

New-Jersey Court of Errors and Appeals.

BETWEEN

HENRY S. TERHUNE, complainant,

and

ASA S. COLTON AND MARGARET HIS WIFE,
WILLIAM C. SCHENCK, AND ABRAHAM W.
BROWN, defendants,

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On bill, &c.

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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

To his Honor Oliver S. Halsted, Chancellor of the State of  
New Jersey.

Humbly complaining, shows unto your Honor your orator, Henry S. Terhune, of the township of Montgomery, county of Somerset, and state of New Jersey, that John C. Schenck, late of the township of West Windsor, in the county of Mercer, and state aforesaid, deceased, being indebted to one James Bishop in the sum of six thousand dollars, for money lent and advanced by the said James Bishop to the said John C. Schenck, did execute and deliver unto the said James Bishop a certain bond or obligation, bearing date the twenty-eighth day of June, eighteen hundred and thirty-nine, in the penal sum of twelve thousand dollars, conditioned 10  
for the payment of six thousand dollars, on the first day of May, eighteen hundred and forty, with interest from the first day of May, eighteen hundred and thirty-nine; and, to secure the payment of the said sum of six thousand dollars, the said John C. Schenck and Mary Ann his wife did, on the same day, execute to and deliver unto the said James Bishop a certain indenture of mortgage, bearing date on that day, by which the said John C. Schenck and Mary Ann his wife did grant and convey unto the said James Bishop, his heirs and assigns, a certain tract of land, situated in the township of West Windsor aforesaid, particularly described in the said in- 20  
denture of mortgage, and containing one hundred and fifty-seven acres of land, with a proviso, that if the said John C. Schenck, his heirs, executors, or administrators, should pay to the said James Bishop, his executors, administrators, or assigns, the said sum of

six thousand dollars, according to the condition of the aforesaid bond or obligation, that then the said indenture of mortgage, and the estate thereby granted, should cease and become void.

And your orator further shows, that on the twenty-seventh day of May, eighteen hundred and forty-three, the said bond or obligation and the said indenture of mortgage were duly assigned, for a valuable consideration, by the said James Bishop to your orator; and the said sum of six thousand dollars, not having been paid according to the condition of the said bond or obligation and the

10 said indenture of mortgage, but the same, together with a large arrear of interest remaining due and unpaid, your orator, on the first day of April, eighteen hundred and forty-five, filed his bill in this honorable court for a foreclosure of the equity of redemption and a sale of the said mortgaged premises; and such proceedings were thereupon had, that, on the fifteenth day of December, eighteen hundred and forty-six, a final decree was made for the sale of the said mortgaged premises, and a *feri facias* was issued directed to the sheriff of the county of Mercer, commanding him to make

20 sale of so much of the said mortgaged premises as would be sufficient to pay unto your orator the sum of seven thousand eight hundred and forty-five dollars, the principal and interest of his said mortgage, together with the costs of the said suit, as by a reference to the said bill, and the proceedings thereupon had, will more fully and at large appear.

And your orator further shows, that, in obedience to the said writ of *feri facias*, the whole of the premises included in the said mortgage, after having been duly advertised, were, by the sheriff of the county of Mercer, on the first day of May, eighteen hundred and forty-seven, exposed to sale by public vendue, in the said town-

30 ship of West Windsor; and your orator bidding therefor the sum of eight thousand six hundred dollars, and no one bidding more, the said lands and premises were struck off to him, and on the tenth day of the same month of May, a deed for the said lands and premises was duly made and executed to your orator, by John Hammell, esquire, the said sheriff of the county of Mercer; and, some time after the execution and delivery of the said deed, your orator went into possession of the said lands and premises, and has since, either by himself or his tenant, continued to occupy and possess the same.

40 And your orator further shows, that the consideration paid by him to the said James Bishop for the said bond and mortgage, when the same was assigned to him as aforesaid, was the sum

amount of the principal and interest at that time due thereon; and that your orator was informed, by the said James Bishop, that there was no other encumbrance of any description upon the said property prior to the said mortgage so as aforesaid assigned to him. Never having heard from any one the slightest intimation that there was any prior lien or encumbrance upon the said property, your orator has been greatly surprised to find that the very same premises included in the mortgage so as aforesaid assigned to him, and which were conveyed to him as aforesaid by the sheriff of the county of Mercer, had been advertised to be sold on the eighth 10 day of this instant, at the house of Sarah A. Bashford, in Princeton, in the county of Mercer, by Abraham W. Brown, former sheriff of the county of Middlesex, by virtue of an execution out of the Court of Chancery of the state of New Jersey, at the suit of Caleb Johnson and Enoch Johnson against John C. Schenck and others. As soon as your orator's attention was called to the said advertisement, he made inquiries, with a view of ascertaining what was the condition of the suit, and the nature of the proceedings in the Court of Chancery under which the former sheriff of the county of Middlesex was about to make sale of the premises in 20 question. Your orator ascertained that the writ of *feri facias*, under which the said property was advertised to be sold, was a writ issued out of this honorable court, on the twenty-first day of February, eighteen hundred and thirty-seven, in a cause in which Caleb Johnson and Enoch Johnson were complainants, and John C. Schenck, Asa S. Colton and Margaret his wife, William Schenck, and Isaac Story, executor of James Stoddard, deceased, were defendants, directed to the sheriff of the county of Middlesex, commanding him to make sale of a certain tract of land, situate in the township of West Windsor (then in the county of Middlesex), containing 30 one hundred and fifty-seven acres of land, (being the same premises included in the mortgage assigned to your orator by the said James Bishop as aforesaid) and out of the proceeds of the sale to pay and satisfy, in the first place, to the said Asa S. Colton and Margaret his wife the sum of one thousand seven hundred and twenty-four dollars and thirty-eight cents, and to the said William Schenck the like sum of one thousand seven hundred and twenty-four dollars and thirty-eight cents, being the amount due upon their legacies secured upon the said premises, and to pay and satisfy, in the second place, unto the complainant, Caleb Johnson, the sum 40 of four thousand nine hundred and four dollars, and to the complainant, Enoch Johnson, the sum of two thousand six hundred

and ninety-seven dollars and twenty cents, being the sums secured by their mortgages in the proceedings mentioned; and to pay and satisfy unto the said Caleb Johnson, in the third place, the sum of two thousand four hundred and forty-one dollars, being the amount due on his mortgage in the said proceedings mentioned; and to pay and satisfy, in the fourth place, unto Isaac Story, executor of James Stoddard, deceased, the sum of two thousand six hundred and forty-two dollars and six cents, the principal and interest secured by his mortgage in the said proceedings mentioned, together  
 10 with the costs of the complainants and of the said Isaac Story. The said writ of *feri facias* was returned to the April term of this court, eighteen hundred and thirty-seven, with the following certificate endorsed thereon by Abraham W. Brown, sheriff of the county of Middlesex: "I do hereby certify, that the property described in the within *fi. fa.* has, by me, been advertised according to law, to be sold at public auction, at the house of A. H. Voorhees, innkeeper, in the township of West Windsor, on the twelfth day of May next, between the hours of 12 and 5 o'clock P. M. March 12th, 1837."

20 Your orator then applied for information to the solicitor of Caleb Johnson and Enoch Johnson, the complainants at whose suit the said property was taken in execution and advertised to be sold, and was informed by him that the said execution had long since been satisfied, so far as the said complainants were concerned; that before the day on which the said property was at first advertised to be sold by the sheriff, and on or about the thirtieth day of March, eighteen hundred and thirty-seven, the whole amount of principal and interest due to the said Caleb Johnson and the said Enoch Johnson, on their respective mortgages in the said proceedings mentioned, was paid and satisfied, together with the costs of  
 30 the said complainants and the sheriff's fees on the said execution, including his per centum on the whole amount due to the complainants and defendants, as allowed by law when executions are settled without actual sale; and that it was not by the instructions of the said complainants or their solicitor, or with their knowledge, that the former sheriff of the county of Middlesex was now proceeding under the said execution.

And your orator further shows, that he next made application to the solicitor of the said Asa S. Colton and Margaret his wife, William Schenck, and Isaac Story, executor of James Stoddard, defendants named in the said execution, and who had an interest therein, for the purpose of ascertaining by what authority the for-

mer sheriff of the county of Middlesex, after a lapse of more than eleven years, had advertised for sale the property in question under an execution long since settled and arranged by the parties; and your orator was informed by the said solicitor, James S. Green, esq., that he had given no instructions to the said Abraham W. Brown to proceed under the said execution or to advertise the said property for sale, and that the first knowledge which he had that any such proceedings were in contemplation was from seeing the sheriff's advertisement in one of the papers of the city of New Brunswick. 10

And your orator further shows that, through his solicitor, he addressed a communication to the said Abraham W. Brown, inquiring by what authority he had advertised for sale the property in question, and received for answer, under date of May 24th, 1848, that he had been directed by the said Asa S. Colton and William Schenck to obey the instructions of Courtland Parker, and not the instructions of James S. Green; and, for further information, referring your orator to Courtland Parker, esq., of Newark. Having thus ascertained that it was at the instance of Asa S. Colton and William Schenck alone, two of the defendants in the said execution named, that the said Abraham W. Brown had advertised the property in question, and was about to sell the same, your orator proceeded to make inquiries in reference to the history of the claims of the said Asa S. Colton and William Schenck under the said execution, and how far the same had been satisfied. 20

The legacies of the said Asa S. Colton and Margaret his wife and William Schenck, referred to in the said execution, were legacies bequeathed to the said Margaret and William by the will of their grandfather, Joseph Schenck, bearing date the nineteenth day of February, eighteen hundred and twenty-two. Joseph Schenck, 30 by his said will, devised to his son, the said John C. Schenck, his homestead place, containing about two hundred and fifty-six acres, including the premises in question, and several lots of land. He also made to him some bequests of personal property, and, in consideration of said devises and bequests, he thereby directed him to pay to Margaret Schenck and William Schenck, grandchildren of the testator, the sum of one thousand nine hundred and fifty-three dollars, to be equally divided between them, and to be paid in three equal annual payments, the first to become due the first day of May next after the decease of the said testator. There were 40 other legacies given by the said will to the said Margaret and William Schenck, and the executors were directed to place out at in-

terest the amount of all the legacies given to the said Margaret and William, and to apply the interest arising therefrom to their support and education, until they arrive at the age of twenty-one, when the principal was to be paid to them. The said John C. Schenck and his brother Elias Theodore Schenck were appointed executors of the said will; but the said John C. Schenck alone acted in that capacity. The said Joseph Schenck died about the month of November, 1822. What payments were made by the said John C. Schenck to the said Margaret and William Schenck,

10 on account of the legacy of one thousand nine hundred and fifty-three dollars, between the time when the same became payable and the year eighteen hundred and thirty-three, your orator has not been able to ascertain. There can be no doubt that the interest, at least, was applied towards their support and education. But, in the year eighteen hundred and thirty-three, a marriage took place between the said Margaret Schenck and the said Asa S. Colton; and before the said marriage was solemnized, as your orator has been informed and believes to be true, an article of agreement or a deed of trust, in the nature of a marriage settle-

20 ment, was made and executed by and between the said Asa S. Colton and Margaret Schenck and John C. Schenck, bearing date on the eighteenth day of February, eighteen hundred and thirty-three. This deed of trust the said Asa S. Colton has, since the death of the said John C. Schenck, in some way obtained the possession of, and your orator cannot state with precision the contents thereof, not having access thereto, nor being able to obtain a copy thereof, but he is informed and believes that, by the said deed of trust, the whole amount of principal and interest at that time due to the said Margaret Schenck, on account of the said legacy, was

30 by the said Margaret Schenck, with the consent of her intended husband, the said Asa S. Colton, transferred to the said John C. Schenck, as trustee of the said Margaret, and to be held by him for her sole and separate use, and not to be under the control of her said husband. At the time of the execution of this deed of trust, the said John C. Schenck was a man of large property, of undoubted credit, and wholly unembarrassed in his affairs, and the arrangement thus made was deemed a most beneficial one for the said Margaret.

