

NEW JERSEY COURT OF ERRORS & APPEALS.

Between

JOHN S. VAN WINKLE AND BRANT VAN BLARCOM,
Executors and Trustees, &c., complainants,
and

ABRAHAM VAN HOUTEN, RACHEL VAN HOUTEN,
RICHARD POST, JOHN POST, DAVID D. VAN
BUSSUM, and JANE VAN BUSSUM his wife, JOHN
C. VAN HOUTEN and ANNA VAN HOUTEN his
wife, MARTHA POST, HENRY POST, JOHN A.
VAN RIPER and ELIZABETH VAN RIPER his
wife, JANE VAN BLARCOM, JACOB GARRETSON
and LEAH GARRETSON his wife, ELIZABETH
VAN HOUTEN VAN SAUN, MARY LOUISA VAN
SAUN, JANE AMELIA VAN SAUN, ALBERT VAN
SAUN, RICHARD WESSELS, GARRET A. HOPPER
and JANE HOPPER his wife, defendants;

On original bill.

And between

AARON S. PENNINGTON, Executor of the last will
and testament of ABRAHAM VAN HOUTEN, de-
ceased, and RACHEL VAN HOUTEN, complain-
ants,

and

JOHN S. VAN WINKLE and BRANT VAN BLARCOM,
Executors and Trustees, &c., RICHARD POST,
JOHN POST, DAVID D. VAN BUSSUM, Adminis-
trator of JANE his late wife, ANNA VAN HOUTEN,
MARTHA POST, HENRY POST, JOHN A. VAN
RIPER and ELIZABETH his wife, JANE VAN
BLARCOM, JACOB GARRISON and LEAH his wife,
ELIZABETH VAN HOUTEN VAN SAUN, MARY
LOUISA VAN SAUN, JANE AMELIA VAN SAUN,
ALBERT VAN SAUN, RICHARD WESSELS, GAR-
RET A. HOPPER and JANE his wife, defendants.
RICHARD WESSELS, appellant.

On cross-bill.

A bill in Equity was filed by the executors and trustees in the will of Abraham Van Houten, senior, of Paterson, in this State—upon doubts being expressed as to the true construction of the same, for the purpose of receiving the aid of the Court, in carrying out properly the will of the testator, and all necessary parties were made to the suit. This is the original suit first above stated. While that suit was progressing, Abraham Van Houten, junior, the son, and a devisee and legatee in the will of his father, died, and by his will constituted Aaron S. Pennington executor thereof; and who, with Rachel Van Houten, the widow of Abraham Van Houten the elder, filed a cross bill in the aforesaid suit, in which all the matters embraced in the case, so far as this appeal is concerned, are fully set forth, and which is the second suit above stated. It is deemed by counsel, unnecessary to set out the original bill or the answer to the same, or to trace the proceedings therein, as a full understanding can be acquired, and with less embarrassment, on the points raised for argument on this appeal, by copying into the case only the proceedings on the cross-bill. The final decree here appealed from, settled both the original suit and the suit on the cross-bill.

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IN CHANCERY NEW JERSEY.

Copy of Cross-bill.

Humbly complaining, shew unto your Honor, your Orators, Rachel Van Houten and Aaron S. Pennington, Executor of the last will and testament of Abraham Van Houten, deceased, of Paterson, in the County of Passaic, and State of New Jersey, that one Abraham Van Houten in his life time and at the time of his death was seized or entitled in fee simple of and to divers lands and messuages, tenements and hereditaments of considerable value, situate in the present County of Passaic, and was also possessed of and entitled to personal estate and effects, consisting of household furniture, goods, monies, securities for monies, and other chattels to a considerable amount in the whole, and being so seized, possessed or entitled, he, the said Abraham Van Houten, on or about the sixteenth day of February, in the year of our Lord one thousand eight hundred and twenty-five, made his last will and testament in the words and figures or to the purport or effect following:—"In the name of God, Amen—I, Abraham Van Houten, of the town of Paterson, in the township of Acquackanonk, in the County of Essex, and State of New Jersey, being weak in body, but

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" of sound mind and memory, for which blessing I most devoutly
 " thank my God, do make and publish this my last will and testament
 " in manner and form following, viz :—First, my will is and I do that
 " my loving wife Rachael, if she survive me, shall have the whole use
 " of my farm, together with my dwelling house, where I now live ;
 " also, all the farming utensils, together with my whole stock of said
 " farm ; also, my household family of colored people, together with
 " my household and kitchen furniture, which is not hereinafter disposed
 50 " of otherwise, together with every article belonging to the same, as I
 " at present do occupy and enjoy the same, until my son Abraham
 " Van Houten shall arrive at the age of twenty-one years ; and I do
 " further give unto my wife Rachael the sum of three hundred dollars
 " a year, yearly, and every year, out of my estate, during her natural
 " life ; all which I do give unto my said wife Rachael in lieu of her
 " dower.

" Item—I give unto Caty Post, daughter of my said wife Rachael,
 " fifty dollars a year, yearly, and every year, until she arrives at the
 " age of twenty-one years.

60 " Item—I give unto Hannah Wessels, daughter of Casper Wessels
 " one thousand dollars ; also, the first choice bed and bedding com-
 " plete ; also, one mahogany dining table.

" Item—I give and devise unto Richard Wessels, son of Casper
 " Wessels, one building lot in the town of Paterson, fronting on Broad-
 " way ; to begin on Broadway, ten feet west from the north-westerly
 " corner of a lot sold to James W. King, and extend westerly along
 " Broadway, to be in front and rear thirty feet, and one hundred feet
 " in depth, to him and to his heirs and assigns forever ; also, the sum
 " of eight hundred dollars.

70 " Item—I give unto Leah, wife of Jacob Garretson, five hundred
 " dollars.

" Item—I give unto Jane Wessels, daughter of Casper Wessels, the
 " sum of one thousand dollars.

" Item—I give unto Nashe, widow of Casper Wessels, three hun-
 " dred dollars.

" Item—I give unto my negro slave named Jack, the sum of fifty
 " dollars.

" Item—I do give unto my female slave Bett, the sum of fifty dol-
 " lars.

80 " Item—I do give unto my negro slave named Tom, the sum of
 " twenty-five dollars.

