment from said Michael W. Derham. That said action was stoutly contested through the several appellate Courts of the State of New York, by said Lee and your Oratrix successfully, and that such proceedings were had therein that finally, on or about the thirty-first day of January, eighteen hundred and eighty-two, judgment was entered therein, in the Court of Appeals, the Court of last resort in New York State, against your Oratrix as Executrix of John Lee, the surviving partner
10 of the firm of Lee & Dolan, in favor of said John B. Sunderland, for four thousand, three hundred and fifty dollars and twenty-five cents ($4,350.25) damages and costs, which sum was promptly paid to said Sunderland by your Oratrix, to prevent further proceedings and expenses on said judgment in Pennsylvania or elsewhere.

And your Oratrix further shows that in the defence to said protracted suit the sum of five hundred and seven dollars and fifteen cents was expended by said Lee and your Oratrix for counsel fee and expenses at-
20 tending the same, and that both of said sums, viz: the sum of four thousand, three hundred and fifty dollars and twenty-five cents ($4,350.25) damages and costs, and the sum of five hundred and seven dollars and fifteen cents ($507.15) counsel fees and expenses, making a total of four thousand, eight hundred and fifty-seven dollars and forty cents (4,857.40) were paid by said Lee and your Oratrix out of the private estate of said Lee, the partnership accounts having been theretofore settled, as hereinbefore shown.

30 And your Oratrix further shows unto your Honor that the said Ellen Dolan, after having taken upon herself the administration of the estate of her late husband, Michael Dolan, as before stated, did, on or about the twelfth day of April, in the year eighteen hundred and seventy-one, file an inventory of the personal property of the said Michael Dolan, deceased, in the office of the Surrogate of the County of Union, in which the value of the personal estate was, under the oath of the Appraisers, placed at twenty-eight thousand, eight hun-
40 dred and eighty-six dollars and forty-five cents, ($28,-

886.45), and that on or about the nineteenth day of April, eighteen hundred and seventy-five, said Ellen Dolan did render her final account as Administratrix to the Orphans' Court of said County of Union, wherein she did charge herself with the sum of thirty-nine thousand, six hundred and eleven dollars and forty-three cents ($39,611.43) and did pray allowance for the sum of thirty thousand eight hundred and thirteen dollars and forty-nine cents ($30,813.49) leaving a balance due the estate of eight thousand seven hundred and ninety-seven dollars and ninety-four cents ($8,797.94) that said account was then and there allowed by the Court and by a decree of that date said Administratrix was directed to pay the balance in her hands, to wit: the above sum of eight housand seven hundred and ninety-seven dollars and ninety-four cents ($8,797.94) " to the persons entitled by law to the same." And your Oratrix further shows that no refunding bonds have ever been filed in said Surrogate's office by the persons entitled by law to a distributive share of said estate, nor by any one, and your Oratrix therefore charges the truth to be that no such distribution has ever been made, and that said Ellen Dolan, Administratrix, is chargeable with the above amount of eight thousand seven hundred and ninety-seven dollars and ninety-four cents ($8,797.94), as assets for the payment of debts of the estate of Michael Dolan, deceased. And your Oratrix further shows that although said Thomas Dolan, youngest son of said Michael, was at the time of Michael's death, and still is an infant under the age of twenty-one years ; no guardian has ever been appointed for him, and no guardian's bond filed in the Surrogate's office of Union County, or elsewhere, and your Oratrix therefore charges that said Ellen Dolan, Administratrix, is still for this reason also chargeable with said Thomas' share, there being no one to whom she could lawfully have paid said Thomas' share.

And your Oratrix further shows unto your Honor that in addition to said personal estate, said Michael

Dolan, died, seized of a large amount of real estate, situate in said City of Elizabeth, and worth at least twenty-five thousand dollars. That said real property descended to his said sons as heirs at law, and is now being enjoyed by them, with the said Ellen, who, as doweress is in the present occupation and enjoyment of a proportionate part thereof.

And your Oratrix further shows unto your Honor that she has frequently requested the said Ellen Dolan, Administratrix, of Michael Dolan, to contribute her ratable share, or one half of the above mentioned amount of $4,857.40 (that is to say $2,428.70), so collected from your Oratrix out of the personal estate of said John Lee, for a debt owing by the late firm of Lee & Dolan, both during the progress of the litigation of said suit in the Courts of New York, and after the rendering of final judgment thereon, and more particularly that on or about the thiriteenth day of June eighteen hundred and eighty-two, one Charles A. Crowall, as agent for your Oratrix did serve personally upon said Ellen Dolan, Administratrix, a demand for contribution as aforesaid, of which the following is a copy, viz:

"To Ellen Dolan, Administratrix of Michael Dolan, deceased.

"Alice Lee, Executrix of John Lee, deceased, claims there is due to her as such Executrix from the estate of Michael Dolan, deceased, the sum of $2,428.70 as follows:

1882—Jan. 21.

Amount of judgment rendered in the Court of Appeals of the State of New York against John Lee, surviving partner of Lee & Dolan, and paid by Alice Lee, his Executrix as aforesaid, $4,350.25, one half of which is due from the estate of Michael Dolan, viz:	$2,175.12
Counsel fees and expenses paid $507.15, half of which is also due from said estate of Michael Dolan, viz:	253.58
	$2,428.70

Besides interest from January 21, 1882, on
$2.428.70.

ALICE LEE, Executrix."

And your Oratrix well hoped that the said Ellen Dolan, Administratrix as aforesaid, would comply with your Oratrix's most reasonable request in this behalf.

But, now so it is, may it please your Honor, the said Ellen Dolan, Administratrix, etc., constantly refuses so to do, and still does refuse and gives out and pretends that she has no assets in her hands as Administratrix 10 of Michael Dolan, deceased, but she has paid over all assets that were in her hands as Administratrix, to the persons entitled by law to the same; the contrary whereof is the truth, as the said Ellen Dolan has never filed any refunding bonds in the Surrogate's office of the County of Union, nor has any guardian been appointed, nor guardian's bond filed for the said Thomas Dolan, a minor as aforesaid, to whom and by virtue of which said Ellen could pay said Thomas' share as distributee; and the said Ellen Dolan, as Adminis- 20 tratrix and personally, and the said John, William, Peter and Thomas Dolan give out and pretend in response to your Oratrix request for them to reimburse her that your Oratrix has no valid claim against said Dolan's estate, on account of the late firm of Lee & Dolan, all differences having been settled by said paper writing or receipt hereinbefore mentioned and set out, the contrary whereof your Oratrix asserts to be the truth, said paper writing being a mere receipt not under seal and not applying to a claim then unknown to exist. 30

All which actings, doings, pretences and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your Oratrix in the premises.

In tender consideration whereof, and for as much as your Oratrix can only have adequate relief in the premises in a Court of equity, where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the said Ellen Dolan, as Administratrix as aforesaid, and individually, and said 40

John Dolan, William Dolan, Peter Dolan and Thomas Dolan, and their confederates when discovered, may without oath (an answer or answers under oath being hereby waived) true, full and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they particularly interrogated thereto; and more particularly that the said Ellen Dolan, Administratrix of Michael Dolan, deceased, may discover whether she
10 still has in her possession the said sum of eight thousand seven hundred and ninety-seven dollars and ninety-four cents ($8,797.94) the balance in her hands due the estate of Michael Dolan, on or about the nineteenth day of April, eighteen hundred and seventy-five, or any part thereof, or whether she has in fact paid over said sum or any part thereof to the persons entitled by law to the same, and if so, to whom and in what proportion; and that the said Ellen Dolan, widow, and said John, William, Peter and Thomas Dolan,
20 children of said Michael Dolan, deceased, being his next of kin and therefore the persons entitled by law to the above sum of eight thousand seven hundred and ninety-seven dollars and ninety-four cents ($8,797.94) may discover whether they have received as distributees their respective shares or any part thereof, of the last above mentioned sum, in accordance with the aforementioned decree of distribution of the Orphans' Court of the County of Union, and if so, in what proportion and how much; and that the said Ellen Dolan, Admin-
30 istratrix of the estate of Michael Dolan, if still in possession of said assets, or the said Ellen Dolan, William Dolan, John Dolan and Thomas Dolan, as distributees of the personal estate and heirs at law of the said Michael Dolan, deceased, may be decreed to pay to your Oratrix, Executrix as aforesaid, the above mentioned sum of two thousand four hundred and twenty-eight dollars and seventy cents ($2,428.70) being one-half of the amount paid by your Oratrix in satisfaction of said claim against your Oratrix as Executrix of John
40 Lee, surviving partner of the firm of Lee & Dolan, with

interest thereon, from the twenty-first day of January, eighteen hundred and eighty-two, being the day of the entry of said judgment in the proportion that the said share or amount so held by each of them respectively bears to the whole sum above demanded.

And that your Oratrix may have such other and further relief as the nature and circumstances of the case may require, and to your Honor shall seem meet.

May it please your Honor, the premises considered, to grant unto your Oratrix the state's most gracious writ 10 of subpœna, to be directed to the said Ellen Dolan, as Administratrix of Michael Dolan, deceased, and to the said Ellen Dolan individually, the said John Dolan, William Dolan, Peter Dolan and Thomas Dolan, thereby commanding them at a certain day and under a certain penalty, therein expressed, to be and appear before your Honor in this Honorable Court, and then and there full, true and perfect answer make to all and singular the premises, and further to stand to, perform and abide such further order, direction and decree therein, 20 as to your Honor shall seem meet.

And your Oratrix shall ever pray, &c.

McCarter, Williamson & McCarter,
Solr's. and of Counsel with Complainant.
Thomas N. McCarter, of Counsel.

A true copy—G. S. Duryee, Clerk.

IN CHANCERY OF NEW JERSEY.

Between ALICE LEE, Executrix of the last will and testament of John Lee, deceased, Complainant, AND ELLEN DOLAN, Administratrix of the estate of Michael Dolan, deceased, Ellen Dolan, John Dolan, William Dolan, Peter Dolan and Thomas Dolan, Defendants.	On Bill. Answer.

The joint and several answer of Ellen Dolan, Administratrix, of the estate of Michael Dolan, deceased, Ellen Dolan, John Dolan, William Dolan, Peter Dolan
10 and Thomas Dolan, infant, by Ellen Dolan, his guardian, Defendants, to the bill of complaint of Alice Lee, Executrix, of the last will and testament of John Lee, deceased. These Defendants for answer thereunto or unto so much thereof, as they are advised it is material or necessary for them to make answer unto answering say:

That they believe it to be true that the said John
20 Lee, departed this life about the time mentioned in said bill of complaint, and that he left a will appointing the said Complainant executrix, and that the said will was proved as stated in said bill, and they further admit the said John Lee, had been a railroad contractor, and that on or before the first day of September, eighteen hundred and sixty-nine, he entered into a co-partnership with the said Michael Dolan, to continue the construction of the Passaic Valley and Peapack Railroad in New Jersey, and to construct a part of the New Haven.
30 Middletown and Willimantic Railroad to be built in

the state of Connecticut, and these further admit that the said firm entered upon the work of constructing the portion of the work contracted for, of the said New Haven, Middletown and Willimantic Railroad; but these Defendants deny that the said firm of Lee & Dolan, received one hundred and twenty thousand Dollars, and further deny that said sum was divided between said partners, in the manner and proportion agreed upon between them.

And these Defendants further answering, say that it 10 is true, that the said Michael Dolan, departed this life intestate, about the time mentioned in said bill of complaint and that Ellen Dolan was granted letters of administration, and that he left surviving, these Defendants, all of whom are of lawful age, excepting Thomas Dolan:

But these Defendants deny that the affairs of the firm were in a confused condition at the time of the decease of Michael Dolan, and these Defendants maintain and insist that if any confusion subsequently ex- 20 isted it was caused, and designed by the said John Lee for his personal aggrandizement, and to avoid rendering a fair account to the estate of said Michael Dolan, deceased, and by concealing from the Administratrix of the estate of Michael Dolan, some part of the knowledge he had of the affairs of said firm, was thereby enabled to appropriate to his own use, a very large part of the stock of said firm, without the knowledge or consent of these Defendants, or any of them.

And these Defendants further insist, that the said 30 Ellen Dolan, Administratrix, as aforesaid, demanded that the interest of the estate, of said Michael Dolan, should be continued in said work, but the said John Lee, knowing the value of the profit, which would be derived in the latter part of the work, and anxious to retain the same for his own benefits, declined to permit the said estate, to share in the profits, or have any interest in the completion of the work; although during said time, and while said work was being completed he the said John Lee, exacted, and wrung from the 40

estate of said Michael Dolan, deceased, the sum of forty-five hundred dollars and over.

And these Defendants further answering, say that they believe that the report of P. A. Fritchman, Charles M. Gibson and Dennis Reilley, is as therein stated, and that the receipt or memorandum therein described is substantantially as therein set forth, and this Defendant, Ellen Dolan, Administratrix, as aforesaid further says that at the said time the said Ellen Dolan, Administra-
10 trix, and the said John Lee, then and there agreed that she the said Ellen Dolan, Administratrix, &c., should assume the payment of all debts, claims and demands of the New Jersey West Line Railroad, and that the said John Lee should assume the payment of all debts, claims, and demands of the New Haven, Middletown and Willimantic Railroad, including the said claim of James B. Jackson, a contract broker, for services rendered in procuring the contract for said Lee & Dolan, to construct a part of the New Haven, Middletown and
20 Willimantic Railroad.

And these Defendants further say that the receipt or memorandum as set forth in said Complainant's bill of complaint was executed by the said John Lee, with the full understanding and knowledge of the said agreement.

And these Defendants admit that a judgment was entered against said John Lee as stated in said bill, about the month of July, eighteen hundred and seventy-two; but these Defendants deny that said suit was a surprise
30 to said John Lee; and these Defendants insist that the said John Lee was served with a summons in said cause, in the City of New York, and he knew that said suit was progressing, and knew that said claim was just, and that the said James B. Jackson, or his legal representative, was entitled to the amount of said judgment; that the said John Lee had no just defense to said action, and that the subsequent proceedings and appeals were unnecessary and extravagant, and were prompted by a desire to avoid the payment of said
40 claim; he, the said John Lee, well knowing that by the

agreement between the said John Lee and Ellen Dolan, he ought to have paid, and was individually liable to pay said judgment; that throughout the progress of the new trial, and the appeals from the judgment rendered therein, the said John Lee offered as his defense that at the time of the making the contract by Michael Dolan, he, the said John Lee, was not a partner of the said Michael Dolan, whereas in truth and in fact the said John Lee was a partner, and well knew the same to be true; that he repeatedly said that he would not 10 pay the claim or any part thereof, even though it took all he was worth to fight it, but admitted that it was a just claim against said Michael Dolan.

And these Defendants further say, that it is true that about the fifteenth day of January, one thousand eight hundred and seventy-five, the said Lee, by his Attorney, caused said judgment to be opened and interposed a defense, but these Defendants deny that the said John Lee gave notice thereof to said Ellen Dolan, Administratrix, and the said Ellen Dolan says that the only 20 information she ever received relating to said judgment and the proceedings thereon, was on the twenty-eighth day of February, eighteen hundred and eighty-one, at the residence of the said John Lee, at Easton, at which time, and for the first time, the said Ellen Dolan was informed by said Lee that judgment had been entered against him.

And these Defendants deny that the said John Lee was ignorant of the services of the said James B. Jackson, and further deny that information was withheld 30 from him, but they admit that a very long time was consumed in the defense to said action, and say and insist that it was unnecessarily long and unnecessarily expensive; they further admit that Complainant was substituted in place of said John Lee, deceased, and that the action was continued in name of Sarah Derham, Administratrix of Michael W. Derham, deceased, against Complainant, and one Sunderland, to whom said action had been assigned.