Admitting that this legacy bequeathed by Joseph Schenck to

40 Margaret Schenck was originally a lien upon the real estate devised to the said John C. Schenck as aforesaid, yet your orator respectfully insists that it ceased to be so from the time of the execu-

tion of the said deed of trust. He submits that, at that time, the whole of the said legacy was in fact paid by John C. Schenck to the said Margaret, and received by him as her trustee, and that from thenceforth it was no longer a lien or charge upon the real estate which had been devised to him by his father. Accordingly the said John C. Schenck, shortly after the execution of this deed of trust, and on or about the first day of May, eighteen hundred and thirty-three, applied to the said Caleb Johnson and Enoch Johnson for the loan of a considerable sum of money, and to secure the same, proposed to mortgage to the said Caleb and Enoch Johnson one hundred and fifty-seven acres of land, being part of the homestead place devised to him by his father, and which he represented to them to be wholly free and clear of all encumbrance whatever. And the said Caleb and Enoch Johnson relying, as your orator has been informed and believes to be true, upon the assurances of the said John C. Schenck that the said property was wholly unencumbered, did agree to loan to him the sum of six thousand two hundred dollars, of which the said Caleb Johnson furnished four thousand dollars, and the said Enoch Johnson two thousand two hundred dollars. And the said John C. Schenck, to 20 secure the payment of the said sum of six thousand two hundred dollars, did thereupon execute and deliver unto the said Caleb Johnson and Enoch Johnson a mortgage upon the said one hundred and fifty-seven acres of land, being the same premises now advertised to be sold by the former sheriff of Middlesex. And on the fourth day of June, eighteen hundred and thirty-three, the said Caleb Johnson made another loan of two thousand dollars to the said John C. Schenck, to secure the payment of which the said John C. Schenck made and executed to the said Caleb Johnson a second mortgage upon the same one hundred and fifty-seven acres 30 of land, which he still represented to be free from all other encumbrances save the mortgage before executed to Caleb and Enoch Johnson.

And your orator further shows, that on the seventh day of March, eighteen hundred and thirty-six, the said John C. Schenck, having become much embarrassed in his circumstances, and failing to pay the interest upon the mortgages so given to the said Caleb and Enoch Johnson as aforesaid, a bill was filed in this honorable court, by the said Caleb and Enoch Johnson, for a foreclosure of the equity of redemption and a sale of the said mortgaged premises. 40 Your orator is informed, and believes it to be true, that the said Asa S. Colton and wife and William Schenck were not at first

made parties to the said bill of foreclosure, no intimation having been given to the said Caleb and Enoch Johnson up to that time that there was any pretence of the legacies of the said Margaret Colton and William Schenck being a lien upon the mortgaged premises. But the complainants in the said bill, understanding that it was the intention of the said John C. Schenck to set up these legacies as an existing lien upon the premises so as aforesaid mortgaged to them, they amended their bill by making the said Asa S. Colton and Margaret his wife and William Schenck defendants thereto.

- 10 No answer to said bill was filed by the said Asa S. Colton and wife and William Schenck, but a decree *pro confesso* was entered against them. An answer was, however, put in by the said John C. Schenck, insisting that the said legacy of nineteen hundred and fifty dollars, given to the said Margaret and William Schenck by the will of their grandfather, Joseph Schenck, was a charge upon the mortgaged premises, and entitled to a priority in payment over the mortgages of the said Caleb and Enoch Johnson. This answer was filed on the fourteenth of October, eighteen hundred and thirty-six. On the nineteenth day of March preceding, the said
- 20 John C. Schenck had made an assignment of all his estate, real and personal, to Isaac Story, for the benefit of his creditors.

And your orator further shows, that he is informed, and believes it to be true, that before any evidence was taken in the said cause, and while the said Caleb and Enoch Johnson were preparing to resist the claim set up by the said John C. Schenck to have the said legacy declared a charge upon the mortgaged premises, an agreement was entered into between the said Caleb Johnson and Enoch Johnson, on the one hand, and the said John C. Schenck and Asa S. Colton and Margaret his wife and William Schenck on the

30 other, by which it was agreed that a decree should be made in the said cause declaring the said legacy to be a lien upon the said mortgaged premises, and entitled to be first paid out of the same, and that an execution should issue in conformity with the said decree, but that the moneys arising from the sale of the said mortgaged premises should be applied, in the first place, to the payment of the several mortgages of the said Caleb and Enoch Johnson and the costs of the said suit, and the residue to the payment of the said legacy, which said agreement was in writing, and bore date on the sixth day of February, 1837, and was signed by Richard S. Field, as the solicitor of the complainants, Samuel R. Hamilton, solicitor of John C. Schenck, and James S. Green, solicitor

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of the said Asa S. Colton and Margaret his wife and William Schenck.

And your orator further shows, that, in pursuance of the said agreement, a decree of this honorable court was made on the seventh day of February, eighteen hundred and thirty-seven, and an execution issued, in conformity with the said decree, directed to the sheriff of the county of Middlesex, being the same execution before referred to, and under which the premises in question are now advertised for sale. Upon receiving the execution, the sheriff advertised the mortgaged premises for sale on the twelfth 10 day of May, eighteen hundred and thirty-seven; but your orator is informed, and believes it to be true, that before the arrival of that day, and on the thirtieth of March, eighteen hundred and thirty-seven, the said execution was settled by the parties, and a new arrangement made between them. Isaac Story, the assignee of John C. Schenck, had in the mean time advertised for sale the homestead farm of the said John C. Schenck, containing two hundred and fifty-six acres, and including the premises in question, and, on the said thirtieth day of March, the same was purchased by John Gulick for the sum of sixty-seven dollars, subject to encumbrances. 20 This purchase was made by the said John Gulick for the benefit of John C. Schenck, and with the intention of subsequently conveying the property to him. On the same day, a mortgage was executed by the said John Gulick to James Bishop on one hundred and fifty-seven acres of land, being part of the said homestead farm, to secure the payment of five thousand nine hundred and sixty-nine dollars and forty-six cents. This mortgage from the said John Gulick to James Bishop was made contemporaneously with the settlement of the said execution. And the arrangement that was made, as your orator is informed and believes, was this: 30 the said James Bishop was willing to take a mortgage upon the said one hundred and fifty-seven acres of land, provided it could be cleared of all existing encumbrances. This could only be effected by a satisfaction of the execution issued out of the Court of Chancery, and then in the hands of the sheriff. With the money thus obtained from the said James Bishop, together with other moneys raised by the said John Gulick, the whole amount of principal and interest due to the said Caleb and Enoch Johnson was paid, together with the costs of the said suit and the sheriff's execution fees. In what way precisely the legacy of the said Margaret Col- 40 ton and William Schenck, and the amount due to them under the said execution, was satisfied and arranged, your orator, at this dis-

tance of time, and in consequence of the death of the said John C. Schenck, has not been able to ascertain. It was an arrangement, however, to which the solicitor of the said Asa S. Colton and Margaret his wife, and William Schenck, and also John C. Schenck, the trustee of the said Margaret Colton, were parties, and with which they were entirely satisfied. In reference to the said William Schenck, your orator is informed, and believes it to be true, that the amount due to him on account of his said legacy was secured by certain bonds and mortgages, executed to him by the said John C. Schenck, which bonds and mortgages were subsequently paid off, with the exception of a small balance of ninety-six dollars and twenty-four cents, for which he received in payment a note of the said John C. Schenck; but the particulars of the said settlement your orator is not able to state. Prior to the settlement of the said execution, the said William Schenck had presented to the assignee of the said John C. Schenck his claim against the said estate, including the whole amount due to him on account of the said legacy. But exceptions were afterwards filed to this claim in the Court of Common Pleas of the county of Middlesex, upon the ground that it had already been paid and satisfied; and these exceptions were sustained by the court, and the said claim was wholly disallowed. And, in reference to the said Margaret Colton, your orator submits, that the said John C. Schenck, being her trustee, had the entire control of her interest in the said execution, and that any arrangement made in relation thereto, or acknowledgment of satisfaction thereof by him, so far as innocent third persons are concerned, is binding upon the said Asa S. Colton and Margaret his wife.

And your orator further shows, that on the eighteen hundred and thirty-nine, the said John Gulick conveyed to the said John C. Schenck the said farm of two hundred and fifty-six acres, including the premises in question, which he had purchased at the assignees' sale; and thereupon the said James Bishop agreed that the bond and mortgage of the said John C. Schenck should be substituted in place of the bond and mortgage previously executed to him by the said John Gulick as aforesaid, and accordingly, on the twenty-eighth of June, eighteen hundred and thirty-nine, the said John C. Schenck made and executed to the said James Bishop his bond and mortgage for six thousand dollars, being the same bond and mortgage herein before mentioned, and which was afterwards assigned by the said James Bishop to your orator, the said John C. Schenck assuring the said James Bishop that there was no other encumbrance whatever upon the

said premises prior to the said mortgage; that the said execution out of the Court of Chancery had been settled by the parties, and that the said legacy was no longer a lien or charge upon the said property.

And your orator further shows, that he has repeatedly applied to the said Abraham W. Brown, and requested him to desist from proceeding any further under the said execution, and from exposing to sale the said premises in pursuance of his said advertisement; and your orator well hoped that the said Abraham W. Brown would have complied with such reasonable request, as in justice and equity he ought to have done. But now so it is, may it please your Honor, that the said Abraham W. Brown, combining and confederating with the said Asa S. Colton and Margaret his wife and the said William Schenck, and with divers other persons at present unknown to your orator, but whose names, when discovered, your orator prays may be inserted in this his bill of complaint, with apt and proper words to charge them, as defendants hereto, to injure and aggrieve your orator in the premises, not only refuses to comply with such reasonable requests of your orator, but has advertised the said property for sale on the eighth day of this instant, and threatens that he will actually sell the property at that time to the highest bidder, in pursuance of the said execution, pretending that the said execution is still unsatisfied, whereas your orator expressly charges the contrary thereof to be true, and that the said execution has long since been satisfied and settled by the parties, and that the said Abraham W. Brown has no right to advertise and sell the said premises in virtue thereof. All which actings and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator. In tender consideration whereof, and forasmuch as your orator has no adequate remedy in the premises by the strict rules of the common law, and without the assistance of this honorable court—To the end, therefore, that the said defendants and their confederates, when discovered, may, upon their several and respective oaths or affirmations, full, true, and perfect answer make to all and singular the matters aforesaid, as fully as if the same were here again repeated, and they thereto particularly interrogated, and that this court, by its order and decree, may perpetually restrain the said Asa S. Colton and Margaret his wife and William Schenck from proceeding to enforce the said execution by a sale of the premises therein mentioned, and now belonging to your orator, or in any other manner, and that they may be deemed to have no right or

interest in the said premises by virtue of the said decree and execution, and that the said Abraham W. Brown may in the mean time be restrained from selling the said premises in virtue of his said advertisement, or, in case the same should be sold, from delivering a deed to the purchaser in pursuance of such sale, and that your orator may have such other and further relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience, may it please your Excellency, the premises considered, to grant to your orator not only the state's  
 10 writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said Abraham W. Brown, former sheriff of the county of Middlesex, restraining him from selling the said premises mentioned in the said execution in pursuance of his said advertisement, or in case the same shall be sold, from making and delivering a deed to the purchaser, but also a writ of subpœna of the state of New Jersey, to be directed to the said Asa S. Colton and Margaret his wife, William Schenck and Abraham W. Brown, commanding them, and each of them, on a certain day and under a certain penalty, therein to be inserted, to be and appear  
 20 before your Honor, in this honorable court, then and there to answer the premises, and to stand to, abide by, and perform such decree in the premises as shall seem meet and agreeable to equity and good conscience. And your orator, as in duty bound, will ever pray, &c.