" Item—I give, devise, and bequeath unto my son Abraham Van
 " Houten, all the rest and residue of my estate, both real and personal,

- " whatsoever and wheresoever, lying and being, of whatsoever descrip-
 " tion the same may be, excepting what is herein otherwise dispos-
 " of, to him, his heirs and assigns forever;—my will further is and
 " do order that my Executors hereinafter named shall rent out all my
 " property lying in the town of Paterson and Hackensack, and all
 " houses and lots owned by me, at their discretion, for the benefit of
 90 " my son, Abraham Van Houten, and the proceeds arising therefrom
 " after deducting all necessary expenses and charges, together with
 " my personal estate, consisting of money, bonds, notes and mortgages
 " bequeathed to my said son, Abraham Van Houten, to be put out to
 " interest for the benefit of my son, by my Executors, until he shall
 " arrive to the age of twenty-one years; and I do further order, that
 " my Executors give unto my said son, Abraham Van Houten, out of
 " my estate, a good college education, and a decent support until
 " arrive at the age of twenty-one years; but if my said son, Abraham
 " Van Houten, should die, having no children, then my will is, and
 100 " do hereby dispose of my property in the following manner, viz:
- First Item* " Item first.—I give unto the grand children of my sister, Elizabeth
 " Van Riper, wife of Richard Van Riper, deceased, one thousand dollars
 " to be equally divided among them, share and share alike
 " among them, their heirs and assigns, forever.
 " Item—I give unto the children of my sister, Caty Post, wife of
 " Adrian Post, the sum of one thousand dollars, to be equally divided
 " among them, share and share alike to them, their heirs and assigns
 " forever.
- 110 " Item—I give unto the children of my sister, Jane, wife of He-
 " Post, one thousand dollars, to be equally divided among them, share
 " and share alike to them, their heirs and assigns forever; all the
 " and residue of my estate, both real and personal, wheresoever
 " whatsoever description the same be, I do give, devise and bequeath
 " one equal third part thereof unto my beloved wife, Rachael, to
 " and to her heirs and assigns forever.
- " Item—I give, devise and bequeath one other equal third part
 " thereof unto Leah, wife of Jacob Garretson, to her and to her heirs
 " and assigns forever.
- 120 " Item—I give, devise and bequeath one other equal third part
 " thereof unto the children of Casper Wessels, deceased, to be equally
 " divided among them, share and share alike to them, their heirs and
 " assigns forever.
- " I appoint John S. Van Winkle and Brant Van Blarcom, Executors
 " of this my testament and last will, and I do hereby utterly
 " disallow, revoke and disannul all and every other former testament

"wills, legacies, bequests and Executors by me in anywise before mentioned, willed and bequeathed, ratifying and confirming this, and none other to be my last will and testament.

"In witness whereof, I have hereunto set my hand and seal, this
130 "sixteenth day of February, in the year of our Lord one thousand eight hundred and twenty-five.

"Signed, sealed, published and
"declared by the said Abraham
"Van Houten, to be his testa- } *Abraham Van Houten*, [L. s.]
"ment and last will, in the
"presence of us:—
"James Van Blarcom,
"Garret A. Hopper,
"Henry J. Van Blarcom."

140 As in and by the said will or a duly certified copy thereof, when produced, will appear, and to which your Orators for greater certainty beg leave to refer.

And your Orators further shew, that the said testator departed this life in the year of our Lord one thousand eight hundred and twenty-five, without having revoked or altered his said will, and leaving his widow, Rachel Van Houten, your orator, and his son, Abraham Van Houten, his only child, him surviving; and that the said John S. Van Winkle and Brant Van Blarcom, on or about the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and twenty-
150 five, proved the said will, and took upon themselves the burthen of the due execution thereof: as by the Record of the Probate remaining in the office of the Surrogate of Essex County, reference thereunto being had will appear.

And your Orators further shew, that the said Executors have possessed themselves of the said testator's personal estate, and have discharged all his debts, and have paid the legacies bequeathed in his said will, and have, as Executors, rendered and settled their accounts in the Orphans' Court of the County of Essex, and have also possessed the real estate not specifically appropriated and devised
160 to Rachel Van Houten and Richard Wessels, and have received the rents, issues and profits thereof.—And that according to the directions of the said will, the said Executors have invested at interest the estate of the said testator, which has remained in their hands respectively, after the payment of the debts, legacies, and the payment and allowance of the necessary expenses and charges, and of the monies paid and expended by them in the education and support of Abraham Van Houten, the minor son of the testator, who at the time of the death

of the testator was an infant; and that as Trustees, they have from time to time exhibited their accounts of the estate to the proper
 170 Orphan's Court, first of the County of Essex, and afterwards of the County of Passaic, which accounts have been examined by the Courts where exhibited and found and certified by them to be properly and fairly stated, and to be supported by the vouchers; and that the last accounts thereof were exhibited to the Orphans' Court of the County of Passaic in July, one thousand eight hundred and forty-four, and were referred by the said Orphans' Court to Auditors, whose report, made on the twenty-ninth day of January, one thousand eight hundred and forty-five, was approved and confirmed by said Court and duly entered of record therein; and further, that by the said reports
 180 there was in the hands of the said Executor, John S. Van Winkle, on the first day of June, in the year of our Lord one thousand eight hundred and forty-two, the sum of eleven thousand six hundred and fifty-seven dollars and ninety-three cents, and in the hands of the said Executor, Brant Van Blarcom, at the time of his exhibiting his said accounts, the sum of two hundred and fifty-seven dollars and eleven cents, and that the said Executors have not finally settled their accounts in said Court, or in this Honorable Court.

And your Orators further shew, that the said Abraham Van Houten, the son of the said testator, and his sole heir at law, arrived at the
 190 age of twenty-one years in the month of September, in the year of our Lord one thousand eight hundred and forty-five.

And your Orators further shew, that the grand children of Elizabeth Van Riper, named in the said will, are Richard Post, who lives in the township of Acquackanonk, in Passaic county; John Post, who lives in the township of Saddle River, in the county of Bergen; and Jane, who married one David D. Van Bussum, of the township of Saddle River; that Jane is dead, and David D. Van Bussum, as Administrator, is entitled to her personal estate; that Caty Post, wife of Adrian Post, named in the said will, had two children, one named
 200 Anna, who married one John C. Van Houten, who is now dead, and she now lives in the said township of Saddle River; the other named Halmagh, who died several years ago, leaving a widow and an only child named Martha Post, who is of age and lives in Paterson; that Jane, the wife of Henry Post, named in the said will, had five children, namely, Halmagh, who died without issue; Henry Post, who, as your orators are informed, lives in Philadelphia; Elizabeth, who married John A. Van Riper, and lives in the township of Paterson; Jane, the widow of Henry Van Blarcom, and Margaret, who died without leav-

ing issue: that Leah, the wife of Jacob Garrison, named in the said
 210 will, lives in the village of Hackensack, in the county of Bergen;
 that Caspar Wessels, deceased, named in the said will, left three chil-
 dren—Richard Wessels, who is living in Paterson; Jane, who is mar-
 ried to one Garret A. Hopper, and lives in the township of Paterson
 aforesaid: and Anna, who married one Samuel A. Van Saun of Pat-
 erson, and who is dead, leaving four children, Elizabeth Van Houten
 Van Saun, of full age, and three others, who are minors and living
 with their father, namely, Mary Louisa, Jane Amelia and Albert.

And your Orators further shew, that in the fall or winter of eighteen
 hundred and forty-five, the said John S. Van Winkle and Brant Van
 220 Blarcom, Executors and Trustees^{as} aforesaid, filed their bill in this
 Honorable Court against the said Abraham Van Houten, the son of
 the said testator, your oratrix Rachel Van Houten, and against the
 said Richard Post, John Post, David D. Van Bussum, Jane Van Bus-
 sun, John C. Van Houten, Anna Van Houten, Martha Post, Henry
 Post, John A. Van Riper, Elizabeth Van Riper, Jane Van Blarcom,
 Jacob Garrison, Leah Garrison, Elizabeth Van Houten Van Saun
 Mary Louisa Van Saun, Jane Amelia Van Saun, Albert Van Saun,
 Richard Wessels, Garret A. Hopper, and Jane Hopper his wife, setting
 forth the foregoing facts, and that the said Abraham Van Houten
 230 claims under the said will, the whole of the real and personal estate
 of the said testator; and that the other defendants claim, that if the
 said Abraham Van Houten, the son, should die without issue, that the
 property by the said will would go to and belong to them after his
 death, and that only the income of the property belonged to him, and
 the said bill prayed that the rights and interests of the said defendants
 in the personal and real estate of the said testator might be ascertain-
 ed and declared by the decree of this Honorable Court, and that a re-
 ceiver or receivers, trustee or trustees, might be appointed by this
 Court, according to the practice thereof, to take charge of the estate
 240 and effects of the said testator, in the room and stead of the said
 complainants.