They further admit that judgment was entered against 40

Complainant about the time mentioned; but these Defendants are ueable as to their belief, or otherwise, to set forth whether or not the statement of expenditures for Counsel fees is true or untrue; they further admit that the said Ellen Dolan, Administratrix, filed an inventory, and subsequently a final account, showing a balance as stated on said bill, and that no refunding bonds were filed; but these Defendants say that the said Ellen Dolan, as Administratrix, has paid for the
10 benefit of said estate of Michael Dolan, deceased, the balance charged against her, and other sums exceeding said amount; and they further admit that no guardian has been appointed for the said Thomas Dolan, and that said Michael Dolan died, seized, of real estate; and these Defendants further admit that notice was served upon the said Ellen Dolan by Charles A. Cornwell, as stated in said bill; but this Defendant, Ellen Dolan,Administratrix as aforesaid, denies that any other notice was served upon her; and the said Ellen Dolan,
20 Administratrix as aforesaid, further answering says, that she paid out of her own separate estate, for the benefit of the estate of said Michael Dolan, the sum of ten thousand dollars on a certain mortgage made by said Michael Dolan in his life time, and covering lands belonging to the said Michael Dolan.

And she further says, that she has paid to each of the said heirs or for their maintenance and education, a sum exceeding the distributive share of each of them.

30 And these Defendants further say that some time after the death of the said Michael Dolan, the said John Lee, the surviving partner got up a mock or sham sale, of the goods of said partnership, and pretended to expose for sale the stock of the said firm; and finding some parties ready to bid, the said Lee, or his agent, ordered the sale to be adjourned and continued to adjourn until he found a favorable opportunity to sell at a time when no bidders were present, and then and there caused the goods to be sold at a great sacrifice,
40 the said John Lee and his son being the principal bid-

ders and purchasers of the goods and stock of said firm of Lee & Dolan.

And these Defendants further answering, say that the said John Lee, was frequently urged by the holders of the claim known as the Jackson claim, to settle the same at the sum of seven hundred dollars, which the said John Lee, repeatedly refused to do, saying that he would spend all the money he was worth before he would pay it, or any part of it. 10

And these Defendants by way of a cross-bill, exhibited against the Complainant say, that the said Complainant Alice Lee, Executrix of the estate of John Lee, deceased, is indebted to these Defendants in the sum of twenty-five hundred dollars, ($2,500) with interest from the fourteenth day of November, eighteen hundred and seventy-three, being their portion of the five thousand dollars, ($5,000) of first mortgage bonds of the New Haven, Middletown and Willimantic Rail- 20 road Company, which the said John Lee, had or ought to have collected.

And these Defendants by way of cross-bill exhibited against the Complainant, say that the said Complainant, Executrix, as aforesaid, is indebted to these Defendants in the sum of forty-five hundred dollars, ($4,500) being the amount retained and withheld by the said John Lee, out of the portion of the partnership effects belonging to the said estate of Michael Dolan, deceased, and claimed by said Lee, for services which he alleged 30 he rendered in the settlement of the partnership affairs, but which said alleged services were not rendered or if any service was rendered it was done for the benefit of the said Lee, and not for the benefit of the estate of Michael Dolan, deceased; and these Defendants deny that any other matter, cause or thing in the Complainant's bill of complaint, contained material or necessary for these Defendants to make further answer unto, and not herein, and hereby well and sufficiently answered, avoided, traversed or denied, is true to the knowledge, 40

or belief of these Defendants. All which matters and things these Defendants are ready to maintain, aver and prove as this Honorable Court shall direct, and humbly pray that the bill of said Complainant be dismissed with their reasonable costs and charges in this behalf sustained, and that the Complainant be decreed to pay to these Defendants the said several sums demanded, and charged by these defendants by way of a
10 cross-bill exhibited against the said Complainant.

T. F. McCORMICK,
Solicitor for and of Counsel with Defendants.

IN CHANCERY OF NEW JERSEY.

Between ALICE LEE, Executrix of the last will and testament of John Lee, deceased, Complainant, AND ELLEN DOLAN, Administratrix of the estate of Michael Dolan, deceased, Ellen Dolan, John Dolan, William Dolan, Peter Dolan and Thomas Dolan, Defendants.	On Bill. Amended Answer by way of Cross Bill.

And these Defendants by way of a cross-bill exhibited against the Complainant, say that when said arbitrators considered the matters in difference between this Defendant, Ellen Dolan, Administratrix as aforesaid, and said John Lee, the said John Lee, with full knowledge of the existence of the claim against him as surviving partner of said Michael Dolan, afterwards established by judgment in the Court in the City of New York, as set forth in said bill and of the nature thereof; and not in any wise apprising this Defendant, Ellen Dolan thereof, who was for her part utterly ignorant of the same, not only left said arbitrators to act in entire ignorance of said claim, but actually having in his hands monies of said partnership sufficient to settle and pay the same to wit: the sum of four thousand five hundred dollars ($4,500) assets of said firm, claimed before said arbitrators that said sum should be allowed and paid him for services in settling the affairs of said partnership after the death of said Michael Dolan, which claim said arbitrators illegally, as this Defendant is advised, allowed.

And these Defendants say that said sum of forty-five hundred dollars ($4,500) ought, in equity, to be applied to the liquidation of said claim, afterward established by said judgment in New York, that said Lee was not entitled thereto for services as surviving partner, especially under the circumstances, and that this Court should so decree ; and these Defendants say that although said Ellen Dolan submitted to said award, yet
10 that if said Complainants seek remedy against the said Ellen Dolan, Administratrix, and the other Defendants, for a share of a debt due by said partnership, but which by reason of his negligence was not brought before said arbitrators upon the ground of an asserted equity, he, the said Complainant, should be required equity, and that a correct application of said doctrine calls upon the Court to open and look behind said award so far as regards said forty-five hundred dollars ($4,500), and to decree its application *pro tanto* the
20 liquidation of this claim, and these Defendants make prayer for such decree.

T. F. McCORMICK,
Solicitor for and of Counsel with Defendants.

IN CHANCERY OF NEW JERSEY.

Between ALICE LEE, Executrix, &c., of John Lee, deceased, Complainant, AND ELLEN DOLAN, Administratrix, &c., et. als., Defendants.	On Bill, &c., Replication.

The Complainant joins issue on so much of the Defendants' amended answer as is not in the nature of a cross-bill, and as to that part of said amended answer which is by the nature of a cross-bill, she says:

That she denies that the said John Lee, at the time when said arbitrators considered the matters in dispute between the said Defendant, Ellen Dolan, Administratrix, and said John Lee, had full knowledge, or any 10 knowledge whatever, of the existence of the claim against him as surviving partner of said Michael Dolan, afterward established by judgment in the State of New York, and she says that as soon as said John Lee did actually become aware of said pretended claim, which was not until more than a year after the final settlement of the affairs of the partnership of Lee & Dolan, adjusted by said Arbitrators, he did at once apprise the Defendant, Ellen Dolan, Administratrix, thereof, as is in Complainant's bill set forth; but as to whether 20 the said Ellen Dolan, was utterly ignorant of said pretended claim at the period of said arbitration, this Complainant is unable to say, but she charges that the said Defendant, Ellen Dolan, as Administratrix of the said Michael Dolan, by whom and on whose sole and personal responsibility said pretended claim was incurred, ought to have been fully informed of the same and ought to have assumed and discharged the same in the adjustment of said partnership affairs: and Complainant further answering says that the said John Lee, 30

being ignorant of said claim himself could not inform said Arbitrator of the same; and she says that whatever claims were put in before said Arbitrators by said John Lee, for services or otherwise, were just and fair claims, and whatever sum or sums of money were allowed by said Arbitrators, to said John Lee, in the settlement of said partnership affairs, were justly and legally due to the said John Lee, as was acknowledged by the memorandum signed by said Ellen Dolan at the ter-
10 mination of said arbitration in said bill set forth, and Complainant denies that the said Defendants have any right either legal or equitable to demand a readjustment of said award, and humbly prays as in and by her said bill she has already prayed.

McCarter, Williamson & McCarter,
Solr's. and of Counsel with Complainant.

A true copy—G. S. Duryee, Clerk.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between ALICE LEE, Executrix of the last will and testament of John Lee, deceased, Complainant. AND ELLEN DOLAN, Administratrix of John Dolan, et. als., Defendants.	On Bill &c.

Deposition of Philip Lee, taken *de bene esse* pursuant to the order of Vice Chancellor Bird, made herein on Friday, the tweuty-ninth day of February, eighteen hundred and eight-four, before Walter J. Knight, a Master in Chancery of the State, at the office of McCarter, Williams & McCarter, No. 810 Broad street, Newark, New Jersey, at the hour of 7:30 P. M., on Friday the twenty-ninth day of February, eighteen hundred eighty-four, in the presence of T. N. McCarter, Esq., and R. H. McCarter, Esq., of Counsel for the said 10 Complainant, and of Cortlandt Parker, Esq., and T. F. McCormick, Esq., Counsel for the said Defendants.

It is agreed by and between the Counsel herein that deposition may be taken in shorthand, and that the signature of the witness to his deposition be waived.

Dated Newark, New Jersey.

WALTER J. KNIGHT,
Master in Chancery.

PHILIP LEE, a witness produced on the part of the 20

Complainant, having been duly sworn according to law, deposeth and saith:

Direct examination:

By Mr. R. H. McCarter.

Q. What is your age?

A. Forty-seven.

Q. Where do you live?

A. Philadelphia.

Q. Are you going to remain in Philadelphia?

10 A. Only a few days.

Q. Where do you expect to go to then?

A. Texas.

Q. How long to remain?

A. Until Fall; I have business down there, and I attend to it during the Summer and return to Philadelphia in the Fall.

Q. What relation are you to Alice Lee?

A. She was my step-mother.

Q. Did you know John Lee?

20 A. Yes, sir.

Q. Were you present in New York at the service of a paper on Mr. John Lee?

A. Yes, sir.

Q. Please state what took place then?

Mr. Cortlandt Parker: Objection is taken to anything that passed on the part of Mr. Lee, then a party in interest in this matter.

By request the Master read the question as follows: "Please state what took place then?"

30 A. Shall I state?

Q. Yes.

A. Well, I was along with my father; we were going to Connecticut, and we stopped at the Western Hotel; I think that was the name of the hotel then, and while we were there a gentleman stepped up and served a paper on my father; we were in a hurry to catch the four o'clock boat to New Haven, and father asked the clerk of the hotel if there was a lawyer in the house, and he said there was and told him he would get the

40 gentleman; he did so, and a rather elderly gentleman

came up and represented himself as a lawyer; father handed him the papers and asked him if he would not look the matter up and see what was in it, and he would be back a certain day at the hotel and see him again; I was with my father when he returned, and we saw the lawyer, and he reported then to my father that it was merely such a matter as when a man died and there were several claims brought against him—that this was something against Mr. Dolan for commission for work obtained, and they were suing father as the surviving partner, and he did not think there would be anything more of it. 10

Q. Did anything further than that take place about it?

A. My father paid him; he asked him how much his charges were; well, he said his services were not much, and father handed him ten dollars and asked him if that would satisfy him, and he said yes; and then my father asked him if there was anything more the matter if he would not let him know, and he said yes, and took his address, &c., but we heard nothing more of it afterwards. 20

Q. What was the next think that took place in relation to this matter?

A. The next thing was that while I was working in New Jersey, on the Longwood Valley road, at Succasunny, a gentleman came from New York and asked me if my name was Lee; I told him yes, and he served a paper on me; he said he had a judgment against me; I said "What for?" I think the amount was twenty-two hundred dollars ($2,200) as near as I can remember; he said it was in favor of Mr. Jackson for commissions on work obtained for Mr. Dolan, and was against me as surviving partner; I told him he was mistaken in the man, that I never was a partner of Mr. Dolan; then he said "Then you are not John Lee?" I said "No, sir." "Well," he said "the work here is being done by John Lee and son, are you the son?" I said, "yes." He said "I thought you were John Lee." I told him, "no, I was the son;" then he wanted to know where 30 40

John Lee was, and I told him he was at Easton; then he went there with this judgment, but what took place in Easton I don't know, because I was not there.

Q. What further took place then?

Mr. Parker: We object to all that the witness has stated as what was said to him as inadmissible, that he has no right to put in such a statement in evidence.

Q. What transpired then after this man went to Easton?

10 A. I cannot tell you anything, that is, of my own knowledge, but only from hearsay; father of course conversed with me at different times afterwards.

Q. What further steps did your father take to your knowledge in relation to that matter?

A. Well, immediately after, that some time I think, I don't know how soon after, father and I went to New York together, and he wanted to see a lawyer, and he was directed to a Mr. Jones by a friend of his in New 20 York as being a very honorable man, and a reliable man to see about this claim; we went to Mr. Jones' office and father showed the paper to Mr. Jones.

Mr. Parker: You do not propose to show what happened between Mr. Lee, deceased, and this lawyer, do you?

Mr. T. N. McCarter: Certainly, we do.

Mr. Parker: I do not understand how you can do that.

Mr. McCarter: You read the pleadings?

30 Mr. Parker: Yes, sir.

Mr. McCarter: Then I do not see how I can make it any clearer.

Mr. Parker: Note the objection to it.

Q. Just state what transpired there?

A. Well, Mr. Jones told my father that he would try to have the case opened, and of course having no knowledge of it he did not see why he should not be ableto do so, but he did not know, and father told him about this person coming to his house and asking him 40 to make an offer (interrupted).

By Mr. Parker.

Q. What was that, I did not catch it?

A. About the party coming to his house with this judgment for to settle.

Mr. Parker: I have not heard any testimony in relation to that before.

Further Direct:

Q. You testified just now about a person going to Easton and serving a paper on your father, is that what you mean? 10

A. Yes, sir.

Mr. Parker: He said this person went to Easton, but he did not know what happened there; now is he going on to state what happened?

Mr. T. N. McCarter: He is going to state what his father told Mr. Jones.

Witness: In my presence.

Mr. Parker: Of course we object to what his father told Mr. Jones; note the objection. 20

Q. Did your father employ Mr. Jones then to open the judgment?

A. Yes, sir.

Q. Was the judgment opened?

A. It was.

Q. How long did you say it was after the time that the papers were served in New York that the man came to you and attempted to serve some papers on you supposing you were John Lee, about how long?

A. It was about two years and a little over I think, 30 as near as I can recollect.

Q. Well, now did your father know until that judgment was served upon him what had become of the paper which he had given to the lawyer in the Western Hotel?

Mr. Parker: I object to that as calling for hearsay testimony.

Q. Proceed?

A. No; he did not, he thought the whole thing was hushed up from the fact of not hearing from it. 40

Q. Did he ever hear from that lawyer again?

A. Never.

Q. I mean the original lawyer?

A. No, sir; he never heard from him.

Q. After that Mr. Dolan died; now after his death was there any difficulty between Mrs. Dolan and your father as to the settlement of their affairs?

A. Yes, sir.

Q. What did that result in?

10 A. In an arbitration.

Q. Did you take any part in the carrying through of that arbitration?

A. Yes, sir; I did.

Q. Were you present at the meeting of the Arbitrators?

A. Yes, sir; I came there to explain the books; the bookkeeper was employed by a Pennsylvania Company, and he could not get away very well, and I went over the books so often that he telegraphed to us that 20 I knew about as much about them as he did.