R. S. FIELD,

*Solicitor for and of counsel with complainant.*

New Jersey, ss.—*Henry S. Terhune*, the complainant in the foregoing bill named, being duly sworn, on his oath says, that the matters and things therein set forth, so far as they relate to his own  
 30 acts and deeds, are true, and so far as they relate to the acts and deeds of others, he believes them to be true.

HENRY S. TERHUNE.

Sworn and subscribed, this 7th day of July, A. D. 1848, before me.

J. F. HAGEMAN, M. C.

## IN CHANCERY OF NEW JERSEY.

*The joint and several answers of Asa S. Colton and Margaret his wife to the bill of complaint of Henry S. Terhune, complainant.*

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering say, that they admit it to be true, that the said Abraham W. Brown, late sheriff of Middlesex county, did, under and by virtue of the execution referred to and mentioned in said complainant's bill of complaint, advertise for sale, on the eighth day of July last, at the place stated in said bill of complaint, the premises described in said bill, and that he did so at the instance of these defendants, Asa S. Colton and Margaret his wife and William C. Schenck, through their solicitor, Cortlandt Parker, who, by the order of this court, made in the term of March, one thousand eight hundred and forty-eight, was substituted solicitor for these defendants in the cause wherein said execution, issued in the place of James S. Green, esquire, who before that time had acted as such solicitor. 10 20

And these defendants further answering admit it to be true, as is stated in said bill of complaint, that the writ of *feri facias*, under which the said property was advertised to be sold, did issue out of this honorable court on the twenty-first day of February, one thousand eight hundred and thirty-seven, in a cause in which Caleb Johnson and Enoch Johnson were complainants, and John C. Schenck, Asa S. Colton and Margaret his wife, William Schenck, and Isaac Story, executor of James Stoddard, deceased, were defendants; that the same was directed and delivered unto the sheriff of Middlesex county then being, to wit, the said Abraham W. Brown, who then occupied that office; and that in and by said writ of *feri facias* said sheriff was commanded to make sale of the said premises described in the complainant's bill, in said execution stated to be situate in the township of West Windsor, then in the county of Middlesex, containing one hundred and fifty-seven acres of land, and out of the proceeds of said sale to pay the said defendants, Asa S. Colton and Margaret his wife, the sum of one thousand seven hundred and twenty-four dollars and thirty-eight 40

cents, and to this defendant, William C. Schenck, (called in said execution William Schenck) a like sum of money, being the amount due upon their legacies secured upon said premises, and to pay and satisfy, in the second place, unto Caleb Johnson and Enoch Johnson, respectively, the amounts stated in said bill, and to pay and satisfy unto said Caleb Johnson, in the third place, the further amount stated in said bill, and to pay and to satisfy unto said Isaac Story, executor as aforesaid, in the fourth place, the amount stated in said bill, together with the costs of said complainants in said execution and said Isaac Story. And these defendants further answering admit, that the said writ was returned at the time, and having the certificate endorsed thereon, which in said bill of complaint is stated.

And these defendants further answering say, that as to that part of the complainant's bill wherein complainant states his own conduct on learning that said sheriff had advertised said property for sale, his being surprised at hearing thereof or discovering the same, his application for information to the solicitor of said Caleb Johnson and Enoch Johnson, and what information he obtained from  
 20 him, and his application to the said James S. Green for information, and what he learned from him, and his thereafter, through his solicitor, addressing a communication to said Abraham W. Brown, and the contents thereof, and his reply, these defendants know nothing, except as informed by the said bill of complaint, and can therefore neither admit nor deny the said bill of complaint to be true in the matter thereof.

And the said defendants, Asa S. Colton and Margaret his wife, further answering say, that heretofore, to wit, on the eleventh day of February, in the year of our Lord one thousand eight hundred  
 30 and thirty-seven, in the said cause, then and before that time pending in this honorable court, wherein Caleb Johnson and Enoch Johnson were complainants, and John C. Schenck, Isaac Story, executor of James Stoddard, deceased, and Asa S. Colton and Margaret his wife, and William Schenck (the defendants to this bill) were defendants, final decree was made by this honorable court, after reference made to, and report duly made by Stacy G. Potts, esquire, one of the masters of the same, by which said decree, after reciting, among other things, that it had been referred to said master to take an account of the principal and interest due  
 40 to the complainants, and Isaac Story, executor aforesaid, a defendant in that suit, upon their bonds and mortgages in their bill of complaint mentioned, and also of the principal and interest of a

certain legacy mentioned in the answer of John C. Schenck, one of the defendants in said cause, and to examine and report whether the same is a lien upon the mortgaged premises mentioned in the bill of complaint, being the same premises mentioned in the bill of complaint to which these defendants are now making answer, and entitled to be first paid out of the same; and also that it appeared, by the report of said master, that there was due to said Asa S. Colton and Margaret his wife, at the date of said report made by said master, the sum of seventeen hundred and twenty-four dollars and thirty-eight cents, and to said William Schenck (also a defendant in this suit) a like sum of seventeen hundred and twenty-four dollars and thirty-eight cents, being the amount of a certain legacy bequeathed to the said Margaret and William by their grandfather, Joseph Schenck, deceased, with interest thereon, and that said legacy was a lien upon the mortgaged premises mentioned in the bill of complaint, and entitled to be first paid out of the same, and that there was due to the complainant, Caleb Johnson, the sum of four thousand nine hundred and four dollars, and to complainant, Enoch Johnson, the sum of two thousand six hundred and ninety-seven dollars and twenty cents, on two certain bonds to them respectively belonging; secondly, a mortgage upon said premises, which was entitled to be next paid out of the same, and that then was due to Caleb Johnson, on a further bond and mortgage to him belonging, the sum of two thousand four hundred and forty-one dollars, which was entitled to be paid out of said premises next in order; and that there was due to the said Isaac Story, executor as aforesaid, the sum of two thousand six hundred and forty-two dollars and six cents, on a bond and mortgage which was entitled to be paid out of said premises next in order, it was, in substance, ordered, adjudged, and decreed, that the said report should in all things be confirmed; and further, that the mortgaged premises mentioned in the said bill of complaint should be sold, and that, for that purpose, a writ of *feri facias* should issue out of this court, directed to the sheriff of the county of Middlesex, commanding him to make sale of the said premises according to law, and that, out of the moneys arising from such sale, he should pay to these defendants, Asa S. Colton and Margaret his wife, or their solicitor, the sum aforesaid reported to be due to them, with interest from the date of said report, and to the said William Schenck, or his solicitor, the sum as aforesaid reported to be due to him, with interest from the date of said report until the same should be paid and satisfied; and that he should then pay to the said complainants,

or their solicitor, the sums reported to be due to them aforesaid, with interest as aforesaid, until the said money due as aforesaid on the mortgage given to secure said two bonds, one to Caleb, and one to Enoch Johnson, should be paid and satisfied; and that he should then pay to said Caleb Johnson, one of said complainants, the sum reported to be due as aforesaid on the mortgage given to secure the said second bond to him belonging, with like interest as aforesaid, and also the costs of complainants in said cause to be taxed; and that he should then pay to said Isaac Story, executor as aforesaid, or his  
 10 solicitor, the sum as aforesaid reported to be due to him, with like interest until said sum should be fully paid and satisfied, and also the costs of the said defendant, Story, in said cause to be taxed, if the said moneys would so far extend; and that he should bring the surplus moneys, if any there should be, into this court, and deposit the same with the clerk thereof, to abide the further order of the court; and it was likewise further ordered, adjudged, and decreed, that the said defendants to said bill of complaint should stand absolutely debarred and foreclosed of and from all equity of redemption of, in, or to the said mortgaged premises, or so much thereof as  
 20 should be sold by virtue of that decree, as in and by the said decree, now remaining of record in this honorable court, and registered in Book S, p. 608, et seq., reference being thereto made, which these defendants pray, in case it be necessary so to do, will more fully and at large appear.

And these defendants further answering show, that the said writ of *feri facias*, under which, as stated by said complainant, Henry S. Terhune, in his bill of complaint, and by these defendants admitted, the said defendant, Abraham W. Brown, sheriff, at the time of the issuing thereof, of the county of Middlesex, advertised  
 30 the premises, in said complainant's bill of complaint mentioned, for sale, was founded upon and issued in conformity with said decree, was duly recorded, according to the rules of this court, and delivered to the said sheriff, and that the moneys therein, and in the said decree mentioned to be due to these defendants, have never yet been paid or satisfied to them, or either of them, or to any person for them.

And these defendants, Asa S. Colton and Margaret his wife, further answering say, that the said decree and execution still remain of record and unsatisfied, and the said premises therein  
 40 referred to, and in the said writ of *feri facias* described, never having been sold according to the command of this court to the said sheriff in and by said writ, they, the said defendants had good

right and lawful authority to direct a sale of the said premises by the said sheriff, in obedience to the command of said writ, in order to obtain the moneys due thereon to them.

And these defendants further answering say, that the said decree, so remaining of record in this court, was, of itself, full and adequate notice of the existence of the lien held by these defendants on the said premises mentioned in the bill of complaint, and that after a solemn adjudication of this court, decreeing that these defendants did possess a right to have the moneys aforesaid due to them on the said legacy raised out of the said premises, the said complainant ought not to be permitted to allege otherwise or to go behind said decree, and controvert in any manner, after this lapse of time, the truth or justice of the same; and these defendants say, that, having no knowledge, they can neither admit or deny that said complainants even knew or had heard of the existence of said lien on farm of these defendants, but they submit that, in law and in equity, even if such were the case, these defendants ought not to be prejudiced thereby; that said decree, so long as it remained unsatisfied of record, was, in law and equity, notice to the complainant and all the world of said lien, and that if said complainants purchased the said premises without the exercise of due diligence to ascertain the situation of the same in regard of title and encumbrances, he purchased in his own wrong, and cannot, in law or equity, acquire any right thereby, except subject to said decree in favor of these defendants. 10 20

And these defendants further show, that the said Caleb Johnson and Enoch Johnson, the complainants in that suit, in and by their bill of complaint filed in said cause, stated that the said Joseph Schenck, the grandfather of the defendant, Margaret, and William C. Schenck, and father of said John C. Schenck, did, by his last will and testament, devise to said John C. Schenck his homestead farm, in which was included the premises in question in that suit, to wit, the same premises which said Abraham W. Brown, as aforesaid, was about, at the instance of these defendants, to sell; and further, therein stated that said devise was subject, among other things, to the payment of nineteen hundred and fifty-three dollars to Margaret Schenck and William Schenck, children of William C. Schenck, deceased, and that said Margaret had intermarried with said Asa S. Colton, and that said Asa S. Colton and Margaret his wife and William Schenck claimed some estate, right, or interest in and to said premises by virtue of the said last will and testament of said Joseph Schenck, or used words to that effect, as by 30 40

reference to said bill of complaint, now on file in this honorable court, will appear.