And your Orators further shew, that the said Abraham Van Houten,
 the son of the testator, thereupon filed his answer to said bill, and that
 the said Richard Wessels filed his answer to the said bill, and that no
 other answers have been filed to said bill.

And your Orators further shew, that on or about the twenty-ninth
 day of November, in the year of our Lord one thousand eight hun-
 dred and forty-five, an order was made on said cause by his Honor the
 Chancellor, appointing John R. Van Houten, of Paterson, Receiver

250 of the rents and profits of the real estate, and also of the personal estate of the said testator, upon his first giving security, to be approved by one of the Masters of this Court; and the said Executors and Trustees were directed to hand over to him all the bonds, mortgages and securities for debts in their hands; and upon a final settlement of their accounts, such balance (if any) as remains in their hands, and that they should deliver to him such possession as they might have of the real estate, or of any parts thereof, and that the tenants of the said estates should attorn and pay their rents in arrear and growing due to such Receiver, as by reference to said decree will
 260 more fully appear.

And your Orators further shew, that the said Executors and Trustees did thereupon pass over to the said Receiver certain bonds, mortgages and securities for money belonging to said estate, but no account has been taken by any competent Court since the account heretofore stated and settled by the Orphans' Court of the County of Passaic and before mentioned; and your orators charge that the said John S. Van Winkle and Brant Van Blarecom ought to account for the monies received by them respectively after the date of said settlement, and be credited with the monies and securities handed over by
 270 them to said Receiver, and that upon payment of such balance as may be found against them, they be discharged by the order of this Court.

And your Orators further shew, that the said Receiver has had his accounts twice stated and audited in this Honorable Court.

And your Orators further shew, that pending the said suit, and on the twentieth day of May, in the year of our Lord one thousand eight hundred and forty nine, the said Abraham Van Houten, the son of the said Abraham Van Houten, the testator, departed this life at Paterson, leaving a last will and testament duly executed according to
 280 law, and sufficient to pass real estate by the laws of the State of New Jersey, bearing date the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and forty-eight, in the words and figures, or to the purport and effect following, that is to say:—
 “In the name of God, Amen—I, Abraham Van Houten, of Paterson, in the County of Passaic and State of New Jersey, being of sound
 “mind, memory and understanding, do make and publish this my last
 “will and testament in manner following, that is to say:—It is my
 “will, and I do order that all my just debts and funeral expenses be
 “duly paid and satisfied.

290 “Item—I give, devise and bequeath to my mother, Rachel Van

“Houten, all my estate, real and personal, whereof I may die seized
 “or possessed of, to have and to hold, to her, her heirs and assigns
 “forever.

“Item—I do hereby constitute and appoint Aaron S. Pennington,
 “Esquire, of Paterson, Executor of this my last will and testament.

“In witness whereof, I have hereunto set my hand and seal, this
 “twenty-ninth day of April, in the year of our Lord one thousand
 “eight hundred and forty-eight.

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“Signed, sealed, published and
 “declared as his last will and tes-
 “tament by the testator in our
 “presence, who at his request
 “and in his presence, and in the
 “presence of each other, have
 “hereunto set our hands as wit-
 “nesses.

Abraham Van Houten, [L. s.]

“*David Burnett,*
 “*Isaac J. Sigler,*
 “*Elias B. D. Ogden.*”

310 As by the said will, or a duly certified copy thereof when produced
 will appear, and to which your Orators beg leave to refer.

And your Orators further shew, that the said Abraham Van Houten
 departed this life without having revoked or altered his said will; and
 that your Orator, Aaron S. Pennington, hath duly proved the same,
 and took upon himself the burthen of the due execution thereof, as by
 the Record of the Probate of said will remaining in the office of the
 Surrogate of the County of Passaic, reference being thereunto had,
 will appear, and that such Probate was made on the first day of June,
 in the year of our Lord one thousand eight hundred and forty-nine.

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And your Orators charge, that by virtue of the said last will and
 testament of the said Abraham Van Houten, the son, your Orator,
 Aaron S. Pennington, as Executor, is entitled to have all the personal
 property of the said Abraham Van Houten, the son, and that by virtue
 of the devise in said will your Oratrix, Rachel Van Houten, is entitled
 to have all the real estate of the said Abraham Van Houten, the son,
 and to receive the rents, issues and profits thereof.

And your Orators further shew, that at the last Term of this Court,
 a rule was taken to revive the before mentioned suit, and that your
 Orators, Aaron S. Pennington, Executor, and Rachel Van Houten,
 devisee as aforesaid, were directed to appear and put in their answers,
 &c. and that the said cause has not been heard.

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And your Orators further shew, that during the long minority of the

said Abraham Van Houten, the son, the personal estate greatly increased in amount in the hands of the said Trustees, and that the said Receiver has expended a large sum of money in improving the real estate, which has been taken from the personal property, and that the whole of the increase of the personal property and the money expended on the real estate belongs in any event to your Orator, Aaron S. Pennington, as Executor of Abraham Van Houten, the son.

- 340 And your Orators well hoped that the said complainants and the said defendants in the said suit would have permitted your Orator, Aaron S. Pennington, Executor as aforesaid, to have the custody of the bonds, mortgages, monies and other securities, and to have them assigned to him, to be distributed as directed by said will, and that they would have permitted your Oratrix, Rachel Van Houten, to have the possession of the said real estate, and to receive the rents, issues and profits thereof. But now so it is, may it please your Honor, that the said John S. Van Winkle and Brant Van Blarcom, Trustees as aforesaid, and the said Richard Post, John Post, David D. Van Bussum, Administrator of his late wife Jane, Anna Van Houten, Martha Post, Henry Post, Elizabeth Van Ripper, Jöbū A. Van Ripper, Jane Van Blarcom, Leah Garrison, Jacob Garrison, Elizabeth Van Houten Van Saun, Mary Louisa Van Saun, Jane Amelia Van Saun, Albert Van Saun, Richard Wessels, Jane Hopper, and Garret A. Hopper, combining and confederating with divers other persons to your orators at present unknown, but whose names when discovered your orators pray may be inserted herein with proper and apt words to charge them as parties hereto, threaten and intend to proceed in said suit, they sometimes pretend that the said Abraham Van Houten the elder, by his
- 360 will intended to give only the use of the real and personal estate to his son Abraham Van Houten for his life, and that if he died without any issue, that it should go to the defendants; whereas, your orators charge that the said Abraham Van Houten when he made said will, intended to make a full disposition of his estate, that he had but one child, then an infant; that he made a provision for his wife, the mother of the said infant, such as he thought suitable, and gave to his other relatives such legacies and devises as he thought proper, and then gave the rest and residue of his estate, both real and personal, to the said Abraham Van Houten, his heirs and assigns forever, making the
- 370 said John S. Van Winkle and Brant Van Blarcom, Trustees for his said son, until he should arrive at the age of twenty-one years; that as the said Abraham Van Houten was then an infant, and it was very uncertain whether he would live until he should arrive at twenty-one