Q. Whereabouts did the Arbitrators sit?

A. In Cook's Hotel up here in Newark.

Q. This city?

A. Yes, sir.

Q. Did they make an award?

A. Yes, sir.

Q. (Witness shown a paper purporting to be an award of Arbitrators to the estate of Michael Dolan co-part- 30 ner of John Lee, of the firm of Lee & Dolan); look at that paper and see if you can state in whose handwriting that is?

A. Yes, sir.

Q. And if you recognize the signatures of any of them?

A. I recognize the handwriting and signature of Peter A. Fritchman who wrote the whole thing.

Q. What do you say the name is?

A. Peter A. Fritchman, the whole thing is drawn up 40 in his handwriting, and the last name Dennis Reilley;

I recognize his singnature, but the other name I am not conversant with.

Complainant's Counsel offers said award of Arbitrators in evidence, and the same is marked *Exhibit No. I* on the part of the Complainant.

Q. Are you acquainted with the handwriting of Mr. Fritchman and Reilley?

A. Yes, sir.

Q. And you know that this is in the handwriting of Mr. Fritchman? 10

A. Yes, sir.

Q. And that that is his signature?

A. Yes, sir.

Q. And that also, that is the signature of Mr. Relliey?

A. Yes, sir.

Q. Did you ever have any conversation with Mrs. Dolan after this arbitration was settled in relation to this supposed claim of Jackson's?

A. Yes, sir; I had conversation in relation to the whole arbitration, although it was settled it was never settled in the minds of some people, it was always talked about. 20

Q. Please state what took place in any or all of those conversations in relation to this claim?

A. When I was at Elizabeth (interrupted).

Q. When was this about?

A. It was a short time after this arbitration, and Mrs. Dolan talked about the whole arbitration, and about the award and so on, and made a good many remarks, and amongst others spoke about this; I think there was some talk about these bonds that we were to get from New Haven, Meriden and Willimantic Company, there were five thousand dollars ($5,000), of bonds that were due to my father and Dolan yet, and in speaking about them and about this Jackson affair she said that my father would have to pay that. 30

Q. She said that your father would have to pay that?

A. Yes, sir; and I asked her how she knew that; "Well," she said, "you will see he will have to pay it;" 40

well, I said, "That won't be any gratification to you, because you would have to pay half of it if he did."

Q. What reply did she make to that?

A. Well, she made no reply, only that she said "Now you see he will have to pay it;" but she did not make any reply to my remark.

Q. Is that Jackson claim that you then spoke of, the same claim that Mrs. Lee afterwards satisfied?

A. Yes, sir; that was the original name of the claim-
10 ant; I don't know what he goes by now, but Jackson was the man that performed whatever services were performed, or were claimed to have been performed—some services in getting work.

Q. Have you any idea how long this conversation took place with Mrs. Dolan after the settlement of that award?

A. It was not very long after the award that I was there; I was there a short time afterwards; I was there frequently after that; the last time I was there I think
20 it was in eighteen hundred and seventy-six.

Q. Mrs. Dolan then was aware of the existence of this Jackson claim?

(Objected to as leading.)

A. From the way she spoke to me I supposed so.

Q. Who opened the conversation about the Jackson claim, she or you?

A. I did not know anything about it; that is, all I knew about it, and heard about it up to that time, was
30 about this paper which was served in New York, and that was the same year as the arbitration, to the best of my recollection, although I did not look at the date of the paper, but I think it was in eighteen hundred and seventy-three, as near as I can recollect; I came to live in Newark in the Fall of eighteen hundred and seventy-three, and it was in the Fall or Spring before I came here.

Q. Who, in this conversation about the arbitration award, first adverted to the subject of the Jackson
40 claim, you or Mrs. Dolan?

Mr. Parker: I object to that as leading; let the witness state jus what transpired without leading.

A. Mrs. Dolan.

Q. During your father's life what business did he and Mr. Dolan transact together?

A. They were in partnership business; Mr. Dolan had some work in West Jersey, I believe, which he attended to, and my father had work in Connecticut on the Air Line, afterwards called the New Haven, Meriden and Willimantic, and they were both interested in these works, and my father attended to that part of it; each attended to their separate work, but I suppose they went to see each other occasionally; I know Mr. Dolan went to Connecticut sometimes.

By Mr. T. N. McCarter.

Q. You say Mr. Dolan was working in West Jersey, don't you mean the West Line Railroad?

A. Yes, sir: that was it, Mr. Dolan was working on the New Jersey West Line Railroad.

Further Direct:

Q. Did they ever have any further business connection?

A. No, sir; not that I know of.

Q. You have testified that you were present at the arbitration; was any claim made by Mr. Lee of five thousand dollars or four thousand dollars, for services in settling up the partnership affairs?

A. No, sir; there was never any such claim made.

Q. That is all.

Cross Examination:

By Mr. Parker.

Q. What was this paper, Mr. Lee, which you said was served upon your father at the Western Hotel in New York?

A. I did not read the paper that I know of, and I don't think my father read it either, but from the character of the paper, of course, I knew it was a service of papers commencing a suit.

Q. Commencing a suit by whom?

A. Jackson, as it was originally.

Q. Against your father?

A. Against him as surviving partner of Michael Dolan.

Q. Do you remember in what court it was?

A. No, sir; I do not.

Q. Then it was a summons, was it?

A. Yes, sir.

Q. To appear in court and answer to the claim?

A. Yes, sir.

10 Q. And the claim was stated there as something over two thousand two hundred dollars, wasn't it?

A. Something like that, sir?

Q. Something about that?

A. Yes, sir.

Q. Then you employed a lawyer?

A. Yes, sir.

Q. What was his name?

A. The name of the lawyer I could not give you now, sir, although I believe his name was on the docket 20 where he makes answers.

Q. On the docket?

A. On the docket, I think it is.

Q. In the suit?

A. Yes, sir.

Q. But he did not appear for you in the suit?

A. He appeared at that time.

Q. Then he entered an appearance in the suit, and you so understood it?

A. Yes, sir; that is what he told us when he came 30 back from Connecticut, that he had entered an appearance, and if there would be anything further we would hear from it—that my father would.

Q. Now the date on which you saw this man I suppose was the date of the paper, wasn't it?

A. That I could not tell you.

Q. Well, who was the man that served it on you?

A. He did not serve it on me, he served it on my father.

Q. On your father in your presence?

40 A. Yes, sir.

Q. Who was he?

A. Well, now, I could not say, but I supposed it was Mr. Jackson, but of that I won't be positive.

Q. You supposed it was Mr. Jackson?

A. Yes, sir; or he might be an attorney; or it might be Mr. Jackson, I don't know.

Q. Where was it the service took place?

A. At the Western Hotel; it has since then, I think, been pulled down. 10

Q. In Cortlandt street?

A. Yes, sir.

Q. Now how long transpired between that service and the next time you heard about it, when as you say, they came to see you about it first; how long transpired between these two times?

A. A little over two years; it was in the Winter they came to me, and I know it was in the Summer or along in the Fall of eighteen hundred and seventy-two, I think it was, when it was served. 20

Q. I did not catch that?

A. It was in the Fall of eighteen hundred and seventy-two.

Q. What was?

A. That the papers were first served in New York, and then it was in eighteen hundred and seventy-four that they came to me with the judgment.

Q. Came to you with the judgment?

A. Yes, sir; when they had the judgment.

Q. Or with an execution, which?

A. Well, I don't know whether it was an execution or judgment. 30

Q. What sort of a thing did they give to you?

A. I did not take much notice of it.

Q. Well, you took some notice of it; you are an intelligent man?

A. He told me he had obtained judgment against my father as the surviving partner of Mr. Dolan, and I think the amount was twenty-two hundred dollars.

Q. Did he have the paper with him?

A. He had. 40

Q. Did you see it?

A. I did.

Q. Did you read it?

A. I read the back of it, and told him my name was not John Lee.

Q. Didn't you read the inside?

A. No, sir.

Q. Well, it concerned your father?

A. Yes, sir; but my father was alive, and well able
10 to attend to his own business.

Q. Yes, but you were interested enough to see whether he had a judgment against him or not, and yet you did not look inside the paper?

A. No, sir; I don't think I did

Q. Well, you told your father about that, didn't you?

A. Sir.

Q. You told him about it?

A. The next time I seen my father he told me that the man had been there.
20

Q. Had been there, too?

A. Yes, I seen him maybe in Newark afterwards, and he told me so.

Q. After that time, when you saw this gentleman of the law with your father, that your father gave the ten dollars to the last time, why didn't you go and see him again?

A. Well, I will answer that in the same way as I did before; it was my father's business, and of course he
30 was well able to take care of himself.

Q. He was well able to take care of himself; how old was he then?

A. My father.

Q. Yes.

A. He might be fifty-seven or fifty-eight.

Q. A hale, strong man?

A. Yes, sir.

Q. Of sound mind?

A. Yes, sir.

40 Q. Well, didn't Mrs. Dolan tell you when you talked

to her about this claim, that she had never heard of it before?

A. No, sir; she did not tell me anything of the kind.

Q. You attended at the arbitration, didn't you attend there to help your father?

A. I came there simply to explain the books.

Q. I put the question again, didn't you attend there to help your father?

A. No, sir; no more than that at one time Mrs. Dolan offered to leave the affair of the whole arbitration to me. 10

Q. I don't want you to answer any more than to answer my questions, you need not talk?

A. Very well, sir.

Q. Were you subpœnaed there?

A. No, sir; I went there.

Q. At whose request?

A. My father's request; he said he knew if I went (interrupted). 20

Q. Stop, I did not ask you what he said.

A. Well, that is right.

Q. Didn't you talk to the arbitrators on your father's side on that occasion?

A. In some instance I did in explaining the books.

Q. And as to other matters than the mere explanation of the books, as to what ought to be, as to whether it was fair to charge your father with this or with that?

A. Yes, sir; I did talk with them on that subject.

Q. That is all. 30

Sworn to (the signature being waived) before me this twenty-ninth day of February, eighteen hundred and eight-four, at Newark, New Jersey.

WALTER J. KNIGHT,
Master in Chancery.

Deposition closed.

IN CHANCERY OF NEW JERSEY.

Between

ALICE LEE, Executrix, Complainant,

AND

ELLEN DOLAN, Defendant.

BEFORE HIS HONOR ABRAM V. VAN FLEET. V. C.

10 Appearances: Messrs. T. N. McCarter and R. H. McCarter, for Complainant; Messrs. T. F. McCormick and Cortlandt Parker, for Defendant.

Transcript of short hand notes of testimony &c., taken in the above stated cause at the Vice Chancellor's Chambers, Newark, New Jersey, on Saturday the thirteenth day of December, eighteen hundred and eighty-four.

Mr. R. H. McCarter read the bill.

CHARLES JONES, a witness produced on behalf of the 20 Complainant, having been duly sworn, testified as follows:

Direct examination:

By Mr. T. N. McCarter.

Q. Where do you reside?

A. In the City of Brooklyn.

Q. What is your profession?

A. Attorney and Counsellor at Law.

Q. Did you have to do with the defense of a suit conducted in New York in favor of one Jackson against 30 Mr. Lee, as the surviving partner of the firm of Lee & Dolan?

A. I believe Jackson was not the Plaintiff, it was the assignee of Jackson—Durham; I had charge of the defense.

Q. On whose employment?

A. John Lee.

Q. Can you tell when you were employed, now?

A. If I am permitted to refer to some papers I can.

Q. Certainly?

40 A. December, eighteen hundred and seventy-four.

Q. At what stage in the proceedings in the suit were you employed; what was the condition of the suit at that time?

A. There was then a judgment by default against Mr. Lee.

Q. And what was accomplished by your intervention as to that judgment?

A. The default was opened and he was permitted to answer.

Q. And what finally became of the suit? 10

A. It was referred to (interrupted).

Q. I don't care about its history; just the final result?

A. There was a judgment against him and an appeal taken to the general term of the Superior Court where the judgment was affirmed and the appeal was then taken to the Court of Appeals and the judgment was again affirmed.

Q. You continued to represent the Defendant in the defense all the way through? 20

A. From the beginning to the end; yes, sir.

Q. What was the defense?

By Mr. Parker: Wont the record show?

By Mr. McCarter: I don't propose to put the record in.

By the Court: Can you show it otherwise?

By Mr. McCarter: I want to show that the defense was in good faith, that is all; the defense was a general denial; that is all the record would show if the record was here, and we simply want to show that the defense 30 was as is admitted in the answer that Mr. Lee wasn't a partner.

By the Court: I suppose the proper way to show that the defense was made in good faith would be to show that it was made by advice of Counsel.

By Mr. McCarter: I submit it would be hardly testimony in a case like this, that the defense was in good faith even if it was by advice of Counsel.

By the Court: The course of the Complainant's testator in defending this suit is assailed in the answer, 40

but I suppose the Court would assume from the fact that the Defendant defended the action, that he did it in good faith, I think that at a proper stage in this case you would be at liberty to show that Mr. Lee defended this action upon advice of Counsel.

The objection is withdrawn by Mr. Parker, I understand, so far as to the order of proof.

By Mr. Parker: Yes, sir.

Q. You acted as his Counsel in that defense?

10 A. On the trial and on the appeals.

Q. What was your advice to him in regard to the propriety of defending the claim?

A. I advised him that he had a substantial defense upon his statement of the facts.

Q. Was the judgment which was obtained paid through you?

A. It was finally paid through my office.

Q. What was the name of your firm?

A. At that time Jones, Rosevelt & Carly.

20 Q. I show you a receipt?

A. I recognize that as a receipt obtained by our firm.

Q. From whom.

A. From Mr. Mitchell, Attorney for Sunderland, the Defendant.

Q. Do you know Mr. Mitchell's hand-writing?

A. I have seen it quite often connected with papers, but whether I have seen him write I am not able to say.

Q. Have you an acquaintance with his hand-writing?

30 A. I have.

Q. Is that his signature?

A. It is the signature of one of the firm.

Q. Do you know the fact that the payment was made in accordance with that?

A. The payment was made and a receipt obtained.

Q. I see by this paper that Mitchell is signed Attorney for John P. Sunderland, will you explain what Sunderland had to do with it?

40 A. He was brought in on a supplementary pleading

as a Defendant claiming to be entitled to the proceeds of the claim.

Q. In accordance with your practice in New York?

A. Well it seemed to be on the final decision of the question by the Court of Appeals, so decided by the Court of Appeals.

By Mr. McCarter: I want to offer that receipt. (Handing same to Mr. Parker.)

By Mr. Parker: This receipt refers to three judgments? 10

By Mr. McCarter: Yes, there were three; the Superior Court, General Term, and Court of Appeals, (said receipt offered in evidence, marked *Exhibit No.* 2 for Complainant.)

Q. I show you a check dated May thirty-first, eighteen hundred and eighty, purporting to be drawn by John Lee to the order of Charles Jones for two hundred and sixty-two dollars and fifty cents; will you look at that check (handing same to witness), do you recognize the endorsement on the check? 20

A. I do.

Q. In whose hand writing is it?

A. Mine.

Q. Was that check given to you?

A. It was given to me by Mr. Lee and I got the money on it.

Q. On what account was it given?

A. For services in defending the action.

Q. This action that has been spoken of?

A. Yes, sir. 30

Q. I show you another check of John Lee, dated February twenty-eighth, eighteen hundred and eighty-one, payable to Jones, Rosevelt & Carly, or order, for two hundred and forty-two dollars and fifty-five cents; look at that and see if you——does that bear the indorsement of your firm?