And further, these defendants show, that the said John C. Schenck, the mortgagor of said premises unto said Caleb and Enoch Johnson, complainants in that suit, did, in and by his answer to their bill of complaint therein, filed October fourteenth, one thousand eight hundred and thirty-six, and duly sworn to by him, assert and set up that the said premises mentioned in the bill of complaint of said Henry S. Terhune had been devised to him, 10 the said John C. Schenck, subject nevertheless to the payment of the said legacy of nineteen hundred and fifty-three dollars unto said Margaret Colton and William Schenck, children of said William C. Schenck; that said legacy then remained due and unpaid, and that the same, with the arrears of interest thereon, was a charge on said premises, and entitled to a priority over the mortgages of the complainants in that suit and the said Isaac Story executor as aforesaid, and whether or no such was the case, was submitted to this honorable court, as in and by said answer of said John C. Schenck, now on the files of this court, reference being 20 thereto had will more fully appear.

And these defendants submit to this honorable court, that the said Henry S. Terhune, the complainant in this suit, claiming under a mortgage, and sale thereunder, given by said John C. Schenck, even though the money through said mortgage realized by said John C. Schenck went to pay said Caleb Johnson and Enoch Johnson, as to which these defendants have no knowledge, is bound by, and ought not to be permitted to dispute the solemn admissions and assertions made in his said answer by the said John C. Schenck, and declared and decreed by the final decree of this honorable 30 court, whereby the said John C. Schenck was for ever concluded from denying the same. And these defendants submit, that by virtue of said final decree rendered in said cause by this honorable court, and the proceedings had in that cause previously thereto, said Henry S. Terhune is and ought to be, in law and in equity, estopped from denying that these defendants had, on the day of the said decree, a valid lien and encumbrance upon the said premises to the amount settled and declared in and by said decree.

And these defendants further answering say, that the first knowledge ever possessed by them, or either of them, of the existence 40 of any such agreement as is set forth in said bill of complaint of said Henry S. Terhune to have been made and signed by Richard S. Field, solicitor of the complainants in the cause above referred

to, Samuel R. Hamilton, solicitor of John C. Schenck, and James S. Green, solicitor of these defendants, was derived from the said Terhune's bill of complaint; that, as to such agreements having been made while the said Caleb and Enoch Johnson were preparing to resist the claim set up by said John C. Schenck to have the said legacy declared a charge upon the mortgaged premises, these defendants do not believe the said Caleb and Enoch ever thought of resisting it, they themselves, in their said bill of complaint, having admitted its validity; and these defendants can neither admit or deny the existence of such pretended agreement, and leave 10 the complainant to make such proof of the same as they may deem proper; but they submit it to this honorable court, that neither the said James S. Green, as their solicitor, nor the said John C. Schenck had any right whatever to postpone the rights of these defendants, or alter the legal priority of lien to them belonging by virtue of the will of their grandfather aforesaid, unless the same were done with the knowledge, direction, and consent of these defendants; that these defendants never knew of or consented to it, and that the said agreement, without the consent of these defend- 20 ants, was a fraud upon them, and that the said Caleb and Enoch Johnson, having full notice of the rights of these defendants, could, in law or equity, claim no benefit from any such agreement, but would have been held by the rules of this court, had a sale of said mortgaged premises taken place, as contemplated by said agreement, bound, notwithstanding said agreement, to pay over the moneys arising from said sale to the satisfaction of the claim of these defendants upon the said premises before satisfying their own or any other claims.

And these defendants further submit, that said pretended agreement, no sale of the land, as was thereby contemplated, having 30 taken place, never went into operation or effect, and that the same in no manner affects the present rights of these defendants, or said Henry S. Terhune, the complainant herein.

And these defendants further answering say, that they are informed, and believe it to be true, that afterwards, and before any sale had under the said decree, the amounts thereby ascertained and declared to be due unto said Caleb Johnson and Enoch Johnson were, on the day stated in the bill of complaint, or thereabouts, paid and satisfied: said sums so paid amounted to over ten thousand dollars; but whether the amount necessary to discharge the 40 same was derived partly from the money raised by a mortgage given to James Bishop, such as is stated in said bill, or from what

source, these defendants are entirely ignorant, nor, they submit, ought it at all to impair their rights, if such was the case.

And these defendants further answering show, that the amount decreed to be paid to them as aforesaid was not then, nor has it since been paid or satisfied, and, on the contrary, they show that afterwards, and on or about the twenty-second day of September, one thousand eight hundred and thirty-seven, the said sheriff, Abraham W. Brown, received from the solicitor of these defendants in said suit neither directions to stay further proceedings upon the  
10 said decree, as respected these defendants and said William Schenck, until further orders, thereby in terms showing the said executions to be still in force and effect, and not to be paid or satisfied, by authority whereof the said Abraham W. Brown did stay proceeding under said execution until directed otherwise by these defendants, through their solicitor as aforesaid.

And these defendants, Asa S. Colton and Margaret his wife, further answering show, that they believe that a certain mortgage from John Gulick to James Bishop, for some such amount as that stated in the bill, and covering one hundred and fifty-seven acres,  
20 part of said homestead, was made and executed about the time therein stated; but they have no knowledge of the amount, date, or existence of said mortgage, other than as informed by the said bill, and leave the complainant to prove the same as he may be advised; nor do they know (and therefore they can neither admit nor deny) whether or not the said James Bishop was willing to take a mortgage upon the said one hundred and fifty-seven acres, provided it could be cleared of all existing encumbrances; but these defendants submit, that it is not probable that said Bishop did not know the particulars of said decree and execution, if the  
30 money advanced by him was known by him to be intended to pay off the same with.

And these defendants further answering admit that, in the year one thousand eight hundred and thirty-seven, the said premises were conveyed by said John C. Schenck to Isaac Story, and that afterwards the same were purchased by John Gulick, above mentioned, as in said bill is stated, and that, in the year eighteen hundred and thirty-nine, the said John Gulick conveyed to said John C. Schenck the said farm of two hundred and fifty-six acres, including the premises in question; but as to said James Bishop's  
40 agreeing that the bond and mortgage of said John C. Schenck should be substituted in place of the bond and mortgage previously executed to him by said John Gulick, and as to the bond and mort-

gage in said bill of complaint mentioned being thereupon executed, and as to any assurances made by said Schenck to said Bishop that there were no encumbrances upon said property prior to said mortgage, that the said execution from chancery had been settled by the parties, and that the legacy herein before referred to was no longer a lien or charge upon said property, these defendants have no knowledge other than as informed by said bill, and can neither admit nor deny, but leave the complainant to make proof of the same, according to the rules of this court, if he shall think fit so to do; and these defendants insist, and submit to the court, that what-  
 10  
 ever the said John C. Schenck may have said thereupon, the said James Bishop, having neglected himself to inquire on the record into the situation of said decree and legacy, cannot, nor can any person claiming under him, acquire any rights, as against these defendants, by his credulity in trusting to the representations of another.

And these defendants insist that the said decree in favor of these defendants was notice to the said James Bishop and to the said Henry S. Terhune of the claim and lien held by these defendants,  
 20  
 and that it was the duty of those about to purchase or lend upon the security of said property to have insisted on the cancellation and discharge of said decree, else any loss that might happen could be attributed to their own carelessness only.

And these defendants submit to this court that the existence of the said decree in full force and operation is a sufficient justification for the course pursued by these defendants in directing the said Abraham W. Brown to proceed with the said execution, and sell the said premises to pay the money adjudged by the said decree to be due to these defendants, and that the rightfulness of said  
 30  
 decree, after the long time which has elapsed, ought not to be called in question. And these defendants, Asa S. Colton and Margaret his wife, show that their residence, during the period since the commencement of said suit by said Caleb and Enoch Johnson, has been at a distance from Princeton, where the lands lie and the said John C. Schenck resided, and that knowing said John C. Schenck not to be in very prosperous circumstances, and being related to him, they forebore to press for the payment of said legacy, the same being known to them to be a charge and lien as aforesaid upon the said premises, and therefore well secured as to  
 40  
 ultimate payment.

And these defendants, Asa S. Colton and Margaret his wife, further show (if it shall be decided by this court to be a proper

subject for examination after the decree entered in said suit as aforesaid) that the said legacy reported by the said master to be a charge and encumbrance upon said premises, is, in law and equity, such charge as aforesaid.

And these defendants show that, on or about the twentieth day of November, one thousand eight hundred and twenty-two, one Joseph Schenck, grandfather of said Margaret S. Colton and William C. Schenck, died seized of sundry real estate, situate in the then county of Middlesex, and state of New Jersey, and among  
 10 other tracts of the land and premises described in said complainant's bill of complaint, which was part of property known as the homestead place on which said Joseph Schenck during his lifetime resided : and the said Joseph Schenck did, before his death, make and publish his last will and testament, which last will and testament, after his decease, to wit, on the fourth day of December, in the year of our Lord one thousand eight hundred and twenty-two, was duly proved by John C. Schenck and Elias Theodore Schenck, the executors named therein, before John Heard, then surrogate of said county of Middlesex, and letters of probate were by him duly  
 20 granted to said executors by said surrogate, which will and letters of probate, duly recorded in the office of the said surrogate, these defendants pray leave to refer themselves, or to a certified copy thereof, if it be necessary so to do, and which said will is in substance as follows, that is to say :

“ In the name of God Amen, I Joseph Schenck, of the township of West Windsor, in the County of Middlesex, and State of New Jersey, being in a weak state of body, but of sound and disposing mind and memory (praised be God for the same) and being desirous to settle my worldly affairs while I have strength and capacity  
 30 so to do, Do make and publish this my last Will and Testament, hereby revoking and making void all former wills at any time heretofore made by me. And first and principally I commit my soul into the hands of my Creator who gave it and my body to the Earth to be interred at the discretion of my Executors herein after named, and as to the Worldly estate wherewith it hath pleased God to intrust me, I dispose of the same as followeth :

In the first place it is my will and I do order and direct, that all my just debts and funeral expenses be duly paid and satisfied as soon as conveniently can be after my decease. Item, I do hereby  
 40 give devise and bequeath to my son John C. Schenck his heirs and assigns in fee simple that Homestead place on which I now reside situate in the Township of West Windsor aforesaid and bounded

on the northwesterly by lands of my said John, on the westerly by land of my said son John on the northerly by lands of my said son John on the northerly by lands of Zebulon Morford on the Easterly by the Millstone and Stony brook and on the southwestly by the Road leading from Jugtown to Scudders Mills, containing about two hundred and fifty-six acres subject however to the payment by my said son John of certain sums of money herein after mentioned and bequeathed. Item. I do hereby give devise and bequeath to my son John C. Schenck his heirs and assigns in fee simple all that timber lot in Bear swamp containing about 10 fifteen acres. Item. I give devise and bequeath to my son John C. Schenck his heirs and assigns in fee simple, all my share and half in and a House and lot which I hold in common with my said son John C. Schenck, situate on the southerly point of the Homestead place aforesaid, on the road leading from Jugtown to Scudders Mills and near the Bridge over Stony brook, containing about two acres. Item. I give and bequeath to my said son John C. Schenck all my part and share of and in such personal property as may be on the Homestead place at the time of my decease, except such part thereof as is herein after disposed of in the above bequest to 20 my said son John C. Schenck. I include all my share and interest in the farm horses, cattle, sheep hogs, bees poultry, farming utensils, all corn and grain in the ground or in the stack or in whatsoever state or situation it may be in, threshed or not, all the hay and fodder of every description Household and Kitchen furniture except such part thereof as I have herein after given and bequeathed to my son Elias Theodore Schenck and which is particularly specified in a paper subscribed by me and inclosed in this my last will and Testament. And I do hereby give and bequeath and release to my said son John C. Schenck all claim and demand whatsoever, 30 that I may have against him on account of certain slaves or people of color sold to him some years ago. It is my will and I do order and direct that my said son John C. Schenck in consideration of the above devises and bequests do pay to my son Elias Theodore Schenck or his lawful issue the sum of seven hundred and fifty dollars with interest to be computed from the first day of May next after my decease, to be paid as herein after mentioned. It is my will and I do order and direct, that my said son John C. Schenck for and in consideration of the above devises and bequests, do also pay to Margaret Schenck and William Schenck children and heirs 40 at law of my beloved son William C. Schenck deceased the sum

of one thousand nine hundred and fifty-three dollars to be paid as hereafter directed.