years of age, he made provision for that event; in case it should happen that the said Abraham Van Houten should die before arriving at twenty-one years of age and without issue, then he divided his estate as in said will is stated. That the said Abraham Van Houten meant and intended by said will, and such your orators charge is the fair meaning and interpretation of said will, that when his son, Abraham Van Houten, should arrive at twenty one years of age, that he should own, enjoy and possess all the real and personal estate devised and bequeathed to him, in and by said will in fee simple and in his own right, free and clear of any limitation, reversion, remainder, executory devise, or of any incumbrance whatsoever, except the said annuity to the said Rachel Van Houten, with full power to sell, alien, convey, bequeath and devise the same; and that since the death of the said Abraham Van Houten, the son, your orators are entitled to have all the personal property surrendered to and assigned to your orator, Aaron S. Pennington, and the real estate given to your oratrix, Rachel Van Houten, and that she should receive the rents, issues and profits thereof.

And at other times they pretend that the whole of the increase of the personal estate during the long minority of the said Abraham Van Houten, the son, which was not received by him in his lifetime, belongs to them: whereas, your orators expressly charge, that by the said will the executors and trustees were to collect the rents and interest and keep the same invested for the use of the said Abraham Van Houten, the son, and that the difference between the amount of the personal property at the time of the death of the said Abraham Van Houten the elder, after deducting the debts, legacies, bad debts, expenses and charges of settling said estate, and the amounts in the hands of the said trustees and receiver at the time of the death of the said Abraham Van Houten, the son, or due to them for rent, interest, or on any other account, including the amount expended by the said receiver for buildings, is in no way affected by the question in issue in said cause, and that the same ought to be paid to your orator, Aaron S. Pennington, as executor of Abraham Van Houten the son, to be applied by him in paying the debts of the said Abraham Van Houten, and distributing the same as directed by said will, without waiting for the determination of the said cause.

All which pretences, actings and doings of the said John S. Van Winkle and Brant Van Blarcom, executors and trustees; Richard Post, John Post, David D. Van Bussum, administrator of Jane, his late wife, Anna Van Houten, Martha Post, Henry Post, Elizabeth Van

Riper, John A. Van Riper, Jane Van Blarcom, Leah Garrison, Jacob Garrison, Elizabeth Van Houten Van Saun, Mary Louisa Van Saun, Jane Amelia Van Saun, Albert Van Saun, Richard Wessels, Jane Hopper and Garret A. Hopper, are contrary to equity and good conscience, and tend to the manifest injury and oppression of your orators. To the end, therefore, that the said John S. Van Winkle and Brant Van Blarcom, executors and trustees, Richard Post, John Post, David D. Van Bussum, administrator of Jane, his late wife, Anna Van Houten, Martha Post, ~~John~~ Post, John A. Van Riper and Elizabeth Van Riper, Jane Van Blarcom, Jacob Garrison and Leah Garrison, Elizabeth Van Houten Van Saun, Mary Louisa Van Saun, Jane Amelia Van Saun, Albert Van Saun, Richard Wessels, Garret A. Hopper and Jane Hopper, and their confederates, when discovered, may severally, upon their oath, according to the best and utmost of their respective knowledge, remembrance, information and belief, full, true, perfect and distinct answer make to all and every the matters aforesaid, and that as fully as if the same were here repeated and they particularly interrogated; and that the said John S. Van Winkle and Brant Van Blarcom may set forth and discover what monies they have jointly or severally received since the last account stated in the Orphans' Court of the county of Passaic, and what balance remains in their hands not handed over by them to the said receiver, and that they may be decreed to pay over the same, and that an account may be taken at once, and before the determination of the matters litigated in the said suit, of the difference between the amount of the personal property at the time of the death of the said Abraham Van Houten the elder, after deducting the debts, legacies, expenses and charges of settling said estate, and the amount in the hands of the said trustees and receiver, at the time of the death of the said Abraham Van Houten the younger, or due to them for rents or interest, or on any other account, including the amount expended by the said receiver for buildings, and that the same may be decreed to be paid over to your orator, Aaron S. Pennington, executor of the said Abraham Van Houten the younger; and that your Honor may decree that the said Abraham Van Houten the younger, when he arrived at the age of twenty-one years, was entitled by the said will of his father, to the whole of the real estate not specifically devised to others by said will, free from any remainder, executory devise, limitation or condition whatsoever; and to the whole of the personal property in the hands of the said trustees or the said Receiver or due to them or any or either of them, and that the said personal property be assigned and handed over to

your Orator, Aaron S. Pennington, Executor as aforesaid, and that the real estate may be surrendered up to your Oratrix, the said Rachel Van Houten, together with all deeds, writings and muniments of title relating to or concerning the same, and that all leases may be assigned to her; and that the said Richard Post, John Post, David D. Van Bussum, Administrator of Jane, his late wife, Anna Van Houten, Martha Post, Henry Post, John A. Van Riper, and Elizabeth, his wife, Jane Van Blarcom, Jacob Garrison, and Leah, his wife, Elizabeth Van Houten Van Saun, Jane Amelia Van Saun, Mary Louisa Van Saun, Albert Van Saun, Richard Wessels, Garret A. Hopper, and Jane, his wife, may be perpetually enjoined and restrained from further disturbing your Orators, and from prosecuting, hindering, or in any manner disturbing your Orators in relation to the said real or personal estate, and that your Orators may have such further and other relief in the premises as to your Honor shall seem meet and the circumstances of this case require, and shall be agreeable to equity and good conscience; and that the State's writ or writs of subpoena, issuing out of and under the seal of this Honorable Court, may be directed to the said John S. Van Winkle and Brant Van Blarcom, Executors and Trustees as aforesaid, Richard Post, John Post, David D. Van Bussum, Administrator of Jane, his late wife, Anna Van Houten, Martha Post, Henry Post, John A. Van Riper, and Elizabeth, his wife, Jane Van Blarcom, Jacob Garrison, and Leah, his wife, Elizabeth Van Houten Van Saun, Mary Louisa Van Saun, Jane Amelia Van Saun, Albert Van Saun, Richard Wessels, Garret A. Hopper, and Jane, his wife, therein and thereby commanding them on a certain day and under a certain penalty therein to be specified, to be and appear before your Honor, in this Honorable Court, then and there to answer, all and singular, the premises contained in this your Orators' Bill of Complaint, and to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience; and your Orators, &c.

A. S. PENNINGTON,
Solicitor, and of Counsel with the Complainant.

The Answer of Richard Wessels, one of the Defendants, to the Cross-Bill of Complaint of Rachel Van Houten and of Aaron S. Pennington, Executor of the last Will and Testament of Abraham Van Houten, deceased, Complainants.

This defendant now and at all times hereafter, saving and reserving, to himself all and all manner of benefit and advantage of exception

Answer of Richard
Wesles.