A. It does.

Q. And your own also?

A. And my own.

Q. Was the money received on that? 40

A. It was.

Q. On what account?

A. For services in the action referred to.

Q. I show you a third check drawn by Alice Lee, Executrix, dated February thirteen, eighteen hundred and eighty-two, to Jones, Rosevelt & Carly, or order, for two hundred and eighty-nine dollars and thirty-five cents; please look at that; does that bear the endorsement of your firm and your own?

10 A. It does.

Q. And did you receive the money on it?

A. I did.

Q. On what account?

A. For services and disbursements in the action.

By Mr. McCarter: I offer these three checks in evidence; (said three checks referred to, were marked respectively *Exhibits Nos.* 3, 4, 5, for Complainant.)

Q. Do you know where Mr. Lee lived when this business was going on?

20 A. I do; he lived in Easton, Pennsylvania.

Q. Did he see you personally in New York?

A. He did quite frequently.

Q. Can you tell how many journeys were made to New York by him in connection with this business; how many times he came to see you about it?

A. I can only approximate it; I could not speak with any certainty.

Q. In the progress of the defense was it necessary and proper that he should confer with you personally?

30 A. It was.

Q. Can you give an idea of how many such visits were made?

A. In the different stages of the action I should think at least ten.

Not cross examined:

Alfred W. Ladd, a witness produced on behalf of the Complainant, having been duly sworn, testified as following:

Direct examination:

40 By Thomas N. McCarter.

Q. Where do you live, Mr. Ladd?

A. In New York, sir.

Q. Did you know John Lee in his life-time?

A. Yes, sir.

Q. Did you know Mr. Michael Dolan also?

A. I did, sir.

Q. Did you ever have any interest in or connection with the claim which finally resulted in Durham's judgment against the estate of John Lee?

A. I did. sir. 10

Q. How were you concerned with it?

A. Mr. Jackson—I advanced him money and he assigned it over to me—William B. Jackson, not James Jackson.

Q. And you were assignee at one time of the claim?

A. Yes, sir; I was assignee.

Q. Did you assign it to Durham?

A. I nominally advanced it over to him by the advice of Judge Beebe.

Q. Did you at any time go to see Mrs. Dolan about 20 it?

A. I did at one time; I had an hour's conversation with her I think—an hour or two at her house.

Q. At what place?

A. In Elizabethport.

Q. On what subject was the conversation?

A. I went there to see if I could get her to settle this claim.

Q. At the time you were interested in it—you were then holding it? 30

A. I held the claim.

Q. Did you succeed in getting her to settle it?

A. No, I didn't; she was not inclined to give me much information, but she told me I must look to Mr. Lee as surviving partner—an uncle of hers, I think she said.

Q. Had suit been commenced on the claim at that time?

A. Now, it is impossible for me to remember; I have been trying for months to remember, and I cannot re- 40

member it; my books have all been lost since, on account of moving from where I lived in Number Forty Courtland street, where I had an office; my partner sold all the books for old paper, and I cannot refresh my memory; it is impossible; I have been trying for months to refresh my memory.

Q. Well, now, to the best of your recollection was it before or after the suit was commenced?

A. To the best of my recollection it was before this
10 suit was commenced, but I could not swear to it positively.

Q. Which suit do you mean, the original suit?

A. I mean the original suit; my clerk served the papers on Mr. Lee before me at the Merchant's Hotel; I was there present and saw the service.

Q. To the best of your recollection it was before that?

A. Yes, sir; that service was made on the seventh and eighth of June, and my impression is it was made before that but I wouldn't swear to it; there are other
20 circumstances which lead me to think it may not have been; if it wasn't before that it could not have been until the twenty-second of February, eighteen hundred and seventy-five, if it wasn't on the twenty-second of February, eighteen hundred and seventy-two; it was certainly the twenty-second day of February, that I know distinctly, I remember speaking to Mrs. Dolan on that day, because it was Washington's Birthday.

Cross examination:

By Mr. Cortlandt Parker.

30 Q. I think you said there were other things that made you think it might be different from eighteen hundred and seventy-two?

A. Yes, sir.

Q. What were they?

A. Mrs. Dolan while there spoke to me about her son John, she said she would like to bring him up in the railroad business and wanted to know if I wouldn't like to take him, and I told her at the time I thought I would like to take him in our office, and that office was
40 at 40 Cortlandt street where I lost these books, and I

didn't go there until eighteen hundred and seventy-five, and he came with me there to that office; that is all the circumstance which I can remember since the books have been lost.

Q. Where was this?

A. Forty Cortlandt street; the lower floor was West & Company; they were partners of mine at the time.

Q. You went to this office, when?

A. In the Winter of eighteen hundred and seventy-five; it was previous to the Centennial; I went there in November, eighteen hundred and seventy-five, and I went on to Philadelphia soon after to help furnish the materials for the Centennial buildings. 10

Q. You went there in November, eighteen hundred and seventy-five?

A. Yes, sir.

Q. This interview was on the Twenty-second of February; you are sure of that?

A. Yes, sir; I know it was on the Twenty-second of February. 20

Q. Then, if it was after you went to that office, it was as late as February, eighteen hundred and seventy-six?

A. Well, it must have been, but my memory is very indistinct on account of losing those books; I could not refresh my memory.

Q. Do you remember in that interview that Mrs. Dolan told you that all matters between her husband's estate and Lee had been settled by arbitrators?

A. There was something said about the settlement, but I don't remember what it was; she said that Mr. Lee was the proper man to pay that claim; she said she would have nothing to do with it all; that Mr. Lee was the man; that it was not chargeable to the estate. 30

Q. You mean that something was said about the settlement of matters between Lee and Dolan.

By Mr. McCarter: He has not said that.

A. Yes, I had seen a lawyer before this; two years; I had been talking with her lawyer, Mr. Robst; Mr. Brown had helped me—Mr. E G. Brown—with Mr. Robst, a 40

friend of Mr. Brown; she referred me to Mr. Robst in this conversation.

Re-direct:

By Mr. McCarter.

Q. How many conversations or interviews did you ever have with Mrs. Dolan about this matter?

A. Only one; about two hours I was at her house, but I had been two years talking with Mr. Robst.

Q. Mr. Robst?

10 A. The lawyer, Mr. E. G. Brown, and I had been talking.

Q. About this claim.

A. Yes, sir.

Q. How did you come to talk with Mr. Robst about it?

A. Because he was the lawyer; Mr. Brown advised me to see Mr. Robst.

Q. As Mrs. Dolan's counsel?

A. Yes, sir.

20 Q. And had you, before this interview, made known to Mr. Robst the——(interrupted.)

A. Oh! a dozen times; I met him over to Mr. Brown's house once; he was a drinking man, and when he was sober he talked pretty reasonable.

Q. When you talked to Mrs. Dolan did she speak of Mr. Robst as her counsel?

A. She did.

Q. Did you tell her you had seen him?

A. I did.

30 Q. Now, Mr. Ladd, if it was in eighteen hundred and seventy-six, had you not already sued and got judgment against him?

A. Yes, sir; I got judgment on the Twelfth of November, eighteen hundred and seventy-four, and I cannot account why I should go and see Mrs. Dolan after that.

Q. Now, what had John's going to your office to do with the date of that conversation?

A. Because it came immediately after my seeing his
40 mother; that is all it has to do with it.

Q. How do you fix the time that he came as immediately after?

A. Because I moved from Forty-three New street, in November, eighteen hundred and seventy-five, to Number Forty Cortlandt street, the lower floor.

Q. What had that to do with your seeing Mrs. Dolan?

A. She sent Johnnie up immediately—about one or two months after I talked with her as near as I can think. 10

Q. Have you anything to fix the length of time that intervened between the time you talked with her and the time he came?

A. I have not, no, sir; I can't remember it.

Q. Had you any doubt about your going to see her in eighteen hundred and seventy-one or eighteen hundred and seventy-two, until Johnnie attempted to correct you by saying he came immediately after?

A. I hadn't a bit of doubt.

Q. Then your doubt was raised when Johnnie told 20 you of the time when he came?

By Mr. Parker: I think that is cross examination, the Counsel is leading the witness.

By the Court: Proceed.

A. I had no doubt until he talked to me about it, we talked the matter over several times together.

Re-cross:

By Mr. Parker.

Q. Well whether he talked over the matter with you or not, do you or not remember that at this conversa- 30 tion you proposed, or that Mrs. Dolan proposed to you, that Johnnie should go and take his place in your office?

A. I don't know how to answer that question; I can't remember any more than I have sworn to.

Q. You can't remember what?

A. I can't remember any more about the dates on account of losing these books.

Q. I am not asking you to remember about the dates, I am asking you whether you remember that at that 40

conversation with Mrs. Dolan you talked over Johnnie's going to you, and for the first time?

A. I remember that distinctly.

Q. That she did then talk with you about his going to you?

A. Yes, sir; that is the only time I ever saw her and she spoke about it.

Q. Now then, he did afterwards go to you?

A. He did.

10 Q. Can't you tell whether it was two years or three years later that he came?

A. Well my impression is it was but a few months—my impression.

Q. He came in consequence of that conversation?

A. He did; yes, sir.

Further re-direct:

By Mr. McCarter: Did you never see Mrs. Dolan but once?

A. I never saw her since until I saw her this Spring 20 in Court.

Q. Now was that conversation between you pleasant and friendly?

A. Well, she seemed to be moved at first on account of this claim being presented to her; she had heard of it through Mr. Robst; I think she told me she had heard of it through Mr. Robst, her lawyer.

Q. Did she become pleasant afterwards?

A. Yes, she became pleasant afterwards; she was quite moved at first.

30 Q. How did she manifest her state of movedness?

A. She wanted to drive me out of the house at first but I told her I didn't come to annoy her at all, and finally she became quite pleasant.

Further Re-cross:

By Mr. Parker.

Q. She expressed herself that it was a very unjust claim against her?

A. Well, she said that it was for Mr. Lee to settle.

40 Q. Not for her at all?

A. Not for her at all; that is the way she expressed herself to me.

ALICE LEE, the Complainant, having been duly sworn in her own behalf, testified as follows:

Direct examination:

By Mr. T. N. McCarter.

Q. Mrs. Lee, you are the widow of John Lee?

A. Yes, sir.

Q. And the Complainant in this case? 10

A. Yes, sir.

Q. Did you, in your husband's life-time, learn from him the fact that he had been served with a paper in New York?

A. Yes, sir.

By Mr. Parker: One moment; how is it competent?

By Mr. McCarter: It is only introductory.

Q. After receiving such information were you present at a conversation between Mr. Lee, your husband, and Mrs. Dolan, about that suit in New York? 20

A. Yes, sir.

Q. And how soon was it after your husband had been served with that paper?

A. Well, I can't say whether it was before the judgment was obtained by default, or whether he had been sued in the first place: I can't really say; we had a conversation, and when I found my husband was sued I spoke to Mrs. Dolan about it.

Q. Where was this conversation? 30

A. To the best of my opinion it was at her house.

Q. What conversation did you have with her about it?

A. I told her that my husband was sued, or there was a judgment obtained through default, and she said that one of the parties who wanted to collect this money was at her house and she told him to clear out and go to the surviving partner, that she had nothing to do with it.

Q. Did she say anything as to whether the suit was 40

well founded or whether her husband had made the promises (interrupted).

A. Well I can't remember—as near as I can recollect it she said she had no doubt but what her husband did promise the amount of money for getting the work,

Q. Were you present at a conversation between your husband and Mrs. Dolan about the matter?

A. Yes, sir.

Q. And can you tell when that was?

10 A. That was to the best of my opinion in February before he died, at our own house.

Q. And when did he die?

A. April twenty-eighth, eighteen hundred and eighty-one.

Q. Then according to your recollection it was in February, eighteen hundred and eighty-one?

A. Yes, to the best of my opinion.

Q. Now, what conversation took place between your husband and Mrs. Dolan about this suit in New York

20 at that time?

A. Well she came with Judge McCormick on her own business, and of course Mr. Lee came into the room and said he had been defeated in one Court and he said "if I am defeated in the other Courts I expect you to pay your half of it" and she seemed quite surprised that she should be asked to pay her half; and he said that if anything happened to her in the mean time, that the heirs would collect it.

Q. Now, when he said he had been defeated in one

30 Court, and if he was defeated in the other Court, did he specify what claim he was talking about—did he make known to her what——(interrupted.)

A. No, I cannot say that he did; of course he was fully aware that she knew of the suit pending in New York at the time, and I don't know as he did mention it particularly to her at that time.

Q. He spoke about a suit in New York?

A. Yes, he said about a suit in New York; of course he may have said it, but I don't remember the words.

40 Q. You heard the conversation?

A. Yes, sir.

Q. Did you understand from the conversation what he referred to ?

A. Yes, very well indeed ; very well.

By Mr. Parker : I don't think that is right

By the Court : I suppose all she can do is to give her recollection of the conversation—not her understanding.

Q. Did you pay this judgment finally—it was paid after your husband's death, was it not ?

A. Yes, sir ; it was paid. 10

Q. Did your husband keep an account of the expenses connected with the defense of this suit ?

A. Yes, sir ; you have the book.

Q. Is that it ? (showing witness a book.)

A. That is my husband's hand-writing, with the exception of the last entry, made by myself, February sixth, eighteen hundred and eighty-two.

Q. That is the book of the account, is it ?

A. Yes, sir.

Q. Do you know anything about whether he did go 20 from Easton to New York about the business of defending that suit ?

A. On several occasions ; I can't say how many times, but on several occasions ; because he made an entry of it on his return.

Q. You saw him make the entry on his return ?

A. Well, I will not say that I saw him make the entry.

Q. I see an entry there of six occasions where he charges expenses to New York on that business ; can 30 you tell how many times he went ?

A. No, sir ; I can't.

Q. Can you tell whether he went as often as that or not ?

A. I can't say.

Q. You can't speak ?

A. No.

Cross examination :

By Mr. Parker.

Q. When you now say that you knew of his going to 40

New York on this business, it was in consequence of what he told you, wasn't it?

A. Yes, sir.

Q. And after he had been there?

A. Yes, sir.

Q. He simply said that he had been there on that business?

A. Yes, sir.

Q. Now, you say that you had a conversation yourself
10 with Mrs. Dolan?

A. Yes, sir.

Q. And at her house?

A. I am not positive whether it was at her house or not; I rather think it was at her house, but I am not positive; we have met on several occasions at the salt water and other places, and it may have been at the salt water that I had this conversation with her as regards this suit.

Q. And you don't even recollect with certainty where
20 this conversation was?

A. I don't, but to the best of my opinion at her house.

Q. Stop a moment, please; do you recollect who was there?

A. None but herself.

Q. Nobody but herself?

A. No, sir.

Q. What makes you sure of that?

A. Well, I don't remember any person else at present.

Q. You don't remember any other person?

30 A. Not at all.

Q. That is all you can say?

A. Yes, sir.

Q. Was it in the room or open air, or where?

A. I can't say.

Q. Can you say whether or not it was in a street car?

A. It was not in a street car.

Q. It wasn't?

A. No.

Q. Can you say whether it wasn't in some public
40 vehicle?

A. I can't say ; I remember having a conversation.

Q. That is all?

A. That is all.

Q. Now who introduced the conversation?

A. I mentioned it first to her.

Q. You mentioned what?

A. Mentioned this suit—Mr. Lee being sued in New York, I can't say he was sued, in the first place, the judgment was gotten by default.