It is my will and I do hereby give, devise and bequeath to my son Elias Theodore Schenck, his heirs and assigns in fee simple, all that farm and plantation with the appurtenances, situate on Penns Neck containing about two hundred and twenty-six acres being the same premises which are described in two several deeds, one executed by Abraham Schenck and the other by John Scott. It is my will and I do order and direct, that my son John C. Schenck take  
 10 the charge of the said real estate, devised to my son Elias Theodore Schenck and manage it to the best advantage in his power till such time as when my son Elias Theodore Schenck attains his age of twenty-one years at which time my son Elias is to have full possession together with the rents, issues, and profits, which may have accrued after deducting expenses for repairs or otherwise. Item. I give and bequeath to my son Elias Theodore Schenck and his lawful issue, the sum of one thousand five hundred dollars out of my estate, in addition to the sum of seven hundred and fifty dollars herein before directed to be paid to the said Elias by my  
 20 son John C. Schenck which two sums are to be paid to my son Elias Theodore Schenck or his lawful issue at such time as he shall or would attain his age of twenty-one years with interest to be computed from the first day of May next after my decease. I give devise and bequeath to my son Elias Theodore Schenck and his lawful issue my seat or pew in the Princeton Church, also my bay mare and riding chair also such and so much of my personal property as is specified in a paper subscribed by me and enclosed in this my last will and testament. It is my will and I do order and direct, that if my said son Elias Theodore Schenck should die be-  
 30 fore he arrives at the age of twenty-one years that then the estate real and personal hereby devised and bequeathed to him shall pass to his lawful issue male and female, to be equally divided between them share and share alike, and if there should no such lawful issue then I give devise and bequeath the said real and personal estate one moiety or half part to my said son John C. Schenck and his heirs the other moiety or half part to Margaret Schenck and William Schenck children as aforesaid of William C. Schenck deceased, to be equally divided between them share and share alike to be received by them when they respectfully attain their respec-  
 40 tive ages of twenty-one years. Whereas during the life time of my beloved son William C. Schenck deceased I advanced to him the sum of four thousand and seventy-three dollars as part of the pro-

perty that I should have bequeathed to him in and by this my last Will and Testament now it is my will and I order and direct, that my executors make no account or demand against the estate of my said son William C. Schenck deceased for the said sum of four thousand and seventy-three dollars, which they will find in notes signed by my said son William C. Schenck deceased among my papers, which said notes I order to be cancelled. Item. I give and bequeath to Margaret Schenck and William Schenck children and heirs at law of my said son William C. Schenck deceased the sum of three thousand five hundred and forty-seven dollars out of my 10 estate in addition to the sum of one thousand nine hundred and fifty-three dollars herein before directed to be paid to them by my son John C. Schenck, both sums to be divided between them the said Margaret and William share and share alike.

The said sum of one thousand nine hundred and fifty-three dollars is to be paid by my son John C. Schenck in three equal annual payments without interest till each annual payment became due, the first payment to become due on the first day of May next after my decease. It is my will and I order and direct that my executors place out to interest so far as they conveniently can the 20 respective sums of money hereby given and bequeathed to Margaret Schenck and William Schenck children as aforesaid of my son William C. Schenck deceased, and apply the interest (which is to be computed at the rate of six per cent. per annum) so arising to the support and education of the said Margaret Schenck and William Schenck till such time as they shall respectively arrive at the age of twenty-one years, when they or their lawful issue, in the event of the death of both or either of them are to receive their respective parts or moieties, the issue taking its respective parents share. And if either the said Margaret or the said William shall 30 die without lawful issue and before he or she arrived at the age of twenty-one years, then it is my will and I do order and direct and give and bequeath, his or her share and proportion to her or him that survives, and if both the said Margaret and William die without lawful issue and before they respectively attain his or her respective age of twenty-one years, then it is my will and I do hereby give and bequeath the sums of money herein before given to the said Margaret and William, to my two sons John C. Schenck and Elias Theodore Schenck or their lawful issue to be equally divided between them, share and share alike, the issue to take the part or 40 share which its parent would have taken if alive.

Whereas I was one of the Administrators of the Estate of my

- son William C. Schenck deceased, and while acting as such endeavored to do the best in my power for the widow and the orphans, yet still I may have in some particulars, acted not strictly legal. I therefore order and direct, that if there should be any error discovered, and a suit commenced, and a recovery had against my estate that the amount so recovered be paid out of and from the moneys hereby given and bequeathed to Margaret Schenck and William Schenck children as aforesaid of William Schenck, deceased. Item. I give devise and bequeath to my two sons John C.
- 10 Schenck and Elias Theodore Schenck their heirs and assigns forever, as tenants in common all the rest and residue of my estate both real and personal after the payment of debts funeral expenses, expenses of settlement and the legacies, herein before directed to be paid out of my estate. In the above devise I include the real estate known by the name of the Slayback place and Davisson lot lately belonging to Moses Morris Esq and it is my intention, that if there should not be sufficient personal property after the payment of debts and expenses aforesaid, to pay the legacies directed to be paid out of my estate, that then the fifteen hundred dollars
- 20 given to my son Elias Theodore Schenck should be first paid and the residue of the legacies is charged on the real estate last mentioned or may be paid equally by my two sons John C. Schenck and Elias Theodore Schenck. It is not my intention to limit the amount of commissions, which the services of my sons as executors may deserve but to direct the commissions allowed them by law first to be deducted from the residue of my estate if not sufficient then from my estate generally.

- In the last placé I nominate, constitute and appoint my two sons John C. Schenck and Elias Theodore Schenck the executors of
- 30 this my last will and testament and it is my will that my son John C. Schenck have the management and direction of my estate till such time as my son Elias Theodore Schenck shall attain his age of twenty-one years when he is to have the same control over my estate as his brother John C. Schenck and it is my will and I do order and direct, that if either my son John C. Schenck or my son Elias Theodore Schenck depart this life before the execution of this my will, then and in such case I do nominate constitute and appoint my nephew Isaac Story my executor to assist my surviving son to complete the execution of the same.
- 40 In witness whereof I the said Joseph Schanck have hereunto set my hand and seal this nineteenth day of February in the year of our Lord eighteen hundred and twenty-two.

JOSEPH SCHANCK."

And these defendants further answering say, that the said legacies mentioned in said will to be divided between this defendant, Margaret S. Colton, being the Margaret Schenck named in said will, (and who, as is stated in the bill of complaint, afterwards intermarried with this defendant, Asa S. Colton,) and the defendant William C. Schenck, named in said will as William Schenck, in and by virtue of said will became a charge upon the homestead property of said Joseph Schenck, therein bequeathed unto said John C. Schenck, and upon every part thereof, subject to and in consideration of the payment of which only the said John C. 10 Schenck acquired any title to the said homestead, or any part thereof; and further, they submit that the lien of said legacy could not, in law or equity, be divested, until payment or other discharge or release thereof, even in favor of *bona fide* purchasers, without notice; and further, these defendants answering say, that the said will of said Joseph Schenck, deceased, after letters of probate had been duly granted thereon as aforesaid, was, in conformity to law, duly recorded in the office of the surrogate of the county of Middlesex, and now there remains of record, to wit, in Book B, page 581 of Wills for said county, and that such record of said will was 20 in law due notice, in law and equity, to all persons claiming by or under the said John C. Schenck or his heirs, by deed, mortgage, judgment, or in any manner whatsoever; and further these defendants say, that they believe and charge that the said complainant had in fact notice of the said will, and that the said legacies were such charge as aforesaid at the time of his purchasing the said property, as in his bill of complaint stated.

And these defendants further answering say, that, at the time of the recording said will and the granting said letters of probate, the said defendants, Margaret and William Schenck, were minors, and 30 that the said Margaret came of age on the twenty-fifth day of January, one thousand eight hundred and thirty-three, and the said William came of age on the twenty-second day of May, one thousand eight hundred and thirty-five, and that their mother, Eliza Ann Schenck, acted as guardian of said Margaret and William during their said minority.

And these defendants, Asa S. Colton and Margaret his wife, further answering say, that the said John C. Schenck did alone, or nearly so, act as executor of said will, although the said Elias 40 Theodore Schenck also proved the same; and that the said John C. Schenck retained possession of the premises named in said

complainant's bill from the date of the probate of said will until the complainant took possession of the same.

And these defendants further answering submit it to this court, that the said John C. Schenck, being thus executor as aforesaid of the will of said Joseph Schenck, deceased, and also devisee of the said homestead property subject to the said legacy to the said defendants, Margaret and William, was in fact, and will be holden in equity, to have held the assets of said Joseph Schenck, deceased, and the said homestead property, as trustee, to the amount and  
 10 until the payment of said legacy, for them, the said Margaret and William.

And these defendants, Asa S. Colton and Margaret his wife, further answering say, that they admit it to be true, as in said bill is alleged, that in the year eighteen hundred and thirty-three, to wit, on the eighteenth day of February, in said year, these defendants being then about to be joined in matrimony, a paper, containing articles of marriage settlement, was drawn up and executed by and between the said Asa S. Colton, and Margaret Schenck, now the wife of said defendant, Colton, and the said John C. Schenck,  
 20 which said articles of settlement are now in the possession of these defendants, having been obtained by the said Asa S. Colton from the gentleman by whom they were drawn, or from Mrs. Mary Ann Schenck or Isaac Story, said Colton cannot now recollect which, since the death of said John C. Schenck, the death of said Schenck having, by virtue of the articles, terminated all right of his therein, as will by the said articles be seen, and which said articles of settlement are in substance as follows, to wit :

" This indenture triparte made this eighteenth day of February in the year of our Lord eighteen hundred and thirty-three between  
 30 Asa S. Colton of the first part, Margaret Schenck, single woman and daughter William C. Schenck deceased of the second part and John C. Schenck of the township of West Windsor in the county of Middlesex and state of New Jersey of the third part.