500 to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says:

That Abraham Van Houten the elder, in his lifetime, and at the time of his death, was seized in fee-simple of lands and tenements in Passaic county, in this State, of large value, and was also possessed of a very considerable personal property, the statement whereof in the complainants' bill this defendant admits to be truly made; and that being so seized and possessed, he did at the time, for that purpose stated in the bill, or about that time, make and execute his last will and testament, as this defendant believes, in the words set forth in the

510 bill; but as there may be materiality in the terms and expressions used in that instrument, this defendant insists that a true copy be produced and proven in the manner prescribed by the practice of this Court on the proof of wills: And this defendant admits that the said testator died at the time stated in the bill, leaving the said will unrevoked and in full force, and leaving the complainant, Rachel Van Houten, his widow, and Abraham Van Houten, his only child, him surviving; and that the said will was, at the time stated, duly proved by John S. Van Winkle and Brant Van Blarcom as executors thereof, and that they took upon themselves the due execution thereof.

520 And this defendant has understood and believes, and thereupon admits, that the said executors possessed themselves of the said testator's personal estate, and discharged thereout the debts and legacies against the estate, and have settled their accounts in the Orphans' Court of the county of Essex; and that they also have possessed themselves of the real estate, not specifically devised to Rachel Van Houten, the widow, and to this defendant, and received the rents, issues and profits thereof, and have invested the funds so received, and

530 applied them in the manner directed by the will; and that in their capacity of trustees, the said John S. Van Winkle and Brant Van Blarcom have had their accounts audited and settled in the Orphans' Court of the counties of Essex and Passaic. And this defendant further admits, that the last account of the said trustees was referred to auditors who reported thereon, and that their report was at the time stated in the bill, approved and confirmed by the Orphans' Court of the county of Passaic. And this defendant, as to the balances remaining in the hands of the executors and trustees, believes them to be correctly stated by the complainants, but he refers for their accuracy to the

540 statements themselves, or copies thereof, when produced; and that the said executors have not finally settled their accounts.

And this defendant further admits, that Abraham Van Houten, the testator's only son and heir at law, arrived at twenty-one years of age at or about the time stated in the complainants' bill, and that the complainants have correctly stated the names of the relatives of the testator, and their places of residence. And this defendant further answering saith, that the said John S. Van Winkle and Brant Van Blarcom, executors and trustees as aforesaid, in the year one thousand eight hundred and forty five, filed their bill in this honorable Court, against the said Abraham Van Houten, the testator's son, this defendant, and the various other persons for that purpose mentioned in the bill, setting forth, among other things, the will of the said Abraham Van Houten the elder, and that Abraham the son of the testator, then being upwards of twenty-one years of age, claimed to have a right in fee and absolutely of all the real and personal estate named and referred to in the residuary clause of his father's will; and that the other defendants, or some of them, claimed under the same clause, to have rights in the same property, in case the said Abraham Van Houten, the testator's son, died without children; and the said bill

560 prayed that the rights of these defendants in the said property might be ascertained and settled, and that a receiver to take the charge and custody of the said estate, in the place of said executors and trustees, (the complainants in that suit,) might be appointed. And this defendant admits that Abraham Van Houten, the son and this defendant, filed answers to that suit, and that no other of the defendants filed answers. But this defendant states that no further and other answers were filed, because the said suit was amicable in its character, and it was believed that the two answers filed would raise every question necessary to be decided in the cause and save much expense in not requiring all the

570 defendants to appear and file answers in the cause. And this defendant admits that John R. Van Houten, of Paterson, was appointed by the Chancellor receiver in that cause; but as to what he has done as such receiver, this defendant has no knowledge, and must therefore

leave ~~leave~~ him to account in the manner required by the practice of the Court. And this defendant takes no exception to the course pursued by the said John S. Van Winkle and Brant Van Blarcom, either in their character of executors or trustees, nor has he any particular knowledge of the state of their accounts, and therefore leaves them to render such statement of their transactions as this Court shall deem to

580 be proper and necessary.

590 And this defendant further admits that Abraham Van Houten, the testator's son, died at the time stated in the bill, not having conveyed the real estate which he derived under his father's will, and without ever having been possessed of a large part of the personal property bequeathed to him under certain restrictions and qualifications also under the said will, and without ever having been married, and without children: And that he left, as this defendant is informed and believes, a will, duly executed according to the laws of New Jersey, to pass real and personal estate, and that the same is correctly copied in the complainants' bill; but as the provisions of that ~~will~~ ^{will} may become important, this defendant desires that a copy thereof may be produced and proven according to law. And your orator admits that Aaron S. Pennington, Esq., the sole executor named in the said will, duly proved the same at the time stated, and took upon himself the execution thereof.

* will

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And this defendant further answering, denies that the complainant, Aaron S. Pennington, as executor of Abraham Van Houten, the testator's son, is entitled to have all the personal estate bequeathed to him by his father, or that Rachel Van Houten, the other complainant, is entitled to have the real estate devised in the said will to the said testator's son; but on the contrary, this defendant is advised, that by a fair construction of the will of Abraham Van Houten the elder, it was clearly the intention of the testator that if the said Abraham Van Houten, the son, died without children, (as he did,) that the estate, both real and personal, given to him by that will, should go over to the persons as provided for in the said will: and that this defendant, as a son of Casper Wessels, has a share in, and is entitled to a portion of said estate. But this defendant doth admit, that so far as the said Abraham, the son, had property, his will is sufficient to pass the same.

* the will of

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620 And this defendant admits, that the said suit has been revived, and that the complainants were directed to appear and put in their answers, and that the said cause has not been heard.

And this defendant further answering saith, he hath no knowledge, except by the bill, as to the increase of the personal estate during the minority of the said Abraham Van Houten, nor of the use of any part thereof, by the receiver in improving the real estate; but he respectfully submits to the Court that any increase of the personal estate during the said minority, becomes part of the personal estate of the testator, and must be governed by the same rules as any other portion of his personal property, and that any improvements made on the real estate cannot now be separated from such real estate.

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And this defendant denies all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, or avoided, traversed or denied, is true, to the knowledge or belief of this defendant: All which matters and things this defendant is ready to aver, maintain and prove, as this honorable Court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

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WM. S. PENNINGTON,
Solicitor of said Defendant.
WM. PENNINGTON,
of Counsel of said Compt.

Order of Reference to
Master.

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This matter being opened to the Court by A. S. Pennington, of counsel with the complainants, and it appearing from the pleadings in this cause that all the increase of the estate of Abraham Van Houten, the elder, from the time of the death of the said Abraham Van Houten, the elder, until the death of Abraham Van Houten, the younger, belongs to Aaron S. Pennington, as Executor of the last will and testament of Abraham Van Houten, the younger. It is thereupon ordered, adjudged and decreed, by Oliver S. Halsted, Chancellor of the State of New Jersey, on this thirty-first day of December, in the year of our Lord one thousand eight hundred and forty-nine, that it be referred to Philemon Dickerson, Esquire, one of the Masters of this Court, to state the accounts of John S. Van Winkle and Brant Van Blarcom, Trustees of Abraham Van Houten, the younger, from the date of their last accounts as settled in the Orphans' Court of the County of Passaic, (if any there be,) and also to take an account of the personal estate of the said Abraham Van Houten, the younger, and of the rents and profits of the real estate at the time of the death of the said Abraham Van Houten, the younger, in the hands of John R. Van Houten, the Receiver appointed under the original bill filed in this cause, and to report to this Court what the increase of said estate has been to the time of the death of the said Abraham Van Houten, the younger; and the said Master in stating said account is to consider whether the monies expended by the said John R. Van Houten, Receiver as aforesaid, should be charged against such increase, and also to take into account the bad debts and expenses of settling the estate of Abraham Van Houten, the elder; and that the said Master make

his report to this Court with all convenient speed, and that also further equity and directions be reserved until the coming in of the said Master's report.