Q. It was after the judgment was gotten by default, 10 was it not?

A. Yes, sir ; it was after the judgment was gotten by default.

Q. Do you know about how long after?

A. I can't say.

Q. Do you know whether your husband had made any effort to have that default opened?

A. Yes, sir; he had.

Q. He had done so?

A. Yes, sir. 20

Q. At the time of this conversation?

A. I can't say.

Q. I am asking about the conversation you had with her when you and she you say were alone ; now, I ask you again, do you remember whether or not your husband at the time had applied to open that default?

A. Well, of course he was sued ; I can't say whether it was the time he was sued first that judgment was got by default or whether it was afterwards ; I cannot remember at what period the conversation took place. 30

Q. Well, then, you are entirely uncertain except that it was after the default.

A. I can't say whether it was after the default or not; I remember the conversation.

Q. Now, do you mean to correct yourself there?

A. Not at all, if I find I need to be corrected.

Q. Your counsel said that you had corrected yourself, now I want to understand do you correct yourself?

By Mr. McCarter: About what?

Q. About the date being before or after the default? 40

A. I remember the conversation taking place, I can't remember the dates at all.

Q. Can't you remember with reference to the event of the default?

A. No, I can't; I remember the conversation taking place, and that is all I remember.

Q. You said a little while ago you were sure it was after the default?

A. I can't say.

10 Q. Now you take that back do you?

A. I take that back; I certainly do.

Q. And can you be certain that it was not after the first decision made against your husband?

A. I can't be certain of that.

Q. That was much later than the default?

A. Yes; I remember this conversation took place,

Q. Now if I understand you, Mrs. Dolan then said that the man who wanted the money had been at her house and she had driven him out?

20 A. Yes; she told him to clear out, to go to the surviving partner, she had nothing to do with it.

Q. Who was that man?

A. I cannot tell that.

Q. Didn't she tell you?

A. No, I don't remember.

Q. Did you ask her?

A. No, I didn't.

Q. Did you know who the man was?

A. No, I didn't.

30 Q. Did you know who was the real Plaintiff in the case at that time?

A. No, I can't say I did.

Q. Now your recollection is entirely hazy about this conversation, isn't it?

A. Yes; I remember we had a conversation, but I can't remember the dates, whether it was after the judgment by default or before.

Q. Then you can't remember whether mention was made distinctly by either of you what this claim was or

40 whether it was a claim in New York?

A. Mrs. Dolan admitted that she had no doubt that Mr. Dolan had promised this amount of money, but she didn't think she ought to be made to pay it, as the surviving partner was living.

Q. Then your husband died when?

A. April, eighteen hundred and eighty-one.

Q. And in the February before he died he had a conversation with Mrs. Dolan?

A. Yes, sir.

Q. Where was that? 10

A. At our own house.

Q. At your house?

A. Yes, sir.

Q. You fixed the date of that?

A. I didn't; no, sir; it was some time in February.

Q. Some time in February, eighteen hundred and eighty-one. I believe that is all.

Re-direct:

By Mr. McCarter.

Q. The conversation you had yourself with Mrs. Do- 20 lan, was it before or after the conversation which your husband had in eighteen hundred and eighty-one?

A. Oh, it was long before that, when he was first sued.

Q. Now, you have a son Philip Lee?

A. Yes, sir.

Q. Where is he?

A. In Texas.

Q. Residing there?

A. Yes, sir. 30

By Mr. McCarter: We offer in evidence the account in the book on expenses; (said account handed to Defendant's Counsel); objected to by Defendant's Counsel.

By the Court: The proof is clearly insufficient to admit the book as a book on account; you must go further than to prove it was a book of account; the book being objected to must be ruled out.

By Mr. McCarter: We have here the evidence of Philip Lee, the son, taken *de bene esse*; (said testimony read by Mr. R. McCarter). 40

DENNIS RILES, a witness produced on behalf of the Complainant, having been duly sworn, testified as follows:

Direct examination:

By Mr. McCarter.

Q. Where do you live?

A. In Easton, Pennsylvania.

Q. Were you acquainted with John Lee in his lifetime?

10 A. I was.

Q. Do you know his widow?

A. I do.

Q. Did you have anything to do with the settlement of the judgment in New York, which had been obtained against him as surviving partner of Lee & Dolan?

A. Nothing whatever, except to lend Mrs. Lee the money with which to pay it.

Q. I show you a check, dated February fourth, eighteen hundred and eighty-two, purporting to be drawn

20 by Dennis Riles on the Easton National Bank for three thousand nine hundred and sixty-nine dollars and five cents. Look at that?

A. That is my signature and that is my check.

Q And to whom did you give that?

A. I drew this check, as you see, and went to the bank and got a draft on New York in favor of whoever they told me to fill it out for; I don't know who that person was now.

Q. And for what purpose was that check given?

30 A. For the purpose of paying the claim; my check would not be good in New York and I got a draft.

Q. Is that the stub you put on the check book at the time?

A. That is the stub; I am in the habit of pasting my checks back.

(Objected to by Mr. Parker.)

Q. Now that check was paid through the bank, was it?

40 A. Yes.

(Said check offered in evidence) ; objected to by Mr. Parker as having nothing to do with the case.

By the Court : I don't see, Mr. McCarter, that there is any burden upon you at this stage of the case to show where you got the money with which Mrs. Lee says she paid this judgment ; until that is disputed I suppose it must be admitted as true ; I understand her evidence to be that this judgment was paid, and that she paid it ; I don't understand that any dispute is raised by the answer in this case upon that point. 10

Q. Mr. Riles, you live in Easton ?

A. Yes, sir.

Q. What is the fare from Easton to New York and back.

A. Three dollars and forty cents now, it may have been a little more at that time.

Q. At the death of Mr. Lee ?

A. Yes, sir ; I think it was three dollars and eighty cents then, possibly three dollars and forty cents. 20

Not cross examined.

By Mr. McCarter : We offer in evidence an exemplified copy of the judgment roll of the proceedings in the State of New York ; (same marked *Exhibit No.* 6.)

By Mr. McCarter : Unless we have accidentally omitted something, that is our case ; the will was made an exhibit in the testimony of Mr. Philip Lee, we now formally offer it ; it is necessary to do so ; it is already marked as an exhibit.

Complainants rest. 30

[RECESS].

PETER MITCHELL, a witness produced on behalf of the Defendant, having been duly sworn, testified as follows :

Direct examination :

By Mr. Parker.

Q. You are an attorney and counsellor at law ?

A. I am. 40

Q. Living in New York ?

A. I am.

Q. You are, or were one of the firm of P. & D. Mitchell ?

A. I am a member of that firm and was for years.

Q. And that firm were Attorneys for the I laintiff in the suit of Durham against Lee, that has been referred to ?

A. They were, yes.

10 Q. When, about, if you can tell us, did you become Attorney in that suit ?

A. It was early in the fall of eighteen hundred and seventy-eight, I think.

Q. On whose retainer or employment ?

A. John P. Sunderland's.

Q. What was the situation of the case at that time ?

A. The case had been at issue, and the issues were referred to a referee to try and determine ; the original Plaintiff in the case was dead, and the case was dead to 20 a certain extent ; I then caused papers to be drawn to revive the case, and had an order of reviver entered, making Mr. Sunderland Plaintiff, and the case sent back to the referee to proceed with.

Q. Who was the Attorney at that time for the Defendant ?

A. The firm at that time I don't recollect ; I think it was Jones, Rosevelt & Carly ; Mr. Jones, however was the active Counsel in the case, represented the Defendant.

30 Q. The same gentleman who was sworn here ?

A. Yes.

Q. Did you ever have anything to say to Mr. Jones as the Attorney for the Defendant in respect to the compromise of the case ?

A. I did.

Q. About when as near as you can fix the dates ?

A. It was the first or second interview, when I made the motion to revive the case, after the hearing of the 40 motion and before the order was entered, coming away

from the Court, or rather in the Court House, as we were coming from the Court Room—(interrupted.)

By Mr. McCarter: I object to this, it has no bearing on the case.

(Objection overruled.)

Q. Will you proceed, sir, and state?

A. As I was stating, in coming out from the Court Room, I talked with Mr. Jones about the case in a general way, and I finally told him I thought it was a case that ought to be settled, and after some talk with him I 10 told him that the case could be settled for less than fifty cents on the dollar of the claim.

Q. What did he say to that?

A. He was very stiff in claiming for the rights of the defence, saying there was nothing in the claim, and so on; I told him I differed from him very much; I said there might be some difficulty in getting the proof together in the case, but I had no doubt of the justice of the claim; I should advise a settlement for less than fifty cents on the dollar; I know it could be had if he 20 would entertain the proposition, and I asked him to submit what they would pay in the matter.

Q. Did you have any conversations afterwards about that matter?

A. I don't know as I did; nothing that I can recollect so definite as that interview; I know there was considerable talk with my Client about it and others, about settling the case.

Q. Well, as a matter of fact, sir, could the case have beeu settled, and for about what sum? 30

A. I think it could have been settled for the sum of seven hundred dollars or eight hundred dollars.

By the Court: My ruling, Mr. McCarter, must not be understood as embracing this last testimony.

By Mr. Parker: I asked the question because I thought it relevant testimony in the view I take of this thing; there was utter absence of diligence on the part of Lee, which does not authorize him to come to us at this stage and make a response, which is the result of his obstinacy. 40

Cross examination :

By Mr. McCarter.

Q. Was this case reported in the Court of Appeals ?

A. Yes.

Q. Is it the same case reported in eighty-seven, New York, five hundred and ninety-nine ; can you remember, Durham against Lee ?

A. It must be this case ; I know of no other.

JOHN P. SUNDERLAND, a witness produced on behalf
10 of the Defendant, having been duly sworn, testified as follows :

Direct examination :

By Mr. Parker.

Q. Where do you live, sir ?

A. Brooklyn.

Q. What is your profession ?

A. I am in the Mercantile Agency.

Q. Are you the same gentleman named in these proceedings as the owner of the claim of Michael W. Dur-
20 ham against John R. Lee ?

A. I am by assignment.

Q. When did you become connected with this claim?

A. On the first of December eighteen hundred and seventy-four.

Q. By assignment from whom ?

A. Michael W. Durham.

Q. Did you see Mr. Lee the decedent about it ?

A. I did.

Q. When.

30 A. The first day of December eighteen hundred and seventy-four.

Q. Where ?

A. At his own house in Easton.

Q. State what took place between you ?

A. I showed him a transcript of the judgment I obtained from the Court and asked him if he proposed settling that judgment.

Q. Well ?

A. He looked at it, and says he " who is Mr. Dolan.

40 Q. Well ?

A. I told him that I didn't know; that I supposed that he knew; says I "don't you know Mr. Dolan?" says he, "I have heard the name."

Q. Well?

A. Says I "the case shows that you were a partner with him."

Q. Well?

A. He said "that is not so."

Q. Well?

A. I asked him then if he had any proposition about settling the judgment, if not, I should commence suit against him in Pennsylvania on the transcript. 10

Q. Well?

A. "Well," says he, "if you want to commence an action, I will spend ten thousand dollars before I will pay a cent."

Q. Well?

A. I was there for perhaps two hours; we had quite a conversation; I don't know as I can tell verbatim our conversation; he sent out during the time I was there and got a lunch for us, and he and I ate dinner together in his house. 20

Q. Well, was anything further said?

A. Well, I told him I could have that judgment assigned to me, and if he had any idea of settling the judgment it might be compromised for a small sum.

Q. Well?

A. He said "No;" says he, "I will pay it all, but I will spend ten thousand dollars before I do pay it; I will pay it all if compulsory." 30

Q. Well?

A. That is all that I can remember at that time until the second day of May.

Q. Well?

A. In the meantime I had the judgment assigned to me on the fourth day of December; then he, through Mr. Jones, served we with papers to open the judgment in the Superior Court of New York; the judgment was opened, and Judge Nelson was appointed referee in the case. 40

Q. Well?

A. After two sitting——(interrupted).

By Mr. McCarter: Well now all this proceedings the Counsel objected to because it was a matter of record, when I was enquiring about it.

By the Court: I suppose it is for the object of showing another interview with Mr. Lee?

By Mr. Parker: Yes.

By the Court: You had better go direct to it.

10 Q. Well?

A. After the second stitting I felt that we had no evidence much in the case, and that we could not get the evidence and I sent a letter to Mr. Lee on the second day of May.

That part of the tesimony of this witness relating to the contents of said letters, were, by order of the Court, expunged from the record.

By Mr. Parker: We ask the Counsel on the other side to produce two letters dated about the second, and 20 eighteenth of May, eighteen hundred and seventy-five, by Mr. Sunderland to Mr. Lee, and mailed to him at Easton, New Jersey.

By Mr. McCarter: Counsel for Complainant responds that this is the first intimation or notice they have ever had of the existance of any such letters; that it is impossible now to produce them, or make search for them to find out whether they are in existence or not, as, if the letters are in existence, they are in another State, at Easton.

30 Q. Had you any further intercourse with either Mr. Lee or his Attorney, Mr. Jones, in respect to this matter?

A. No further with Mr. Lee excepting those two letters; nothing after that; then I called upon Mr. Jones twice at two different times, the Attorney for Mr. Lee.

Q. State what passed?

A. I cannot give the exact words, but I merely stated to him that I would like to make a compromise of that matter.

40 By the Court.

Q. Twice after the letters were sent?

A. Yes, sir.

Further direct:

Q. And what?

A. That I would settle the case for a small sum if he advised Mr. Lee to do so.

Q. Did you name the sum?

A. I think I named five hundred dollars; I am not sure; I think it was five hundred dollars.

Q. It was five hundred dollars? 10

A. It was five hundred dollars; yes, sir.

Cross examination:

By Mr. McCarter.

Q. You say you belong to a Mercantile Agency?

A. I do now, and did at that time.

Q. What is the Mercantile Agency?

A. McKillop & Sprague; I am doing business now for R. G. Dunn & Co.

Q. What kind of business do you do for them? 20

A. Collecting and rating.

Q. Are you a lawyer?

A. No, sir.

Q. Have you ever been?

A. No, sir.

Q. What was the cause of your anxiety to settle this claim?

A. The claim was brought over to me and I took it on certain contingencies; I paid out a lot of money on it; I paid Mr. Voorhees—James Voorhees—the first Attorney that was in the case, twenty-five dollars, and 30 had him substituted by Mr. Lewis, and gave him eighty dollars.

Q. I didn't ask you these details, I asked you the reason of your anxiety to settle this claim for a small amount?

A. The reason was I couldn't get the testimony.

Q. You could not prove it?

A. I couldn't get the proofs at all; it was in the hands of other parties and I couldn't get it; they wanted me to pay a large amount—(interrupted.) 40

Q. Hold on; who put the claim in your hands?

A. A man of the name of Chase brought the claim over to me and asked me if I would take it.

Q. Who was he?

A. A man I didn't know; he came over from New York to Jersey City; I was in Jersey City at that time, in the Hudson County Bank.

Q. Who was Chase?

A. I can't say, a man I didn't know.

10 Q. Was he the owner of the claim?

A. He came over, it seems, for the Plaintiff here, Mr. Durham, and asked me if I would not take the case, they hadn't the money to carry it through, and wanted to know if I wouldn't take it and carry it through for them.

Q. And you agreed to?

A. I said I would look into it first, that is the reason I went to Easton on the first of December; the case wasn't assigned to me until the fourth of December.