Whereas Joseph Schenck late of the township of West Windsor aforesaid deceased by his last will and testament bearing date the nineteenth day of February in the year of our Lord eighteen hundred and twenty-two, did among other things order and direct, that his son the said John C. Schenck, for and in consideration of the devises and bequests in the said will named, should also pay to  
 40 Margaret Schenck and William Schenck children and heirs at law of his beloved son William C. Schenck deceased, the sum of one thousand nine hundred and fifty-three dollars, to be paid as therein

after directed, and the said Joseph Schenck did in and by his last will and testament further give and bequeath to the said Margaret Schenck and William Schenck children and heirs at law of the said William C. Schenck deceased, the sum of three thousand five hundred and forty-seven dollars out of his estate in addition to the sum of one thousand nine hundred and fifty-three dollars directed to be paid to them by the said John C. Schenck both sums to be divided between them the said Margaret Schenck and William Schenck share and share alike—and John C. Schenck and Elias Theodore Schenck were nominated and appointed executors of 10 the said last will and testament and the said Joseph Schenck died without revoking or altering his said last will and testament, and since his decease the said John C. Schenck and Elias Theodore Schenck have duly proved the said last will and testament, and have taken upon themselves the execution thereof—and whereas the said Margaret Schenck one of the children of the said William C. Schenck deceased hath attained her age of twenty-one years and hath had a full settlement with the said John C. Schenck acting executor of the said Joseph Schenck deceased,—on which settlement there appears due to the said Margaret Schenck the sum 20 of four thousand two hundred and fifty-six dollars and ninety-two cents from the said John C. Schenck executor as aforesaid. And whereas a marriage is agreed upon and intended to be shortly had and solemnized by and between the said Asa S. Colton of the first part and the said Margaret Schenck of the second part and upon the treaty of the said intended marriage it was agreed upon by and between the said Asa S. Colton and the said Margaret Schenck, that previous to the solemnization of the said marriage that the said Margaret Schenck should assign, transfer or otherwise convey the fortune to which she is entitled under and by virtue of the last 30 will and testament of Joseph Schenck deceased, her grandfather—or from any other source whatever unto the said John C. Schenck, upon the trusts and for the interests and purposes herein after expressed and declared of and concerning the same. Now this indenture witnesseth, that in consideration of the said intended marriage and in pursuance and for performance of the said herein before mentioned agreement on the part of the said Margaret Schenck in this behalf and in consideration of the sum of one dollar to the said Margaret Schenck in hand paid by the said John C. Schenck at and before the sealing and delivery of these presents, the receipt 40 whereof is hereby acknowledged and for divers other good causes and valuable considerations the said Margaret Schenck hereunto

moving, she, the said Margaret Schenck, with the consent and approbation of the said Asa S. Colton—testified by his being a party to and sealing and delivering of these presents hath bargained, sold, assigned, transferred and set over, and doth bargain, sell, assign, transfer, and set over unto the said John C. Schenck, all and every sum and sums of money, which the said Margaret Schenck is, or which she, or the said Asa S. Colton shall or may in her right or otherwise might be entitled to under or by virtue of the said last will and testament of the said Joseph Schenck deceased,

10 and all the right, title, interest, property, claim or demand whatever, both at law and in equity of her the said Margaret Schenck of, in and to the same and every part thereof, to have, hold, receive, and take the said sum or sums of money hereby assigned and conveyed aforesaid, or intended so to be, and every part thereof respectively unto the said John C. Schenck. But nevertheless upon the trusts and for the interests and purposes herein after expressed and declared of and concerning the same, that is to say, in *trust* for the said Margaret Schenck, her executors and administrators,

20 immediately after the solemnization thereof to place out the same at interest on bond and mortgage or otherwise as the said John C. Schenck may think best and to change or alter from time to time the investment of the said sum and sums of money at his discretion and as the safety and advantage of the trust fund may require; and upon this further trust to receive and take the interest, dividends and annual produce thereof to and for the sole exclusive use and benefit of the said Margaret Schenck upon her separate receipt, notwithstanding her coverture, and to be no way liable to the control, or for the debts of the said Asa S. Colton, his executors, ad-

30 ministrators or assigns; and upon this further trust that in case the said Margaret Schenck shall happen to survive the said Asa S. Colton, to pay the whole of the said fortune to the said Margaret Schenck for her own use and benefit; and upon this further trust, that in case the said Asa S. Colton should survive the said Margaret, and there should be one or more child or children of the said Asa S. Colton and the said Margaret, then to pay the said interest, dividends, and annual produce, toward the maintenance and education of the said child or children till the youngest shall attain the age of twenty-one years, and then to pay the whole of the princi-

40 pal and such interest as may be in arrears, to and among such child or children equally share and share alike. And in case the said Margaret should depart this life before the said Asa S. Colton

and without a child then upon this further trust to pay the said sum or sums of money with the interest due thereon to such person or persons as may be designated in writing by the said Margaret under her hand and seal in the nature of a last will and testament attested by one or more subscribing witnesses. And it is understood that in the case of the death of the said John C. Schenck, before the execution of this trust, that then the said Margaret shall have the power to name and appoint another trustee, to execute and fulfil the same, and do, as often as the trustee named and appointed by the said Margaret may die till this trust is finally fulfilled and completed. 10

In witness whereof the parties to these presents have hereunto set their hands and seals the day and first above written.

ASA S. COLTON, [L. S.]  
 MARGARET SCHENCK, [L. S.]  
 JOHN C. SCHENCK, [L. S.]

Signed, sealed and delivered in the presence of Eliza A. Schenck James S. Green as to Margaret and John C. Schenck."

And these defendants further answering show, that the said articles of settlement never were intended or understood, either by these defendants or the said John C. Schenck, to destroy, injure, or in anywise interfere with the lien possessed by these defendants in and by virtue of the said last will of said Joseph Schenck, deceased, upon the real property devised by said Joseph Schenck, and whereby the payment of the same was secured. The only object and intention of said articles was so to settle the property belonging to said Margaret as that, in case of misfortune on the part of her husband, his creditors might not deprive her of its enjoyment. And these defendants further submit to this court, that the said articles, in their legal effect and on a just and lawful construction of them, do not in any manner destroy, injure, or in anywise interfere with the said lien in and by virtue of said last will belonging to the said Margaret upon said real property. The amount of said legacy was not in fact paid to the said Margaret. And these defendants submit, that the whole effect of said articles of settlement were a consent upon the part of said Margaret, with the approbation and consent of the said Asa S. Colton, that the said John C. Schenck, acting executor of his father's estate, and thereby, as well as by virtue of the fact that said legacy was a charge upon lands devised subject thereto, unto him, trustee of the legacies bequeathed in said will for the said Margaret, should thereafter re- 20 30 40

main such trustee and for her sole and separate use, free from all debts or claims against her said husband, and to do and perform the trusts in said articles specifically mentioned.

And these defendants further show, that the said John C. Schenck never in fact executed the said trust, or any part thereof; that he never, at any time, invested the said legacy, or any part of the said money due from the estate of said Joseph Schenck in said articles mentioned, in any bond or mortgage or in any other manner; but that the same always remained unpaid and in the same situation  
 10 as the same existed prior to the said articles of settlement being executed; that the said articles remained in the custody, as these defendants believe, of the gentleman by whom they were drawn or of Mr. John C. Schenck, and were regarded by the parties thereto as a precautionary measure, not in anywise altering the relation of the parties to each other or interfering with the said legacy's being a charge upon said real estate, but to be used, in case of necessity, to protect the property of said Margaret from demands against her husband.

And these defendants, Asa S. Colton and Margaret his wife, fur-  
 20 ther answering say, that the whole amount of the principal money due upon the said decree is still due and owing to them, no part thereof having ever been paid to these defendants, together with large arrears of interest thereon; that a large amount of money besides is further due and owing from the said John C. Schenck unto these defendants on account of the other legacy in the said bill mentioned; and these defendants admit that from time to time, since their intermarriage, moneys have been paid by the said John C. Schenck unto them, but they say that such moneys have been appropriated by these defendants to the discharge, in part, of the  
 30 other legacy aforesaid, and not to the discharge of the above decree, no appropriation of the same otherwise being made by the said John C. Schenck at the times of paying the same; and these defendants show that the amount of such moneys by them received on account of the decree above referred to is the sum of two hundred and thirty-eight dollars seventy-four cents, being the interest of said decree for the period of three years and three months, or thereabouts.

And these defendants further answering show and say, that as to any amount being paid to said Margaret before her intermarriage by the said John C. Schenck, these defendants say, that no  
 40 part of the said legacies, or either of them, was ever paid, either to said Margaret, or laid out for her in education or otherwise, pre-

vious to such intermarriage, the said Margaret being so educated by means of moneys belonging to her mother, and expended by him; and defendants say, that the whole principal and interest due on said legacy was unpaid at the time of the said intermarriage of the said Asa S. Colton and Margaret his wife.

And these defendants further answering say, that they were not parties to the suit and decree referred to in complainant's bill, whereby said property was sold, and under which said complainant alleges himself to have purchased, nor had any knowledge of the pendency of said suit while it was progressing; and these defendants submit that they are in no manner bound by the same. 10

And these defendants deny all unlawful combination and confederacy in said bill charged, without this, that any other matter or thing material for these defendants to make answer unto, and not herein or hereby well and sufficiently traversed or denied, confessed or avoided, is true, to the knowledge or belief of these defendants. All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with all reasonable costs and charges in this behalf most wrongfully sustained. 20

CORTLANDT PARKER,  
*Solicitor of said defendants.*

New Jersey, Somerset, *ss.*—Asa S. Colton and Margaret his wife, the above named defendants, being duly sworn say, that the matters and things set forth in the above answer, so far as relate to their own acts and deeds are true, and so far as they relate to the acts and deeds of others, they believe them to be true.

ASA S. COLTON,  
MARGARET COLTON.

Sworn and subscribed, this thirteenth day of June, A. D. 1849, 30  
before me, at New Brunswick, in the county of Somerset.

E. Y. ROGERS, *M. C.*

## IN CHANCERY OF NEW JERSEY.

*The several answer of William C. Schenck to the bill of complaint of Henry S. Terhune, complainant.*

This defendant, now and at all times saving to himself all and all manner of benefit or advantage of exception, or otherwise, to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for him to make answer unto, answering says, that he admits it to be true that said Abraham  
 10 W. Brown, late sheriff of Middlesex, did, by virtue of the execution referred to in the bill of complaint, advertise the premises in said bill referred to for sale at the time and place therein stated, and that he did so at the instance of this defendant, in conjunction with Asa S. Colton and Margaret his wife, through their solicitor, Cortlandt Parker, who, by the order of this court, in March term, one thousand eight hundred and forty-eight, was substituted solicitor for this defendant and said Colton and wife in said cause. And he admits that said execution issued out of this honorable court at the time and in the cause in said bill stated; that it was directed  
 20 and delivered to said Brown, who then was sheriff of Middlesex, and that the command of said writ was as stated in said bill; and further, that it was returned at the time and with the certificate thereon endorsed which the bill states.

And defendant further answering says, that as to that part of said bill which states complainant's conduct on learning of said property being advertised, his surprise thereat, his application for information, and what he learned from the solicitor of the complainant in said cause, or from said Abraham W. Brown, this defendant knows nothing, except as informed by the bill, and leaves  
 30 complainant to prove the same, as he may be advised.