O. S. HALSTED, C.

We consent to the foregoing Order.

WM. S. PENNINGTON,
Solicitor.

D. BARKALOW,
Solicitor of Brant Van Blarcom.
JOHN HOPPER,
Solicitor of John S. Van Winkle.

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Depositions.

Depositions of witnesses taken in the above cases, on the 25th day of February, A. D. 1850, at Congress Hall, in the town of Paterson, in presence of Aaron S. Pennington, as Solicitor for Aaron S. Pennington, as Executor of Abraham Van Houten, dec'd, and Rachel Van Houten, and John Hopper, of Counsel with Cornelius Van Winkle, Daniel Barkalow, Counsel for Brant Van Blarcom, Sam'l R. Gummere not appearing for the minors, Mary Louisa Van Saun, Jane Amelia Van Saun and Albert Van Saun, altho' duly summoned to appear as by his acknowledgment in writing produced before me appears, and William Pennington, Counsel for all the other parties.

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The complainant in the cross-bill having produced a paper purporting to be a copy of the last will and testament of Abraham Van Houten, the elder, and the same being duly certified, with the probate thereof, the same is exhibited and marked Exhibit P 1, on the part of the complainants in the cross-bill.

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Also, a paper purporting to be a copy of the will of Abraham Van Houten, the younger, which being duly certified, is exhibited and marked Exhibit P 2, on the part of the complainants in the cross bill. Adrian Van Houten being duly sworn on the part of the complainants in the cross-bill, on his oath saith—That he is acquainted with Leah, wife of Jacob Garrison, old Abraham Van Houten married into the Wessels's family at his first marriage; witness also knew Caspar Wessels, who was the brother of Leah Garrison, the wife of Jacob Garrison, and witness has always understood that the father of Caspar Wessels and Leah Garrison was the brother of the first wife of Abraham Van Houten, the elder; witness further saith, that Leah Garrison and Caspar Wessels were related to the old Abraham Van

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Houten by marriage only, and not by blood; and witness further saith, that Caspar Wessels had three children, to wit: Richard Wessels, Hannah or Ann Wessels, who married Samuel A. Van Saun, Esq., and Jane, who married Garret A. Hopper. These children of Caspar Wessels were not related to the old Abraham Van Houten by blood. Witness further saith, that he is past seventy-three years of

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ADRIAN VAN HOUTEN.

Taken and sworn this 25th of February, 1850.

PH. DICKERSON,

Master in Chancery.

Jane Van Winkle, being duly sworn on the part of the complainants in the cross-bill, on her oath saith—That she was well acquainted with the old Abraham Van Houten in his life time; he was own cousin of her father; she also knew Caspar Wessels, and Leah, the wife of Jacob Garrison; they were brother and sister; their father was the brother of the first wife of Abraham Van Houten. Witness believes that Caspar Wessels and Leah, the wife of Jacob Garrison, were not related to the old Abraham Van Houten by blood, but only by marriage; nor does witness know of any blood relationship between the children of Caspar Wessels to the old Abraham Van Houten.

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JANE VAN WINKLE.

Taken and sworn this 25th of February, A. D., 1850.

PH. DICKERSON,

Master in Chancery.

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Samuel Van Saun being duly sworn on the part of the complainants, on his oath saith—That he knew Caspar Wessels in his life-time; he left three children, to wit: Ann, Richard and Jane; Jane married Garret A. Hopper, and is now living; witness married Ann, who died nearly six years ago, leaving four children, to wit: Elizabeth Van Houten Van Saun, who is now of age and past; Mary Louisa Van Saun, Jane Amelia Van Saun and Albert Van Saun, the three last named are all under twenty-one years of age.

SAM'L A. VAN SAUN.

Taken and sworn this 25th of February, A. D., 1850.

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PH. DICKERSON,

Master in Chancery.

Interlocutory Decree.

This cause being opened to the Court by Mr. A. S. Pennington of

counsel with the complainants, whereupon and upon reading a report on file made by Philemon Dickerson, Esquire, one of the Masters of this Court, made in pursuance of an order of this Court, whereby it appears that John S. Van Winkle and Brant Van Blarcom, as Trustees of the estate of Abraham Van Houten, the elder, have delivered over to John R. Van Houten, as Receiver, all the monies, vouchers and securities belonging to said estate, and that there is no account of theirs to be stated; since their last account as settled in the Orphans Court of the County of Passaic; and it further appearing by said report, that at the time of the decease of Abraham Van Houten, the younger, to wit, on the twentieth day of May, in the year of our Lord one thousand eight hundred and forty-nine, there was in the hands of John R. Van Houten, as Receiver, monies and securities for monies, amounting to the sum of thirteen thousand eight hundred and ninety-one dollars and ten cents; and it further appearing by said report, that the increment of the estate of the said Abraham Van Houten, the elder, from the time of his death, to the death of Abraham Van Houten, the younger, amounts to seven thousand three hundred and sixty two dollars and fifty-five cents; which increment of seven thousand three hundred and sixty-two dollars and fifty five cents, is to be paid by the said Receiver unto Aaron S. Pennington, as Executor of Abraham Van Houten, the younger, with the interest thereon, from the said twentieth day of May, in the year of our Lord one thousand eight hundred and forty-nine; which leaves in the hands of said Receiver on the same date a balance of said estate of six thousand five hundred and twenty-eight dollars and fifty-five cents to be accounted for; and it further appearing by said report, that during the administration of the estate of Abraham Van Houten, the elder, up to the twentieth day of May, eighteen hundred and forty-nine, there has been paid out of the personal estate for permanent improvements to the real estate, the sum of two thousand two hundred and eighty seven dollars and sixty-nine cents; and during the same time there has been received from the Ramapo Railroad Company, for a portion of the real estate occupied by the said Road, the sum of two thousand dollars, leaving a balance of two hundred and eighty-seven dollars and sixty nine cents to be re-paid to the personal estate; out of the rents of the real estate, after the twentieth day of May, eighteen hundred and forty-nine; and it further appearing by said report, that on or about the first day of July, eighteen hundred and thirty-six, Brant Van Blarcom and John S. Van Winkle, as Trustees of the estate of Abraham Van Houten, the elder, loaned to one Samuel Davis the sum of four hundred and seventy-