20 Q. By whom was the case assigned?

A. It was assigned by Mr. Durham; I saw him when it was assigned.

Q. The claim was not really yours, was it?

A. I took it; the claim was mine.

Q. Did you pay for it?

A. After I saw Mr. Lee I paid a certain amount for the claim.

Q. To Durham?

A. To Mr. Chase.

30 Q. How much?

A. I forget the amount.

Q. Well, as near as you can tell?

A. I can't say what it was.

(Objected to as immaterial; objection sustained.)

Q. Did you know Lee before?

A. I never saw him until I saw him at his house.

Q. At the time you went up there, the judgment you had was one by default, was it not?

A. Yes.

40 Q. And I think you said it was before the judgment

was opened; had Mr. Lee up to that time any knowledge of the recovery of the judgment?

A. I don't think he had until I showed him the transcript; he acknowledged to me of his having notice of the summons three years before that in New York.

Q. How long had the judgment been entered up when you went there?

A. It was entered up on the twelfth day of November, and I went there on the first day of December.

Q. Then it was entered up on the twelfth of November before you went? 10

A. Yes, sir.

Q. Had it been entered when you took the claim? was it in judgment when you took it?

A. It wasn't assigned to me until the fourth day of December.

Q. It wasn't assigned to you until the fourth day of December, but was it in judgment when it was first brought to you?

A. Oh yes, the judgment was obtained. 20

Q. Were did you go first to see Mr. Lee?

A. I went right to Easton.

Q. You didn't go to see his son on the Longwood Valley Railroad?

A. No sir; I went there first and ascertained his residence; he was a stranger to me and I knew nothing about him.

Q. What did you say to him about your willingness to settle the claim for a small sum; what reason did you give him for that? 30

A. Said I, "Mr. Lee I can get this judgment assigned to me, if you have any idea of compromising, I can do it for you perhaps;" that was about all that was said on that scale; that was going to the depot.

Q. You had ascertained he was a man of responsibility, didn't you?

A. I did, yes sir.

Q. And the judgment was how much?

A. Two thousand eight hundred and thirty-one dollars. 40

Q. And you had a judgment for it?

A. Yes, sir.

Q. And it wasn't opened?

A. Not at that time.

Q. Now you say your reason for being willing to settle it was the difficulty of getting testimony; did you want any testimony on a judgment?

A. I meant I didn't say so, I would rather compromise than go to a suit in Pennsylvania.

10 Q. Did you need any evidence except the judgment itself, to succeed in that suit?

A. The only evidence was—he told me it was a snap judgment he was caught in in New York.

Q. Did you need any other evidence to recover on that judgment than the transcript itself?

A. No other evidence, only he said he was going to open it; he said, "I am going to get a lawyer in New York and have it opened."

20 Q. Did you go there with the intention of compromising?

A. I did not, nothing of the kind, until after our interview, when I had a long talk with him; I thought if he was good the judgment would be paid.

Q. Didn't he express considerable indignation and surprise about the judgment?

A. He was surprised that the judgment was obtained against him.

Q. Didn't he complain that he never had made any 30 such contract, or was not liable on it?

A. He said that he had got that contract himself.

Q. Yes?

A. Through Mr. Fielder, I think.

Q. Did he say the broker, Jackson was his name, had no claim on it?

A. He said he didn't know him at all.

Q. Didn't know Mr. Jackson?

A. No sir.

Q. He denied his liability on the claim?

40 A. He denied the liability on the claim, yes sir; he

said he had paid a lawyer five dollars in New York to contest the case for him.

Q. Well, when you went there, what did you go for?

A. I went to ascertain his residence and see about collecting the judgment.

Q. It hadn't then been assigned to you?

A. No, sir.

Q. And you didn't own it?

A. Didn't own it at that time.

Q. Who did own it? 10

A. It stood in the name of the Plaintiff, Mr. Durham.

Q. Was he the real owner?

A. I know nothing about that.

Q. Then you didn't know who was the real owner of the claim?

A. I didn't.

Q. Had you then had any communication with anybody but Mr. Chase?

A No one but Mr. Chase.

Q. What authority did Mr. Chase give you for compromising? 20

A. He gave me no authority to compromise at all; I only told Mr. Lee I thought I could compromise the matter with him.

Re-direct examination:

By Mr. Parker.

Q. I understand you never made an offer of compromise until after you were the assignee of the judgment? 30

A. The assignment was on the fourteenth day of December; I made no offer of compromise until the second day of May.

By Mr. McCarter.

Q. Didn't you tell him going to the depot you thought it could be settled for a small sum?

A. I said I could get the judgment assigned, and could get it compromised, but I didn't say anything about a sum.

Further re-direct: 40

Q. Who was the original Plaintiff's Attorney in the case, do you remember?

A. Beebe, Donahue & Cook.

Q. Then was there a substitution before that which admitted Mr. Mitchell, who was your Counsel?

A. When I took the case—(interrupted.)

By Mr. McCarter: This is a matter of record.

By Mr. Parker: Never mind then.

ALFRED W. LADD, recalled on behalf of the Defend-
10 ant.

Direct examination:

By Mr. Parker.

Q. You stated, I think, when on the stand before, that you were interested—had been interested in this judgment—in this claim?

A. Nobody else owned the claim but me; I controlled the claim; it was my claim only; I brought it in the name of another man by the advice of my Counsel.

Q. Well, now while you controlled the claim, did you
20 ever have any talk with Mr. Lee about settling?

A. I did once.

Q. Where?

A. Nos. Five and Seven Dye street.

Q. What passed between you?

By Mr. McCarter: One moment; I think there ought to be some foundation laid for that testimony as far as this witness is concerned, by showing that Mr. Lee knew that he was the owner of the claim.

By the Court: I understood the question to be to
30 state what passed between him and Mr. Lee.

By Mr. McCarter: The only ground it seems to me on which this evidence is relevant at all is for the purpose of throwing on Mr. Lee some imputation of negligence or want of good faith, or unnecessary expense in the defense of this case; now whatever conversations he had with some one else, unless he knew the party who made the proposition was authorized to settle, it seems to me are not competent.

By the Court: I supposed that was just the sort of
40 evidence Mr. Parker was trying to get at by having the

witness state all that transpired between him and Mr. Lee.

By Mr. McCarter: Well, I renew my objection; (objection overruled.)

By the Court.

Q. Give the time in the first place?

A. Just after the papers were served by my clerk, Mr. Howell.

Q. What time was that?

A. The papers were served——he swore to the affidavit the eighth of June. 10

By Mr. McCarter.

Q. I want your knowledge of it; you know when they were served?

A. I was with him when they were served.

By Mr. McCarter: I object to what Mr. Ladd stated he swore to.

By the Court: It was just after the papers were served. 20

Witness: I got talking to him about the case in the yard between my office and the New York & Boston office; and he was very indignant about it, and I told him I wanted money very bad, and I offered to settle the case very cheap, and said I would take seven hundred dollars; he said he would spend a great deal of money on it to whip me, if it was all he was worth.

Further direct:

Q. I understand you were present when the papers were served? 30

A. I went with Mr. Howell to serve them down to the Merchant's Hotel, in Cortlandt street; I knew Mr. Lee by sight, and my man didn't know him; I pointed him out to him and he served them; he had been with me a great many years; he was a Deputy Sheriff.

Q. What happened at the time he served the papers?

A. Nothing happened at that time, this was after the papers were served.

Q. Did Mr. Lee have any conversation with you at that time, or in your hearing about the papers? 40

A. He seemed to be wrothy about the papers being served—seemed to be very much agitated about it.

Q. Was there anything passed which made known to him who you were and your connection with the claim?

A. Not then, afterwards there was, when he met me in Five and Seven Dey street.

Q. What did you tell him then in relation to it?

A. I told him I owned the claim and was willing to compromise very cheaply, for a very small amount.

10 *Cross examination :*

By Mr. McCarter.

Q. Who did you get the claim of?

A. Jackson assigned it to me for loan of money; I loaned him altogether four thousand five hundred dollars; he owes me now about five thousand dollars.

Q. Did you tell Lee how you got it?

A. I told him how I got it; I told him it was assigned to me for a debt; Mr. Jackson was in my office then.

20 Q. Won't you just answer my questions, Mr. Ladd, please; what reason did you give Mr. Lee for being willing to settle it for so small a sum of money?

A. To avoid any litigation; I wanted to realize something out of it.

Q. The judgment was two thousand two hundred dollars.

A. It wasn't over two thousand two hundred dollars then.

Q. Had he ever heard of it before the summons was 30 served?

A. He pretended to say he didn't; he told me he hadn't.

Q. How long before this time had you got it?

A. It was assigned to me sometime before the suit was commenced; I should think perhaps it was assigned to me sometime in eighteen hundred and seventy-one; I should think it was assigned to me in June, eighteen hundred and seventy-one.

Q. Did you know Mr. Lee?

40 A. I knew him by reputation; I used to see him in

Gen. Sewell's office ; I was furnishing the Willimantic road with supplies ; I knew him by sight, I just bowed to him, I didn't talk to him much.

Q. This was assigned to you for money you had loaned to this man, Jackson ?

A. Yes, sir ; advanced money.

Q. Were there other securities or claims assigned to you at the same time ?

A. Yes, sir.

Q. What did Mr. Lee say ? 10

A. Mr. Lee denied his liability on it ; said he didn't agree to give Jackson any commission.

Q. Did he say he didn't know Jackson ?

A. Yes, he said he didn't know Jackson, he said I must look to Mr. Dolan for it ; that is what he said.

Q. Had you ever spoken to Lee about the claim before the time you spoke of when the conversation took place at Five and Seven Dey street ?

A. I never spoke to him about it before.

Q. You had the claim about a year ? 20

A. I think I had ; I had seen Dolan about it.

Q. Had you seen Lee before that ?

A. I had seen Lee once or twice before that ; but I didn't talk to him about it.

Q. When you had this conversation with Lee at Five or Seven Dey street, did you tell him how long you had had the claim ?

A. I think not ; I don't think I told him ; I told him it was assigned to me, that is all I told him.

Q. Then you had seen Dolan about it ? 30

A. Oh, I had seen him several times.

By Mr. Parker : I object to any questions as to Mr. Dolan.

Q. And you had spoken to Dolan about this claim ?

By Mr. Parker : I object.

Q. Now, in view of the testimony you have given this afternoon, can you tell us why it was you went to see Mrs. Dolan about this claim, when you say now you had seen Dolan before the suit was brought, and had sued 40

Mr. Lee, if you did go to see her, after you had sued Mr. Lee?

A. Well, I can't bring my mind down to what date that was when I went to see Mrs. Dolan; I think it was in eighteen hundred and seventy-two; that is my impression; I think it was the twenty-second of February.

Re-direct examination:

By Mr. Parker.

Q. When did you assign the claim away?

10 A. This man that we brought the suit in the name of was merely a figure head for Beebe, Donahue & Cook; I brought all my suits in his name; forty of them, I suppose.

Q. I see in the papers that Mr. Sunderland is named as the owner of the claim?

A. I had it assigned to him before this man died; he was a drunken man and I wanted to get it out of his hands, and this man Sunderland was a collector, and I thought could collect it, and I had it assigned to him.

20 Q. Who was Mr. Chase?

A. He was in my office; I let him come in there to bring in some custom to me, and I boarded with him over in Jersey City in eighteen hundred and seventy-four.

Q. Then this money that was realized on the judgment was brought to you?

A. Yes sir; I received three-fourths of it and Mr. Sunderland received one-fourth, except what the lawyers got.

30 John K. Howden, a witness produced on behalf of the Defendant, being duly sworn testified as follows:

Direct examination:

By Mr. Parker.

Q. Where do you live sir?

A. Reading, Pennsylvania.

Q. What is your business?

A. My special business is collecting of delinquent city and school taxes of the city of Reading.

Q. Did you know Mr. Dolan and Mr. Lee?

40 A. I did.

Q. Were you ever employed by them ?

A. I was.

Q. In what capacity and about when ?

A. I entered into the employment of Mr. Dolan & Rehill, they were partners then, in the fall of eighteen hundred and sixty-six, and subsequently entered into Mr. Dolan's employment, who was then alone, in eighteen hundred and sixty-seven or eighteen hundred and sixty-eight——(referring to diary) in eighteen hundred and sixty-seven, the fall of eighteen hundred and sixty-seven, I entered into Mr. Dolan's employ. 10

Q. After that were you in the employ of Mr. Lee ?

A. Yes, sir.

Q. And about when ?

A. Dolan & Lee ; that was in the fall of eighteen hundred and sixty-nine, we went on to the Passaic Valley and Peapack Railroad.

Q. Then Mr. Dolan died ?

A. Mr. Dolan died in the spring of eighteen hundred and seventy-one. 20

Q. Now, were you in the employ of the two when he died, at that time ?

A. No, sir, I wasn't in the employ of either at the time Mr. Dolan died.

Q. Well, after that time were you in the employ of either of the parties to this suit, Mr. Lee in his life time, or Mrs. Dolan.

A. After Mr. Dolan's death ?

Q. Yes ?

A. Well, I wasn't exactly in their employ, any more than that I assisted Mrs. Dolan in fixing up matters pertaining to Mr. Dolan's business. 30

Q. And to the business of Dolan and Lee ?

A. Yes, sir.

Q. In what capacity, you haven't stated, were you employed ?

A. As walking boss, as they call it on construction of railroads, and accountant.

Q. You kept books ?

A. Kept the accounts, yes sir. 40

Q. Were you present at the arbitration that occurred between Mr. Lee and Mrs. Dolan?

A. Yes, sir.

Q. Where was that arbitration?

A. It was held at the National Hotel, in Newark, this city.

Q. Do you remember of anything being said between Mr. Lee and Mrs. Dolan at that time, and before the arbitrators, or not, in relation to the debts of the Willi-
10 mantic side of their arrangement?

A. I don't remember that a conversation actually took place between Mrs. Dolan and Mr. Lee, but the understanding there was—(interrupted.)

By Mr. McCarter: Never mind now.

Q. Do you remember anything said between the parties about it?

A. Yes, sir.

By the Court: What parties?

Witness: By Mrs. Dolan and Mr. Lee.

20 Q. What?

By Mr. McCarter: (to witness) state what they said and not what the understanding was; what you heard.

Q. State it substantially and as near as you can recollect it?

A. Well, I couldn't say positively that the conversation did take place between Mrs. Dolan and Mr. Lee; that I could not say.

Q. Well, did you hear anything said by Mr. Lee
30 then?

A. I couldn't say that positively.

Q. Well, did they appear there before the arbitrators by representation at all?

A. Yes, sir.

Q. Whom?

A. There was a gentleman by the name of Gibson, and Philip Lee, and another gentleman, I don't remember his name, and Mr. Robst, a lawyer, Robst, of Elizabeth.

40 Q. Now what, if anything, was said at that hearing

in relation to the payment by either party of the Willimantic obligations?

By Mr. McCarter: I object.

By the Court: I understand, Mr. Parker, that your question is broad enough to admit anything at all upon that subject by anybody.

By Mr. Parker: No, sir.

By the Court: Who then?

By Mr. Parker: By the parties, or their representatives, whom he has named. 10

By Mr. McCarter: He has named one of the arbitrators, not a representative of anybody, I think the question is incompetent.

By Mr. Parker: How can it be incompetent? I offer to prove that at that time it was definitely understood between those parties and before those arbitrators, that any claims outstanding—(interrupted.)

By the Court: By "parties," who do you mean?

By Mr. Parker: I mean Mrs. Dolan and Mr. Lee.

By the Court: It would be competent to state anything which Mr. Lee said to Mrs. Dolan, or any representative of Mrs. Dolan, on that occasion. 20

By Mr. Parker: I think it will be competent to state what the persons said to the arbitrators there or in their hearing about this matter if Lee was present.