And this defendant further answering says, that on the eleventh day of February, one thousand eight hundred and thirty-seven, in the said cause stated, and referred to in said bill wherein Caleb Johnson and Enoch Johnson were complainants, and John C. Schenck, Isaac Story, executor of James Stoddard, deceased, Asa S. Colton and Margaret his wife, and this defendant, William C. Schenck, (called therein William Schenck) were defendants, a certain final decree was made by this honorable court, by which  
 40 decree, after reciting, among other things, that it had been referred to a master of this court to take an account of the principal and

interest moneys due to the complainants and the said Isaac Story, executor as aforesaid, upon their bonds and mortgages in the bill of complaint in said cause mentioned, and also of the principal and interest of a certain legacy mentioned in the answer of John C. Schenck, one of said defendants, and to examine and report whether the same was a lien upon the mortgaged premises mentioned in the bill of complaint (being the same premises mentioned in the bill of complaint to which this defendant is now making answer), and entitled to be first paid out of the same, and that it appeared, by the report of said master, that there was due to said Asa S. 10 Colton and Margaret his wife, at the date of said report, the sum of seventeen hundred and twenty-four dollars and thirty-eight cents, and to said William Schenck, this defendant, a like sum, being the amount of a certain legacy bequeathed to the said Margaret and William by their grandfather, Joseph Schenck, deceased, with interest thereon, and that said legacy was a lien upon the mortgaged premises mentioned in the bill of complaint, and entitled to be first paid out of the same, and that there was due to the complainant, Caleb Johnson, the sum of four thousand nine hundred and four dollars, and to the complainant, Enoch Johnson, two thousand six 20 hundred and ninety-seven dollars and twenty cents, on two certain bonds to them respectively belonging, secured by a mortgage upon said premises, which was entitled to be next paid out of the same, and that there was due to Caleb Johnson, on a further bond and mortgage to him belonging, the sum of two thousand four hundred and forty-one dollars, which was entitled to be paid out of said premises next in order, and that there was due to said Isaac Story, executor as aforesaid, the sum of two thousand six hundred and forty-two dollars and six cents, on a bond and mortgage which was entitled to be paid out of said premises next in order, it was, in 30 substance, ordered, adjudged, and decreed that the said report should in all things be confirmed, and that the said mortgaged premises (being the premises in question in this suit) should be sold, and that for that purpose a writ of *feri facias* should issue out of this court, directed to the sheriff of Middlesex, commanding him to make sale of the premises according to law, and that, out of the moneys arising from the sale thereof, he should pay to said Asa S. Colton and wife, or their solicitor, the sum aforesaid reported to be due to them, with interest from the date of said report until the same should be paid and satisfied, and to said William 40 Schenck, or his solicitor, the sum reported to be due to him as aforesaid, with like interest, and that he should then pay to said

complainants, or their solicitor, the sums reported to be due to them as aforesaid, in the order aforesaid, with interest as aforesaid, and costs to be taxed, and that he should then pay to said Isaac Story, executor as aforesaid, or his solicitor, the sum aforesaid reported to be due to him, with like interest and costs, to be taxed, and that he should bring the surplus money, if any there should be, into this court, and deposit the same with the clerk of the same, to abide the further order of this court. And it was likewise thereby further ordered, adjudged, and decreed, that said defendants in said

10 bill of complaint should stand absolutely debarred and foreclosed of and from all equity of redemption of, in, or to the said mortgaged premises, or so much thereof as should be sold by virtue of that decree, as in and by said decree, now remaining of record in this honorable court, and registered in Book Y, page 608, reference being thereto had, which this defendant prays permission to make, in case it be necessary so to do, will more fully and at large appear.

And this defendant further answering says, that said writ of *feri facias*, in said Terhune's bill of complaint stated, issued upon said decree, and is in conformity therewith; that it was duly recorded,

20 according to the rules of this court, and delivered to said Brown, then being such sheriff, and that the moneys therein, and in said decree mentioned to be due to this defendant, and which, by said execution, said sheriff was commanded to raise, have never yet been paid or discharged, a large sum still remaining due to him thereupon.

And this defendant shows that said decree and execution still remain of record and unsatisfied, and the said premises in said execution and decree referred to never having been sold, this defendant submits to this court that he had good right and lawful

30 authority to direct a sale of said premises by said sheriff, in obedience to the command of said writ, in order to obtain the money due to him.

And this defendant further answering saith, that said decree remaining unsatisfied of record was, of itself, full and adequate notice of the lien held by this defendant upon the said premises, and that after a solemn adjudication of this court, decreeing that said legacy was a lien on said premises, the complainant ought not to be permitted to allege otherwise, nor, after this lapse of time, to controvert the truth and justice of said decree; and defendant saith,

40 that he has no knowledge, and cannot therefore admit or deny, that said complainant never heard or knew of the existence of said decree, but defendant submits, said decree, when recorded, was

notice to complainant and all the world, of itself, and of the said lien, and that if said complainant purchased said premises without discovering the same, he omitted to exercise due diligence, and cannot have acquired any rights to the prejudice of this defendant.

And this defendant further shows, that the existence of said legacy to this defendant, as an alleged lien upon said premises, was admitted in and by the said bill of complaint filed by said Caleb and Enoch Johnson, and was also set up by the answer of said John C. Schenck, filed in this cause, which answer was not controverted by said complainants; that in said answer, filed at the 10 time stated in said Terhune's bill of complaint, said John C. Schenck, the mortgagor of said premises in question to the complainants in that suit, and afterwards to said James Bishop, stated, under oath, that said premises had been devised to him subject to said legacy, that it then remained wholly due and unpaid, and that the same, with the arrears of interest, was a charge on said premises, entitled to be paid thereout prior to the mortgages of the complainants and said Story, and whether or not such was the case was submitted to this honorable court, as in and by said answer, reference being thereto had, on the files of this court, and in the 20 records thereof, will fully appear.

And this defendant submits to this court, that said Henry S. Terhune, the complainant in this suit, claiming under a mortgage and sale thereunder, which mortgage was given by said John C. Schenck, even though the money raised by said mortgage by said John C. Schenck went to pay said Caleb Johnson and Enoch Johnson, as to which this defendant has no knowledge, and can neither admit nor deny, is bound by and estopped from disputing the solemn admissions made in his answer aforesaid by John C. Schenck, and the decree of this honorable court establishing the same to be true, 30 whereby said John C. Schenck was concluded from denying the same; and that he, the said Terhune, is estopped from disputing, especially at this day, the validity of said legacy as a lien and encumbrance upon said premises on the day of the said decree being made as aforesaid.

And this defendant further answering saith, that the first knowledge possessed by this defendant of the existence of any such agreement as is set forth in said bill of complaint of Henry S. Terhune to have been made and signed by Richard S. Field, solicitor of the complainants in the cause above stated, Samuel R. 40 Hamilton, solicitor of John C. Schenck, and James S. Green, solicitor of this defendant and Asa S. Colton and wife, was derived

from said Terhune's bill of complaint, that as to such agreement having been made while said Caleb and Enoch Johnson were preparing to resist the claim set up by said John C. Schenck to have the said legacy declared a charge on said mortgaged premises, this defendant does not believe that any such resistance was ever contemplated, the said Caleb and Enoch having, in their bill of complaint, admitted its validity; and this defendant neither admits nor denies the existence of any such pretended agreement, and leaves complainant to make such proof thereof as he may deem proper, 10 but he submits to this court that such agreement is in nowise binding upon him; that said James S. Green had no right, as his solicitor in said cause, to agree to postpone the rights of this defendant or alter the legal priority of lien to him belonging by virtue of the will of this defendant's grandfather, unless he so agreed with the knowledge and by the direction and consent of this defendant; and defendant shows that he never, until as aforesaid, knew of said agreement, and never directed or consented to it; and he submits that said agreement was a fraud upon this defendant, and cannot in anywise prejudice him at this time; and defendant further submits, 20 that said Caleb and Enoch Johnson, having full notice of the rights of this defendant, could not claim any benefit from any such agreement, but would have been held by the rules of this court, had a sale of said mortgaged premises taken place, bound, notwithstanding the same, to pay over the moneys arising from said sale to satisfy the claim of this defendant before satisfying their own claim.

And this defendant further submits, that said agreement, no aale under the same having taken place, as therein contemplated, never went into operation, and that the same in no manner affects the present rights of this defendant on the complainant in this suit.

30 And this defendant further answering saith, that he is informed and believes that afterwards, and before any sale had under said decree, the amounts thereby ascertained and declared to be due unto said Caleb and Enoch Johnson were, on or about the day stated in complainant's bill, paid and satisfied; said sum so paid amounted to over ten thousand dollars, but whether it was derived in part from the money raised by a mortgage given to James Bishop, such as is stated in said bill, or from what source, this defendant is entirely ignorant, nor, he submits, ought it at all to impair his rights if such was the case. And this defendant further answering shows, 40 that the amount due him was not then, nor has it been since, discharged, and, on the contrary, he shows that afterwards, and on or about the twenty-second day of September, one thousand eight

hundred and thirty-seven, the said sheriff, Abraham W. Brown, received, from the then solicitor of this defendant in said suit, written directions to stay further proceedings upon the said decree, as respected this defendant and said Asa S. Colton and wife, until in further orders, thus in terms showing said execution to be then still in force and not to be paid, by authority whereof said Abraham W. Brown did stay proceeding under the same until directed otherwise by this defendant, through his solicitor as aforesaid.

And this defendant says, that he believes a certain mortgage was given by John Gulick to James Bishop for some such amount as 10 that stated in said bill, and covering one hundred and fifty-seven acres, part of said homestead, was made and executed about the time in the bill stated, but he knows nothing of the amount, date, or existence of said mortgage, otherwise than as informed by said bill, and leaves complainant to prove the same as he may be advised; nor does defendant know, and he can therefore neither admit or deny, whether or not the said James Bishop was willing to take a mortgage upon the said one hundred and fifty-seven acres, provided it could be cleared of all existing encumbrances, but these defendants submit, that it is not probable that said Bishop did 20 not know the particulars of said decree and execution, if the money advanced by him was known by him to be intended to pay off the same with.

And this defendant further answering admits, that, in the year one thousand eight hundred and thirty-seven, the said premises were conveyed by said John C. Schenck to Isaac Story, and that afterwards the same were purchased by John Gulick, above mentioned, as in said bill is stated, and that, in the year eighteen hundred and thirty-nine, the said John Gulick conveyed to said John C. Schenck said farm of two hundred and fifty-six acres, including 30 the premises in question; but as to said James Bishop's agreeing that the bond and mortgage of said John C. Schenck should be substituted in the place of the bond and mortgage previously executed to him by said John Gulick, and as to the bond and mortgage in said bill of complaint mentioned being thereupon executed, and as to any assurances made by said Schenck to said Bishop, that there were no encumbrances upon said property prior to said mortgage, that the said execution from chancery had been settled by the parties, and that the legacy herein before referred to was no longer a lien or charge upon said property, this defendant has no 40 knowledge, other than as informed by said bill, and can neither admit nor deny, but leaves the complainant to make proof of the

same according to the rules of this court, if he shall think fit so to do; and this defendant insists and submits to the court, that whatever the said John C. Schenck may have said thereupon, this defendant can in nowise be injured thereby, and neither the said Bishop, nor can any person claiming under him, acquire any rights, as against the defendant, by his credulity in trusting to the representations of another.

And this defendant insists, that the said decree in favor of this defendant was notice to the said James Bishop and the said Henry  
 10 S. Terhune of the claim and lien of this defendant; and that it was the duty of a man about to lend upon or purchase said property to have insisted on the cancellation and discharge of said decree, else any loss thereby could be attributed to his own carelessness only.