nine dollars and ninety-four cents, for which they took the bond of
 said Samuel Davis and P. Alling ; to secure the payment whereof, they
 also took a mortgage from the said Samuel Davis and his wife, upon
 several lots in the town of Newark, in the State of New Jersey ; and
 800 afterwards, upon the foreclosure of said mortgage, the said lots of land
 in said mortgage described, were sold by the Sheriff of the County of
 Essex, and purchased by the said Trustees, as appears by the deed
 for the same ; and that the said Trustees, Brant Van Blarcom and
 Cornelius Van Winkle, as Administrator and sole heir at law of said
 John S. Van Winkle, should release and convey the said lots of land
 and premises in the said deed described to the said John R. Van
 Houten as Trustee of said estate ; and that the said Brant Van Blar-
 com and Cornelius Van Winkle should make to the said John R. Van
 Houten, as Receiver, an assignment, in due form, of all the bonds,
 810 notes, or other securities for monies, which have heretofore been de-
 livered over to him, belonging to said estate ; and it further appeared
 by said report, that there is due from the Camden Fire Insurance
 Company, the sum of seven hundred dollars, for damage by fire to the
 buildings on Main-street in Paterson, which, when paid, is to be credited
 to the account of the real estate ; and no cause being shewn or appear-
 ing against confirming the ^{said} report—It is on this sixteenth day of April,
 in the year of our Lord one thousand eight hundred and fifty, by Oliver
 S. Halsted, Esquire, Chancellor of the State of New Jersey, ordered,
 adjudged and decreed ; and the said Chancellor doth by virtue of the
 820 power and authority of this Court, hereby adjudge and decree, that the
 Master's report do stand ratified and confirmed, and that the increase
 of the estate of the said Abraham Van Houten, the elder, from the
 time of his death, to the time of the death of Abraham Van Houten,
 the younger, amounting to the sum of seven thousand three hundred
 and sixty-two dollars and fifty five cents, be paid over by John R. Van
 Houten, the Receiver appointed in this cause, to Aaron S. Pennington,
 Executor of Abraham Van Houten, the younger, with the interest
 thereon, from the twentieth day of May, in the year of our Lord one
 thousand eight hundred and forty-nine ; and it is further ordered,
 830 adjudged and decreed, that Brant Van Blarcom, surviving Trustee,
 and Cornelius Van Winkle, Administrator and sole heir at law of
 John S. Van Winkle, deceased, release and convey the lot of land
 purchased as aforesaid, by said Trustees, to the said John R. Van
 Houten, Receiver as aforesaid, and that they also make assignments,
 in due form of law, of all the bonds, mortgages, notes, or other secu-
 rities for money, which have heretofore been delivered over to said

John R. Van Houten, Receiver as aforesaid, belonging to said estate, to him as such Receiver.

O. S. HALSTED, C.

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Final Decree.

This cause coming on to be heard at a Special Term of the Court of Chancery, held at Trenton on the second day of May, in the year of our Lord one thousand eight hundred and fifty, before his Honor the Chancellor of this State, in the presence of Aaron S. Pennington and Peter D. Vroom, of Counsel with the complainants in the cross-bill, and of William Pennington and A. O. Zabriskie, of Counsel with the defendants in the cross-bill, and the pleadings, proofs and exhibits made and taken in these causes having been read and considered, and what was alleged by the counsel of the respective parties heard and understood, and time taken to consider and advise thereon, and it appearing to the satisfaction of the Chancellor, that subpoenas, directed to all the defendants in the cross-bill, have been served upon all the defendants by the Sheriffs of the counties of Passaic and Bergen, except upon the defendant, Henry Post, and that the order made in said cause, directing the said Henry Post to appear, plead, answer or demur, has been duly published as directed by said order; and it appearing that Brant Van Blarcom, John S. Van Winkle and Richard Wessels, have severally filed their answers to the said cross bill, and that the other defendants have not filed any answer, plea, or demurrer to said cross-bill: and it further appearing, that Abraham Van Houten, the younger, and Richard Wessels, filed their several answers to the original bill, and that none of the other defendants have filed any plea, answer, or demurrer to said original bill; and it further appearing, that John S. Van Winkle, one of the complainants in the original bill, and one of the defendants in the cross-bill, hath died since the filing of the cross-bill, leaving a son, Cornelius Van Winkle, his sole heir at law; and that by a rule of this Court, the said Cornelius Van Winkle has been made a party to this suit as such heir at law, and administrator of the said John S. Van Winkle, deceased. And it appearing to the satisfaction of the Chancellor, by the pleadings, proofs and exhibits, made and taken in this cause, that Abraham Van Houten, the elder, made and executed his last will and testament in the pleadings set forth, in manner and form sufficient to pass real estate in New Jersey, and departed this life without altering or revoking the same, leaving one son, Abraham Van Houten, and his wife, Rachel, him surviving; that the said Abraham Van Houten, the younger, was then an infant;

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that in and by said will he gave divers legacies, which have all been paid and satisfied: that he gave to his wife, Rachel, the whole use of his farm, together with his dwelling house where he then lived; also all the farming utensils, together with his whole stock of said farm; also his family of colored people, together with household and kitchen furniture not otherwise disposed of, with every article belonging to the same as he at that time occupied and enjoyed the same, until his son, Abraham Van Houten, should arrive at the age of twenty-one years; and, also, that he gave to her the sum of three hundred dollars a year, yearly and every year, out of his estate during her natural life, in lieu of her dower; that he gave to Richard Wessels a lot on Broadway, in the town of Paterson, in front thirty feet and in depth one hundred feet, in fee simple; that he then gave, devised and bequeathed unto his son, Abraham Van Houten, all the rest and residue of his estate, both real and personal, whatsoever and wheresoever, lying and being of whatsoever description the same might be, except what was therein otherwise disposed of, to him, his heirs and assigns forever; and his will was, and he did order, that his Executors should rent out all his property lying in the towns of Paterson and Hackensack, and all houses and lots owned by him, at their discretion, for the benefit of his son, Abraham Van Houten; and the proceeds arising therefrom, after deducting all necessary expenses and charges, together with his personal estate, consisting of money, bonds, notes and mortgages bequeathed to his said son, Abraham Van Houten, to be put out to interest for the benefit of his son by his Executors, until he should arrive at the age of twenty-one years; and he did further order, that his Executors should give to his said son, Abraham Van Houten, out of his estate, a good college education and a decent support until he should arrive at the age of twenty one years; but if his said son, Abraham Van Houten, should die, having no children, then he disposed of his property in the following manner:—First, he gave unto the grand-children of his sister, Elizabeth Van Riper, wife of Richard Van Riper, deceased, one thousand dollars, to be equally divided among them, share and share alike, to them, their heirs and assigns forever. Also, he gave unto the children of his sister, Caty Post, wife of Adrian Post, the sum of one thousand dollars, to be equally divided among them, share and share alike, to them, their heirs and assigns forever. Also, he gave unto the children of his sister, Jane, wife of Henry Post, one thousand dollars, to be equally divided among them, share and share alike, to them, their heirs and assigns forever—all the rest and residue of his estate, real and personal, wheresoever and