By the Court: Certainly, if Counsel representing him there said, "You need not take into consideration any debts which exist against the co-partners by creditors residing in Connecticut," and Mr. Lee made no objection, that is competent. 30

By Mr. Parker: Now, I haven't conversed with this witness, at least it is several months since I have, so I naturally beat about the bush, perhaps.

By the Court: The better course will be to have him state what Mr. Lee said on that occasion; find out who was the Counsel of Mr. Lee.

By Mr. McCarter: The witness has already stated he did not hear Mr. Lee state anything, and didn't hear conversation between Mrs. and Mr. Lee. 40

By the Court: That is my recollection, but it may be that his memory can be refreshed.

Q. Were you acting as clerk for the arbitrators?

A. No sir, I was not.

Q. Was anybody?

A. I couldn't say positively who was acting as clerk.

Q. I put this question—was there anything said in the presence of the arbitrators, and in the presence of Mr. Lee in relation to the obligations, if any, connected
10 with the Willimatic Railroad contract?

By Mr. McCarter: I object to the question unless it is limited to some person concerned in the business here.

By Mr. McCarter.

Q. Was Mr. Lee there?

A. Not that I remember.

Further direct:

Q. Mr. Lee was not there?

20 A. Not to my knowledge; he may have been there, but the time is so long it has passed my memory.

Q. Who were there at the time you are referring to in your mind?

A. Well, we spent several days in looking over these matters; I think we spent three days.

Q. Do you mean to say that Mr. Lee wasn't there at any time?

A. I couldn't say positively that Mr. John Lee was there during any portion of the time.

30 Q. Well, by whom, if anybody, was he represented?

A. Well, his son Philip was there, and a gentleman who was reputed to be his bookkeeper.

Q. What was his name?

A. I forget the gentleman's name.

Q. How did those gentlemen appear to be the representatives of Mr. Lee?

A. Well, they seemed to look out for his interest.

Q. They acted as agents before the arbitrators?

A. Yes, sir.

40 Q. Now then——

By Mr. McCarter : I object; there is no evidence that they had any authority whatever to act for him.

By Mr. Parker : I think you will find some evidence of the authority in the evidence of Philip Lee.

By the Court : I remember the evidence upon that point, that he said he was not there as the representative of his father, but was there to explain the books.

By Mr. Robert McCarter : That the bookkeeper was not there, and they sent for him because he was familiar with the books. 10

By Mr. Thomas N. McCarter : The arbitrators sent for him, I understand.

Q. Are you acquainted with the existence of any understanding between Mr. John Lee and Mrs. Dolan, although not in the presence of the arbitrators, as to which of the two were to look after obligations arising, or incident to the Willimantic contract ?

By Mr. McCarter : I object to the question.

By the Court : I think, Mr. Parker, this is a very remarkable way of proving a contract. 20

By Mr. Parker : It strikes me, if your Honor please, that I am only asking a preliminary question ; I ask him if he is acquainted with it ; I have not yet asked him what it was.

By the Court : (To the witness) ; You will answer the question, yes, or no.

By Mr. McCarter : This witness from the evidence he has already given can only possibly have knowledge on the subject except from hearsay.

By the Court : If it turns out to be the fact, you are 30 not trying the case before a jury, and I will overrule the evidence ; now this is a mere searching question with a view to find out. Mr. Parker says he has had no opportunity to converse with this witness, whether he knows it or not ; I think the question is proper as a means of Counsel's gaining information for his own use.

By Mr. Parker : I will make the question so legal I suppose nobody can object to it ; I will add to it if yea, state what that understanding was.

By Mr. McCarter : That makes it worse. 40

Q. (Question repeated with the above addition.)

A. No, sir; that is, if I understand the question rightly; that is, between Mrs. Dolan and John Lee.

By the Court: Yes.

By Mr. Parker: The question asked is an understanding between Mrs. Dolan and John Lee; I don't mean only that it should be between Mrs. Dolan in person and Mr. John Lee in person.

Not cross examined.

10 By Mr. Parker: I offer in evidence an exemplified copy from the Superior Court, of all the papers in this case.

(Same marked *Exhibit A*, for Defendant.)

By Mr. Parker: I make offer to prove that at the hearing before the arbitrators it was understood and asserted by parties acting for Mr. Lee, and parties acting for Mrs. Dolan, and by the arbitrators, that all obligations connected with the Willimantic contract were to be looked after by Mr. Lee.

20 By Mr. McCarter: I don't know that I care to object to that particular form of offer.

By the Court: Certainly not, produce your testimony.

By Mr. Parker: Then I produce M. Howden again.

John K. Howden, recalled for further direct examination.

By M. Parker.

Q. You say you were present at the arbitration?

A. Yes, sir.

Q. Did you hear it stated, hear anything stated by 30 the arbitrators and by parties who there acted as agents for Mrs. Dolan, and parties who there acted as agents for Mr. Lee, on the subject of who was to take care of the obligations connected with the Willimantic contract.

(Objected to by Mr.McCarter.)

(Objection sustained.)

Alfred W. Ladd, recalled on behalf of the Defendant.

Direct examination:

By Mr. Parker.

40 Q. Did you, sir, shortly before the report of the

referee was made, have anything to say to Mr. Lee in respect to the compromise of this claim?

A. Yes, sir, I did.

Q. What?

A. I offered to take one thousand dollars, after consulting Mr. Mitchell and Mr. Mudjet.

Q. Where was this?

A. That was at Chaffee's, Forty-nine Dey street, I think it was there in that store on the lower floor.

Q. What did he say? 10

A. He would not listen to it at all, but his nephew, Mr. Reil, he stuck to it.

Q. Was he there?

A. They were both present.

Q. State what his nephew, Mr. Reil, said?

A. He urged him to settle, but Mr. Lee would not listen, he said he would be damned if he would settle, I told him to reconsider it.

Cross examination: 20

By Mr. McCarter.

Q. When was this?

A. It was just before the lawyers got through with the case; Mitchell and Mudjet got through with it.

Q. When was it?

A. It was during the process of the trial before the referee.

Q. When was it?

By the Court: (to witness): he wants you to give the year and month if you can. 30

A. Well, I don't know.

Q. I want to know when this conversation took place?

A. About a month or two m onths before the close of the testimony—one month, I think, about, I think the testimony was nine months going on—eight or nine months.

Q. Can you tell when the testimony was closed?

A. I couldn't unless I looked at the papers.

Q. Can you tell when the report of the referee was made? 40

A. No, I couldn't unless I looked at the papers; it is impossible.

Defendant rests.

By Mr. McCarter: We have no further evidence now, but if Mr. Jones was here I could tell whether we would want any further evidence; testimony has been given of a conversation with him of which we had no notice, and it is a surprise to us; with that exception we have no further evidence; I don't care to fix any other day
10 for the probability is I may not want to examine him; but if I should want to examine him; I would like to have an opportunity to do it.

By the Court: The liberty is reserved to you to recall Mr. Jones.

By Mr. Parker: Suppose I give notice to Counsel at that time to produce the letters I have spoken of, and that I at that time have Mr. Sunderland here, will not the Court hear him?

By Mr. McCarter: I do not want to open the case
20 generally, I would rather close it as it is, but they have given evidence of a conversation with Mr. Jones; if they had informed us of that we would have retained the witness; but now he has gone, and I don't know that I will care to call Mr. Jones at all; it may be that I will want to take his evidence, but I would rather close it as it is, if I am to be compelled, if we recall Mr. Jones, to reopen the case upon other parts.

By the Court: I suppose, as a strict rule, the defense ought to have laid ground for the introduction of the
30 secondary evidence they attempted to offer; the fact that they desired to prove should certainly have come to the knowledge of his associate in his preparation of the case for trial.

By Mr. McCormick: This is the first time I have ever had an intimation that it was a letter,

By Mr. McCarter: Suppose we sum it up now; if you will say so I will close the case, and close the argument, and I will agree to take only half an hour.

By the Court: Does Counsel state that the case is
40 rested?

By Mr. McCarter: If the Court will hear us this afternoon we will rest.

By the Court: Counsel have no right to rest conditionally.

By Mr. McCarter: Well sir, we rest then.

By the Court: The case is rested.

[CASE CLOSED].

10

EXHIBITS.

STATEMENT

Of Award of Arbitrators to the Estate of Michael Dolan, Co-partner of John Lee, in the firm of Lee & Dolan.

Michael Dolan in account with Lee & Dolan, on account of contract on West Jersey R. R.

		Dr.	Cr.
1870.			
May 15.	To cash for work to May 1, 1870, as per ledger,	$27,552.07	
May 17.	By cash payments, as per ledger,		$27,223.24
June 12.	To cash for May estimate, as per ledger,	5,189.24	
July	To cash for June estimate, as per ledger,	3,348.50	
Aug.	To proceeds of Draft for July estimate, as per ledger,	5,415.48	
Sept.	To proceeds of Draft for August estimate, as per ledger,	5,089.23	
Oct.	To cash on account September, as per ledger,	5,655.94	
	To John West's note, as per ledger,	155.00	
Dec. 20.	By cash payments, account work, as per ledger,		23,626.18
" 20.	By cash payments, Blake, as per ledger,		100.00
" 20.	By cash payments, M. Lynch, as per ledger,		81.00
	By merchandise in stock, charge of (8484.01), as per ledger,		188.31
	By spokes, horseshoes, etc., etc., as per ledger,		50.00
1873.			
Aug. 28.	By bills paid by Mrs. Dolan, as per statement hereto attached,		1,118.67
" 28.	By bills payable, subject to interest, as per ledger,		373.62
" 28.	To Thos. Smith's note, included in $1,118.67,	365.00	
	Michael Dolan, by balance,		9.44
		$52,770.46	$52,770.46

In account with Lee & Dolan on account of contract on N., M. & W. R. R. Conn.

1873.	To ledger account as continued,	$10,179.51	$10,824.85
Aug. 28.	By 1 horse, Charlie, (purchased at sale and not taken,)		200.00
" 28.	By 1 buggy and harness, (purchased at sale and not taken,)		10 00
" 28.	By 1 cart, No. 14, (purchased at sale and not taken,		40.00
" 28.	By 1 cart, No. 11, (purchased at sale and not laken,)		37.00
" 28.	By 1 heavy wagon, (purchased at sale and not taken,)		56.00
	To balance,	988.34	
		$11,167.85	$11,167.85

10

STATEMENT

Of bills paid, also of bills unpaid and assumed by Ellen Dolan, Adminstratrix of Michael Dolan, deceased, on account of West Jersey R. R.

20

Lee & Dolan, Contractors—Bills paid Michael Dolan's Estate.

	Cr.	
Newark Cement Co.,	$200.00	
Camp & Osborne,	18.00	
Terah Benedict,	13.60	
George Gidney,	50.00	
Joseph Blake,	173.50	
Pat. O'Rourke,	21.10	
Macknet & Wilson,	40.56	
Joseph Runyan,	15,00	
Wm. A. Howell & Co.	41.15	
Geo. Hedden,	25.25	
C. D & C. F. Aschenbach,	7.95	
Xander & McMahon,	25.00	
Jas. Olwell & Co.,	73.58	
F. Gartz, Jr.	48.98	$753.67

30

Unpaid bills assumed by Ellen Dolan, Administratrix, &c.

Subject to Int'rst		
Michael Kenney,	75.00	
Herman Martin,	44.00	
Francis Brady,	3.37	
Bernard Garvey,	18.75	
John Smith, No. 2,	1.01	
Thos. Kennedy,	1.80	
Martin & Hattersly,	73.86	
Wm. Leeson,	3.36	

40

Subject to Interest.	Laflin & Rand Powder Co., (in dispute on books of Lee & Dolan, $78.88)	252.48	
	A. Shoemaker, ...	4.50	
	Wm. Compton, ...	2.50	
	C. Hoffman, ...	6.00	
	M. Pennington, ...	4.80	$373.62

10

STATEMENT

Of Award of Arbitrators to John Lee, Co partner of Michael Dolan, in the firm of Lee & Dolan.

John Lee in account with Lee & Dolan, on account of contract on N., M. & W. R. R., Conn.

		Dr.	Cr.
1873.	To ledger account as continued,	$90,449.86	$84,956.90
Aug. 28.	By notes returned to R. R. Co.,		5,000.00
" 28.	By Bonds returned to R. R. Co., $9700 at 80 per cent.,		7,760.00
20 " 28.	By discount on $1000 Bond,		300.00
" 28.	By bills paid by him as per statement hereunto attached,		3,930.77
" 28.	By bills unpaid assumed by him, (subject to interest, statement attached),		839.11
" 28.	By bills in suit C. C. Campbell, (est. at)		120.00
" 28.	To Phil. Callahan's goods at sale, assumed by him,	671.05	
" 28.	To John Carrier's goods at sale, assumed by him,	385.67	
" 28.	To Thos. Smith's goods at sale, assumed by him,	493.50	
" 28.	To C. L. Strong's goods at sale,		
30	assumed by him,	365.30	
" 28.	To John O'Conner's goods at sale, assumed by him,	105.00	
" 28.	To Phil. Brady's account, assumed by him,	443.61	
" 28.	To J. A. Herron's account, assumed by him,	30.88	
" 28.	To sale of $12,500 1st Mortgage bonds at 80 per cent.,	10,000.00	
" 28.	To tobacco, Jas. Olwell, on hand after sale,	120.40	
" 28.	By Phil. Callahan's services, after work ceased,		510.00
" 28.	By Attorney's fees, pro rata paid by Lee & Son,		171.50
" 28.	By expenses for feed, 2 horses,		
40	Charlie and Robin,		210.00

" 28. To use of buggy by Phil. Callahan,	100.00	
" 28. By expenses from November 5th, 1871, to March 29th, 1873,		1,216.00
" 28. To services from November 1st, 1871, to August 23rd, 1873,		1,000.00
" 28. To amount charged to eqalize expenses,	2,399	
To balance,	450.01	
	$106,014.28	$106,014.28

10

STATEMENT

Of bills paid, also of bills unpaid and assumed by John Lee, on account of work on N. M. & W. R. R., Connecticut.

Lee & Dolan, Contractors—Bills paid John Lee. 20

	Cr.	
Baily Bros.,	$777.68	
Alden & Purple,	365.63	
J. J. Hoffart,	392.15	
Reuben Payne,	72.58	
J. H. Taylor,	27.00	
Danl. Strong,	201.96	
Jno. J. Welsh,	17.02	
Mich. Sennet,	7.90	
Henry Skinner,	17.30	
Jas. Garvey,	147·90	
Silas Payne,	104.00	
Horace Johnson,	24.88	
Jas. Olwell & Co.,	672.01	
Philip Callahan,	205.20	
Mrs. Keelan,	167.79	
E. Goodrich,	208.77	
Waldo, Hubbard & Hyde,	173.27	
Carrier & Hurd, on account,	100.00	
Thos. Smith,	247.73	$3,930.77

30

Unpaid bills assumed by John Lee.

Subject to Interest.	Carrier & Hurd,	219.84	
	Tibbals & Co.,	27.45	
	Tibbals, Day & Co.,	62.76	
	A. J. & R. A. Pease,	46.86	
	Mrs. Rand,	120.75	
	Wm. Smith,	18.50	
	Laflin & Rand,	323.60	
	U. B. Smith,	19.35	$839.11
	C. C. Campbell, in suit estate at,		120.00

40

John Lee, in account with Ellen Dolan, Administratrix of the late Michael Dolan.