- whatsoever description the same might be, he gave, devised and bequeathed one equal third part thereof unto his wife, Rachel, to her, and to her heirs and assigns forever. Also, he gave, devised and bequeathed one other equal third part thereof unto Leah, wife of Jacob Garretson, to her and to her heirs and assigns forever. Also, he gave, devised and bequeathed one other equal third part thereof unto the children of Casper Wessels, deceased, to be equally divided among them, share and share alike, to them, their heirs and assigns forever, and he appointed John S. Van Winkle and Brant Van Blarcom, Executors of his said will; and it further appearing, that the said Abraham Van Houten, the younger, arrived at the age of twenty-one years
- 920 in the month of September, in the year of our Lord one thousand eight hundred and forty-five; and it further appearing, that Abraham Van Houten, the younger, died on the twentieth day of May, in the year of our Lord one thousand eight hundred and forty-nine, leaving a last will and testament, duly executed according to law, sufficient to pass real estate by the laws of New Jersey; that in and by said will he gave, devised and bequeathed to his mother, the said Rachel Van Houten, all his estate, real and personal; that he died seized and possessed of, to have and to hold to her, her heirs and assigns forever, and appointed the said Aaron S. Pennington, Executor of his said
- 930 will; and it further appearing, that the original bill filed in this cause, was filed for the purpose of settling disputes under the will of Abraham Van Houten, the elder, and of obtaining the direction of this Court as to the true construction of said will, and of ascertaining the rights and interests of the respective parties under said will; and the Chancellor is of opinion and doth declare that the said Abraham Van Houten, the elder, intended by his will that his son, Abraham Van Houten, if he should arrive at the age of twenty-one years, should have and hold the lands and tenements in fee simple, and should have the absolute right in the personal estate, without any limitation or
- 940 qualification, and that the said Abraham Van Houten, the younger, upon his arriving at the age of twenty-one years, became entitled under said will to the said real and personal estate, and to have the personal estate given to him, and to have the absolute power over the real estate, with full right to alien or devise the same; and that inasmuch as the said Abraham Van Houten, the younger, arrived at twenty-one years of age, the contingency upon which the limitations over were given did not happen, and that these legatees and devisees over have no right, title or interest in the real and personal estate of Abraham Van Houten, the elder, and further that the Receiver should assign
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960 and hand over to the said Aaron S. Pennington, Executor of Abraham Van Houten, the younger, all the personal estate in his hands of every kind and description whatsoever, and also should deliver up to the said Rachel Van Houten all the real estate, the same having been devised to her by the will of the said Abraham Van Houten, the younger.

It is accordingly, on this fifth day of July, in the year of our Lord one thousand eight hundred and fifty, by his Honor, Oliver S. Halsted, Chancellor of the State of New Jersey, ordered, adjudged and decreed; and the said Chancellor doth by virtue of the power and authority of this Court, order, adjudge and decree, that the said Abraham Van

970 Houten, the younger, upon his arriving at the age of twenty-one years, became the owner of all the real estate of Abraham Van Houten, the elder, in fee simple, and the absolute owner of the personal estate of Abraham Van Houten, the elder, free and clear of any limitation, reversion, remainder, executory devise, or of any incumbrance whatsoever, (except the said annuity to the said Rachel Van Houten, and except the lot of land devised to Richard Wessels,) with full power to alien and devise the same; and it is further ordered, adjudged and decreed, that John R. Van Houten, the Receiver appointed in this cause, transfer, assign, and set over unto Aaron S. Pennington, Execu-

980 tor of Abraham Van Houten, the younger, all the money, bonds, mortgages, notes, and all other securities for money in his hands; and that he deliver up to the said Rachel Van Houten the real estate, together with all deeds and muniments of title relating to or concerning the same; and it is further ordered, adjudged and decreed, that the said bill and cross bill be taken as confessed against the said Richard Post, John Post, David D. Van Bussum, Administrator of Jane, his late wife, Anna Van Houten, Martha Post, Henry Post, John A. Van Riper, and Elizabeth, his wife, Jane Van Blarcom, Jacob Garrison, and Leah, his wife, Elizabeth Van Houten Van Saun, Mary

990 Louisa Van Saun, Jane Amelia Van Saun, Albert Van Saun, Garret A. Hopper, and Jane, his wife; and it is further ordered, adjudged and decreed, that under and by virtue of the said will of Abraham Van Houten, the elder, the said Richard Post, John Post, David D. Van Bussum, Administrator of Jane, his late wife, Anna Van Houten, Martha Post, Henry Post, John A. Van Riper, and Elizabeth, his wife, Jane Van Blarcom, Jacob Garrison, and Leah, his wife, Elizabeth Van Houten Van Saun, Mary Louisa Van Saun, Jane Amelia Van Saun, Albert Van Saun, Garret A. Hopper, and Jane, his wife, and Richard Wessels, have no right, title, or interest in the real or

1000 personal estate of Abraham Van Houten, the elder; and it is further

ordered, that all the taxed costs on the part of the complainants and the defendants in these causes be paid by John R. Van Houten, the Receiver appointed in this cause, out of the funds in his hands as such Receiver.

O. S. HALSTED, C.

To the Honorable the Court of Errors and Appeals in the last resort :

1010

Petition of Appeal by
Richard Wessels.

The petition of Richard Wessels, the appellant in the above stated causes, respectfully shews, that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Oliver S. Halsted, Chancellor of the State of New Jersey, bearing date the fifth day of July, A. D. 1850, wherein the parties above stated were complainants and defendants in the following particulars, to wit:—

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FIRST—Because the said decree adjudges, that Abraham Van Houten, the younger, upon his arriving at 21 years of age, became the owner of all the real estate of Abraham Van Houten, the elder, in fee simple, and the absolute owner of the personal estate of Abraham Van Houten, the elder, free and clear of any limitation, reversion, remainder, executory devise, or of any incumbrance whatsoever, (except the annuity to Rachel, the widow, and except the lot of land devised to Richard Wessels,) with full power to alien and devise the same.

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SECOND—Because by the words and true construction of the said will, it was provided, that if the said Abraham Van Houten, the younger, should die, having no children, (a contingency which has happened,) the property of the testator was given over to other persons, relatives of the testator named in the said will, the defendants above named, and a share whereof came to this appellant, and the decree should therefore have established and confirmed the rights of the said defendants and this appellant, and directed the property transferred to them.

THIRD—Because the said decree directs John R. Van Houten, the Receiver appointed in the said causes, to transfer, assign and set over unto Aaron S. Pennington, Executor of Abraham Van Houten, the younger, all the money, bonds, mortgages, notes and all other securities for money in his hands, and to deliver to Rachel Van Houten the real estate, together with all deeds and muniments of title relating to or concerning the same.

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FOURTH—Because the said decree directs the said bill and cross bill to be taken as confessed against Richard Post, John Post, David D. Van Bussum, Administrator of Jane, his late wife, Anna Van

Houten, Martha Post, Henry Post, John A. Van Riper, and Elizabeth, his wife, Jane Van Blarcom, Jacob Garrison, and Leah, his wife, Elizabeth Van Houten Van Saun, Mary Louisa Van Saun, Jane Amelia Van Saun, Albert Van Saun, Garret A. Hopper, and Jane, his wife, defendants therein, and decrees that under the will the said Abraham Van Houten, the elder, the said defendants and this appellant, have no right, title, or interest in the real or personal estate of Abraham Van Houten, the elder.

1050 And your petitioner appeals from the said decree of the Chancellor upon the ground aforesaid, believing that the same is erroneous, and that such is not the true construction and meaning of the will of the said Abraham Van Houten, the elder, but that in the death of Abraham Van Houten, the younger, without children, (a contingency which has happened,) all the property so devised and bequeathed to him by the said will passed over to the persons named therein, who should be entitled in the happening of said contingency, and that your petitioner is among that number.

1060 Your petitioner therefore prays, that the said decree of the Chancellor may be reversed, set aside, and for nothing holden, and a new decree ordered in conformity with the provisions of the said will; and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

WM. S. PENNINGTON, Solicitor of Appellants.
WM. PENNINGTON, of Counsel.