	Dr.	Cr.
To amount due M. Dolan on account of Conn. work,	$988.34	
By amount due John Lee on account of New Jersey work,		$ 9.44
By amount due John Lee on account of Conn. work,		450.01
	$988.34	$459.45
To Balance.	$528.89	
To amount due Mrs. Dolan, her proportion as above,	$264.45	
To Thos. Smith's note (John Lee endorsee),	366.81	
Due Ellen Dolan, in cash,	$631.26	

Bonds to be divided.

Bonds held by Ellen Dolan, on account of West Jersey work,	$17,000.00
Bonds held by John Lee on account of Conn. work, 1st mortgage,	2,300.00
2nd mortgage bonds,	20,000.00
To be divided equally between John Lee & Ellen Dolan, Administratrix,	$39,300.00

There are also due Lee & Dolan, from the N., H. M., & W. R. R. Co., 1st mortgage bonds amounting to $5,000 00, (which are to be divided equally between John Lee & Ellen Dolan, when received by said Lee).

We, the arbitrators in the matter of accounts between John Lee and Ellen Dolan, Administratrix of Michael Dolan, deceased, do hereby report and declare as follows: That we have examined all the accounts between said parties carefully and unbiased, and find that the said John Lee is indebted to the said Ellen Dolan, Administratrix, &c., to the amount of two hundred and sixty-four, forty-five one hundredth dollars ($264.45) on account of the co-partnership of Lee & Dolan, also three hundred and sixty-six, eighty-one one hundredth dollars ($366.81) for note of Thos. Smith, and endorsed by him, making a total of six hundred and thirty-one, twenty-six one hundredth dollars ($631.26), and we do further report and declare that the bonds of the N. H. M. & W. R. R. Co., held by John Lee, viz: Twenty-three hundred dollars ($2300) 1st mortgage bonds, and

twenty thousand dollars ($20,000) 2nd mortgage bonds, are to be equally divided between the said parties, as well as a further sum of five thousand dollars ($5,000) 1st mortgage bonds due from said R. R. Co., to be equally divided when received, and that the said Ellen Dolan, Administratrix, &c., shall equally divide the seventeen thousand dollars ($17,000) bonds of the N. J. W. L. R. R. Co., now held by her, with the said John Lee.

In testimony whereof we have hereunto set our hands, 10 this twenty-ninth day of August, A. D., 1873.

P. A. Fritchmn,
Chas. M. Gibson, } Arbitrators.
Dennis Reilly,

(Exhibit No. 2.)

Received from Jones, Rosevelt & Carly, Esq., $3,969.-05 in cash and sight draft for $380.72, on Mrs. Alice M. Lee, Executrix, &c., in payment of the three judgments entered in the action of Sarah Durham, as Administra- 20 trix, &c., v. John Lee, and Alice M. Lee as Executrix, &c., respectively, and we stipulate on demand to give satisfaction pieces of said three judgments to said Counsel.

Dated N. Y., February 6, 1882.

P. D. Underhill,
Attorney for John P. Sunderland, Defendant.

No.— (Exhibit No. 3). 30

Easton, Pa., May 31st, 1880. First National Bank pay to Charles Jones or order, two hundred and sixty-two dollars and 50 hundredths.

($262.50.) John Lee.

No.— (Exhibit No. 4).

Easton, Pa., February 28th, 1881. First National Bank pay to Jones, Rosevelt & Carley, or order, two hundred and forty-two dollars and 55 hundredths.

($242.55). John Lee. 40

No. 6. (Exhibit No. 5).

Easton, Pa., February 13th, 1882. First National Bank, pay to Jones, Rosevelt & Carley, or order, two hundred and eighty-nine dollars and 35 hundredths.

($289.35.) ALICE LEE, Executrix.

(Exhibit No. 6.)

Offered December 13th, 1884. Exemplified copy of judgment roll.

10

NEW YORK SUPERIOR COURT.

MICHAEL W. DURHAM,
against
JOHN LEE, surviving partner.

CONTAINING:

20 1. Order opening default January 15, 1875.
2. " to show cause preceding "
3. Affidavit of G. L. Walker.
4. " John Lee.
5. " Eldred A. Carley.
6. " M. W. Durham.
7. " Jas. C. Voorhees.
8. " Wm. B. Jackson.
9. " John Lee.
10. " Jno. H. Hurd.
11. Summons, 1872.
12. Complaint, "
30 13. Appearance June 28, 1872.
14. Affidavit of W. R. Beebe.
15. Judgment entry, Nov. 1874.

On default for	$2,400
Interest	406
Costs,	15
	$2,821

OPINION.

Executrix of JOHN LEE, deceased,
vs.
Administratrix of MICHAEL DOLAN,
deceased, and others.

On final hearing on original bill and answers, and cross bill and answer, and proofs taken in open Court.

Mr. R. H. McCarter and Mr. Thomas N. McCarter, Complainant.

Mr. T. F. McCormick and Mr. Cortlandt Parker, for for Defendants.

Van Fleet, V. C,

This is a suit for contribution ; although it is brought by the representative of one deceased co-partner against the representative of the other, it must be decided by the same legal principles which would control its decision if it had been brought by one co-partner against the other.

John Lee and Michael Dolan, in September, eighteen hundred and sixty-nine, formed a co-partnership to do work as railroad contractors, not generally, but the particular work required by certain contracts ; one of the contracts was for work on the New Haven, Middletown and Willimantic Railroad ; Dolan died intestate on the first of April, eighteen hundred and seventy-one ; a suit was brought against Lee as the surviving partner, in the Superior Court of the City of New York, in June, eighteen hundred and seventy-two ; judgment was subsequently entered therein, by default, in consequence of the in attention of the Attorney employed by Lee to make defense ; this judgment was opened in January, eighteen hundred and seventy-five,and Lee made; defense his defense was unsuccessful, and judgment was entered

against him on the second of June, eighteen hundred and eighty.

Appellate proceedings were afterwards taken, and the case removed to the Court of Appeals, where it was finally decided, on the thirty-first of January, eighteen hundred and eighty-two, by a judgment of affirmance, by a vote of four Judges to three.

Dertram v. Lee, 87 *N. Y.* 599.

Lee's representative has since paid the judgment, 10 and now, by this suit, asks that Dolan's representative and next of kin be compelled to make contribution of their moiety of the judgment and expenses of the litigation.

Two defenses are set up; First, that the Complainant's right to contribution is barred by an award; and Second, that Lee, knowing that he had no defense to the claim on which the judgment was founded, causelessly, and from pure obstinacy refused to pay a small sum in satisfaction of it, and should not therefore, have 20 contribution for more than one half of the sum for which he could have settled the claim.

The first defense seems to be without the least foundation; an award or a report was made on the twenty-ninth day of August, eighteen hundred and seventy-three, by three persons, who in the award, said that they were "the arbitrators in the matter of the accounts betyeen John Lee and Ellen Dolan, Administratrix, of Michael Dolan, deceased." They found that Lee was indebted to the Administratrix in a sum which they 30 specified, and also that the partnership assets which remained in the hands of either of the parties, when collected or converted, should be equally divided between them; but who appointed them, or gave them authority to act as arbitrators, or what had been submitted to them, or upon what they were to arbitrate, does not otherwise appear; there can be no doubt, however, that the debt or claim, which is the subject of the present controversy, was not submitted to them, nor considered, or passed upon by them; if 40 the submission embraced the accounts between the

parties, or even all demands by either party against the other, it would not have extended to the present demand, for at the time that the award was made this particular claim was unpaid and in dispute, and neither party had done anything in respect to it, which gave him or her the least right to assert it against the other; besides, it appears by a statement annexed to the award, just what claims and accounts were considered by the arbitrators, and also what claims and accounts entered into the computation, by which they ascertained the balance or sum awarded to the Administratrix; this claim is not among them; an award cannot be extended beyond the things submitted; *Caldw. on Arb.* 231; and even if the language of the submission is broad enough to cover a claim subsequently sought to be enforced, yet if it is clearly made to appear that the claim was not before the arbitrators, and that they did not consider it, it has heen held repeatedly that the award will not bar it.

King v. Savory, 8 *Cush.* 309; *Webster v. Lee*, 5 *Mass.* 334; *Hodges v. Hodges*, 9 *Mass.* 320; *Smith v. Whiting*, 11 *Mass.* 447; *Bixby v. Whitney*, 5 *Greenlf.* 193; *Buch v. Buck*, 2 *Verm.* 420.

The other defense must, I think, be tried by this rule; if Mr. Lee, in refusing to compromise the claim, and in resisting its collection, acted in good faith, believing he had a good defense to it; in other words, if he did what a man of ordinary prudence, acting for himself alone, would have done under similar circumstances, then he is entitled to contribution on the full amount paid, including reasonable expenses; but if on the contrary, his conduct was the result of a foolish obstinacy; if, well knowing he had no defense to the claim, he causelessly refused favorable terms of compromise, and unrighteously resisted its collection, then he is entitled to none of the expenses of the litigation, and should only have contribution on the lowest sum for which claim could have been compromised; Dolan contracted the debt on which the suit was founded; Lee

did not know of its existence or that it was asserted until after Dolan's death; one William B. Jackson was the original creditor; he assigned his claim to Michael W. Derham, in whose name the suit in the Superior Court was brought; it was alleged that Dolan had employed Jackson to procure the contract for the work on the New Haven, Middletown and Willimantic Railroad, and had agreed to give him, as his compensation for procuring the contract, two per cent. on all monies
10 earned under the contract; Lee defended on the ground, that if such a contract had been made, it was Dolan's individual contract and not the contract of the firm; he swore, on the trial in the Superior Court, that he himself procured the contract for the work on the New Haven, Middletown and Willimantic Railroad before Dolan and he became partners, and before there had been any negotiations between them on the subject of forming a co-partnership; his statement was this: that he went to Middletown, Connecticut, and there went
20 over and examined the ground on which the work was to be done, and at once made a contract to do the work; that while on his return journey home he met Dolan, who inquired of him whether he had obtained a contract and on being told that he had, Dolan proposed that they should form a co partnership, he (Dolan) putting in his contract for the work, which he was then doing, on the New Jersey West Line Railroad, and Lee putting in his contract, which he had just made, for work on the New Haven,
30 Middletown add Willimantic Railroad, and that after some further talk they agreed to form a co-partnership, but that prior to that time no suggestion or negotiation respecting the formation of a co-partnership had ever passed between them; taking these to be the facts which were before Lee's mind, and on which he was required to form a judgment whether to compromise the claim or not, I think it is impossible to say, that in refusing to compromise he did not do what any prudent man, not too meek to yield to a demand that he knew
40 to be unjust, would have done under like circumstances.

Moreover, the conduct of the claimant was strongly calculated to inspire suspicion of the justice of the claim.

Lee was a man of considerable means, and could be compelled to pay his debts; the owner of the claim knew this, yet he offered to take five hundred dollars for it; the claim at that time amounted to over two thousand five hundred dollars; the reason, the claimant says, he was willing to accept so trifling a sum in payment, was that he could not, at that time, get the evidence necessary to prove it; when and how he got the evidence, ultimately, to prove the claim, does not appear; the same was originally heard in the Superior Court by a referee; the reference was made February twenty-six, eighteen hundred and seventy-five, within less than two months after the judgment was opened, but the referee did not report until May twelfth, eighteen hundred and eighty; the claimant allowed the case to linger before the referee for over five years.

Lee's conduct must be tried, not by what we know now, but by what Lee knew when he was called upon to act; Dolan's lips were sealed in death; Lee, so far as appears, never heard him speak of this claim; he had nothing to guide him in deciding what he should do, but what he knew himself; taking, as I think we must, what he said under oath as true, there can be no doubt that his conduct in refusing to compromise, and also in resisting the enforcement of the claim, was not only reasonable, but unavoidable; on Dolan's death the firm became dissolved, and in consequence of its dissolution, it became the duty of Lee, as survivor, to collect in the assets of the firm, pay the debts of the firm, and divide the surplus with Dolan's representative; in the performance of these duties, Lee was a trustee, so far as Dolan's estate was concerned, and he was bound to see to it that no debt was allowed against the partnership estate, which he knew, or had just reason to believe, was not justly chargeable against the estate; in this particular case, it is true, to have allowed the debt against the partnership estate, even if it was not prop-

erly chargeable to that estate, would have helped rather than harmed Dolan's estate, but that fact does not alter the rule of law; if Lee was satisfied, from facts within his own knowledge, that the claim was not a debt of the partnership, it was his duty to resist its collection; the proof is clear that he was so satisfied; the expenses he incurred in resisting the claim constitute part of the expenses of winding up the partnership estate, and must be borne and defrayed in the same manner that other
10 expenses incurred for the same purpose are borne and defrayed.

The Complainant is entitled to a decree with costs.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between ALICE LEE, Executrix of the last will and testiment of John Lee, deceased, Complainant, AND ELLEN DOLAN, as Administratrix, of the estate of Michael Dolan, deceased, and individually, John Dolan, William Dolan, Peter Dolan, and Thomas Dolan, Defendants.	On Bill &c. Final Decree.

10

This cause coming on to be heard regularly before the Honorable A. V. Van Fleet, Vice Chancellor, to whom the same was referred, at his Chambers in the City of Newark, in the presence of T. F. McCormick, Esquire, and Cortlandt Parker, Esquire, of Counsel with the Defendants and of Thomas N. McCarter. and Robt. H. McCarter, of Counsel with Complainants, and the pleadings and proofs having been heard and the arguments of the respective Counsel listened to, and the Court having duly considered the said pleadings, proofs and arguments, and being now of opinion that the Complainant is entitled to the relief prayed for in her said

20

30

bill of Complaint; it is on the fifteenth day of January, one thousand eight hundred and eighty-five, by the Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby order, adjudge, and decree that the said Ellen Dolan, Administratrix of the estate of Michael Dolan, deceased, do pay to the said Complainant one-half of the amount expended by said Complainant, to satisfy the said judg-
10 ment against her in the State of New York, with interest thereon to the date hereof, that is, the sum of two thousand five hundred and fifty-eight dollars and seventy-six cents, together with one half the expenses incurred by said Complainant in defending said suit, with interest thereon from the date of payment thereof, that is the sum of four hundred and eighty-seven dollars and twenty cents, making in all the sum of three thousand and forty-five dollars and ninety-six cents, together with the costs of this suit to be taxed; and it is further
20 ordered, adjudged and decreed that in default of such payment by said Administratrix within twenty days from the service on her or her solicitor of a copy hereof, and of the taxed bill of costs in this cause, that execution do issue for the collection of said sum, with the costs as aforesaid, against the goods and chattels, if any, of said intestate Michael Dolan, deceased; and it is further ordered, adjudged and decreed that on the failure by said Administratrix to pay as aforesaid, and of the Complainant to collect said sum from the goods
30 and chattels of said intestate, then the said Complainant shall have leave on five days' notice to apply to the Court for an order directing the Defendants, Ellen Dolan individually, John Dolan, William Dolan, Peter Dolan, and Thomas Dolan, heirs at-law and next of kin of said Michael Dolan, deceased, to discover to the Court how much they each, respectively, have received as assets from the estate of said Michael Dolan, and on such discovery to pay to the Complainant the proportionate amount of the sum then
40 due her on this decree, that the share so received by

each of them, respectively, bears to the amount then due, and that in default of such payment, execution do issue in accordance with the practice of the Court, and it is further ordered that either of the parties shall be at liberty to apply to this Court as occasion may require.

THEODORE RUNYON, C.

Respectfully advised, }
A. V. VAN FLEET, V. C. } 10

A true copy—G. S. DURYEE, Clerk.