And this defendant submits, that no inquiry ought now to be permitted, as against this defendant or in favor of complainant, into the rightfulness of said decree establishing said legacy as such lien as aforesaid; but defendant further shows, if this court shall think proper to examine into such question, that said legacy for the  
 20 amount of which said decree was taken was and is, in law and equity, a charge and encumbrance upon said premises. And this defendant shows, that on or about the twentieth day of November, one thousand eight hundred and twenty-two, one Joseph Schenck, grandfather of this defendant and said Margaret Colton, formerly Margaret Schenck, died seized of sundry real estate in the then county of Middlesex and state of New Jersey, and among other tracts of the land and premises described in said complainant's bill of complaint, which was part of property known as the homestead place on which said Joseph Schenck during his lifetime resided;  
 30 and the said Joseph Schenck, before his death, made his last will and testament, which will, after his decease, to wit, on the fourth day of December, in the year of our Lord one thousand eight hundred and twenty-two, was duly proved by John C. Schenck and Elias Theodore Schenck, the executors therein named, before John Heard, then surrogate of said county of Middlesex, to which will, and letters of probate thereon granted, this defendant prays leave to reply, or to a certified copy thereof, if it be necessary so to do.

And this defendant further shows, that, in and by said will, the said Joseph Schenck did, among other things devise, in substance  
 40 as follows, to wit: "I do hereby give, devise, and bequeath unto my son John, his heirs and assigns, in fee simple, the homestead place on which I now reside (including the premises mentioned in

said bill of complaint), situate in the township of West Windsor aforesaid, and bounded on the northwesterly by lands of my son John, on the westerly by lands of my said son John, on the northwesterly by lands of my said son John, on the northerly by lands of Zebulon Morford, on the easterly by the Millstone and Stony brook, and on the southwesterly by the road leading from Jugtown to Scudder's mills, containing about two hundred and fifty-six acres, subject, however, to the payment by my said son John of certain sums of money, herein after mentioned and bequeathed."

And the said testator, in his said will, after other bequests to his said son John, did afterwards order and direct, in substance, as follows, to wit: "It is my will, and I do order and direct that my said son John C. Schenck, for and in consideration of the above devises and bequests do also pay to Margaret Schenck and William Schenck's children and heirs at law of my beloved son William C. Schenck deceased the sum of one thousand nine hundred and fifty-three dollars to be paid as hereafter directed."

And the said testator, in and by his said will, after other devises and directions, did order and devise, in substance, as follows: "I give and bequeath to Margaret Schenck and William Schenck children and heirs at law of my said son William C. Schenck, deceased, the sum of three thousand five hundred and forty-seven dollars out of my estate in addition to the sum of one thousand nine hundred and fifty-three dollars herein before directed to be paid to them by my son John C. Schenck, both sums to be divided between them, the said Margaret and William share and share alike. The said sum of one thousand nine hundred and fifty-three dollars is to be paid by my son John C. Schenck in three equal annual payments without interest till each annual payment become due, the first payment to become due on the first day of May next after my decease. It is my will and I do hereby order and direct, that my executors place out to interest, so far as they conveniently can, the respective sums of money hereby given and bequeathed to Margaret Schenck and William Schenck children as aforesaid of my said son William C. Schenck, deceased and apply the interest (which is to be computed at the rate of six per cent per annum) so arising to the support and education of the said Margaret Schenck and William Schenck till such time as they shall respectively arrive at the age of twenty-one years when they or their lawful issue in the event of the death of both or either of them are to receive their respective parts or moieties, the issue taking its respective parents' share; and if either the said Margaret or

the said William shall die without lawful issue, and before he or she arrive at the age of twenty-one years then it is my will and I do order and direct and give and bequeath his or her share and proportion to her or him that survives and if both the said Margaret and William die without lawful issue and before they respectively attain his or her respective age of twenty-one years, then it is my will and I do hereby give and bequeath the sums of money herein before given to the said Margaret and William, to my two sons John C. Schenck and Elias Theodore Schenck or their lawful  
 10 issue to be equally divided between them share and share alike, the issue to take the part or share which its parent would have taken if alive."

And in the said will, the testator aforesaid further devised and ordered, in substance, as follows :

" I give devise and bequeath to my two sons John C. Schenck and Elias Theodore Schenck their heirs and assigns for ever as tenants in common, all the rest and residue of my estate both real and personal after the payments of debts funeral expenses expenses of settlement and the legacies herein before directed to be paid out  
 20 of my estate. In the above devise I include the real estate known by the name of the Slayback place and Davison lot lately belonging to Moses Morris esq. And it is my intention, that if there should not be sufficient personal property after the payment of debts and expenses aforesaid to pay the legacies directed to be paid out of my estate, that then the fifteen hundred dollars given to my son Elias Theodore Schenck should be first paid and the residue of the legacies is charged on the real estate last mentioned or may be paid equally by my two sons John C. Schenck and Elias Theodore Schenck."

30 And for the further contents of said will, this defendant prays to refer the court to a copy thereof, recited in the answer filed by Asa S. Colton and Margaret his wife to the bill of complaint in this cause, and to another copy thereof attached to this answer, and which defendant prays may be regarded as part of the same.

And this defendant saith, that said Joseph Schenck was possessed, at the time of his death, of a large amount of personal property, which came to the hands of his executors, and was by them, or by the said John C. Schenck, acting executor, bestowed on the payment of the debts and demands against said testator, but  
 40 that the legacy of nineteen hundred and fifty-three dollars aforesaid has never been paid or discharged.

And this defendant submits to the court (if the court shall decide

to inquire into such a matter after the determination of the same by said decree), that, by the will of said Joseph Schenck, said legacy of nineteen hundred and fifty-three dollars became a charge upon the homestead property of said Joseph Schenck, therein bequeathed to said John C. Schenck, and upon every part thereof, subject to and in consideration of which only the said John C. Schenck acquired any title to the said homestead, or any part thereof; and further defendant submits, that the lien of said legacy could not, in law or equity, be divested, even in favor of *bona fide* purchasers without notice, until payment or other discharge or re- 10  
lease thereof.

And this defendant shows, that said will and letters of probate thereon, as aforesaid, were, in conformity with law, duly recorded in the office of the surrogate of Middlesex county, and there still remain of record, to wit, in Book B of Wills, page 581, for said county, and that such record was, in law and equity, due notice to all persons claiming by or under the said John C. Schenck or his heirs, by deed, mortgage, judgment, or in any manner whatsoever; and further defendant says, that he believes and charges that said complainant had in fact notice of said will, and that said legacy 20  
was such charge as aforesaid at the time of his purchasing said property, as in said bill is stated.

And this defendant further answering says, that he denies it to be true that all or any part of the amount due to him on account of his share in said legacy of nineteen hundred and fifty-three dollars, or the said decree thereon founded and above referred to, has been secured to him, or attempted to be secured, by the execution of any bonds or mortgages or bond or mortgage, or that any such bond or bonds or mortgage or mortgages were subsequently paid 30  
off, with the exception of a small balance named in the bill of complaint, or any balance whatever. And this defendant saith, that he has never received any security by bond and mortgage, or otherwise, for his share in said legacy, or the said sum as aforesaid decreed to be paid him thereupon and therefor from said John C. Schenck or any other person; that certain moneys, to the amount of six hundred and forty-four dollars thirteen cents, or thereabouts, have been paid by said John C. Schenck to this defendant, without any special appropriation of the same by the said John C. Schenck to any particular debt due this defendant from him; and that this defendant hath appropriated said sums so paid to the discharge in 40  
part of the other debts subsisting from the said John C. Schenck personally to him, and not to this legacy due from him as executor

of the estate of Joseph Schenck. And this defendant saith, that the whole amount of said decree in this defendant's favor, with interest thereon from its date, is still due and owing to this defendant, no part thereof having been paid or satisfied.

And this defendant saith, that prior to his majority, and while obtaining his education, this defendant was supported and educated by his mother, and not by the said John C. Schenck, or by the proceeds or any part of said legacy.

And as to this defendant's having presented to the assignee of  
 10 said John C. Schenck his claim against said estate, including the amount of the aforesaid legacy, this defendant saith, that at some time previous to the nineteenth day of September, one thousand eight hundred and thirty-six, said John C. Schenck presented the said legacy, together with another, to said assignee, as a claim to him belonging, as executor of the estate of Joseph Schenck aforesaid, against the estate in the hands of such assignee, which claim the said John C. Schenck professed to make for the benefit of this defendant, and which this defendant did not interfere with his making. Whether any exceptions were filed to its allowance or  
 20 not, this defendant knows not and cannot say; none such, he is informed and believes, can be found on the records or files of the said Court of Common Pleas for Middlesex county. And this defendant believes that said claim, so made by John C. Schenck, was not allowed, but on what ground this defendant cannot say and does not know. It could not be upon the ground that such legacy and claim was paid or satisfied to this defendant, because such was not the fact, and is not the fact at this time. And this defendant saith, that it is evident that John C. Schenck could have no rightful claim to apply his private assets to the discharge of said legacies  
 30 in prejudice of his personal creditors, where the same were regularly charged on land sufficient in value to pay the same, as was known and admitted to be the fact; and this defendant suggests that this was the probable ground on which said court proceeded in disallowing the said claim made in regard of said legacy by said John C. Schenck.

And this defendant submits, that even if he had been a party to said matter before the said Common Pleas, it could in no manner conclude or prejudice this defendant in asserting the said legacy to be still due and unpaid and a charge on said premises. And this  
 40 defendant insists, that he was not a party to said controversy; that the claim alleged to have been excepted to was that of John C. Schenck, as executor of Joseph Schenck, deceased, against John

C. Schenck individually, while the claim of this defendant in and about this legacy was and is against the said John C. Schenck, as executor as aforesaid, and the land by said Joseph Schenck charged therewith.

And in relation to the said John C. Schenck having, subsequent to the decree in favor of this defendant, mortgaged the said premises to James Bishop, and the amount of said mortgage, and its having been assigned to the said Henry S. Terhune, and the foreclosure and sale thereupon, and the purchase by said Terhune, this defendant saith, that he has no knowledge, except from common 10 reputation and the said bill; that he supposes and believes the statements of the bill to that effect to be correct, but leaves the complainant to prove the same, nevertheless with all particulars of date, amount, and circumstances, as he may be advised; but this defendant saith he was in no wise a party to said foreclosure, nor was he notified of the same; and he insists that all the rights acquired by the said Terhune are subject to said decree in behalf of this defendant and to said legacy.

And this defendant denies all and all manner of unlawful combination and confederacy in said bill charged, without this, that any 20 other matter or thing in the said bill contained, 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 humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

CORTLANDT PARKER,

*Solicitor for Defendant, Wm. C. Schenck.* 30

Mercer county, *ss.*—*William C. Schenck*, the above named defendant, being duly sworn, on his oath saith, that the matters and things set forth in the above answer, so far as they relate to his own acts and deeds, are true, and so far as they relate to the acts and deeds of others, he believes them to be true.

WILLIAM C. SCHENCK.

Sworn and subscribed, at Princeton, this 19th day of June, 1849, before me.

J. F. HAGEMAN, *M. C.*

"In the name of God amen. I Joseph Schenck of the township of West Windsor in the County of Middlesex and State of New Jersey, being in a weak state of body but of sound and disposing mind and memory (praised be God for the same) and being desirous to settle my worldly affairs while I have strength and capacity so to do, Do make and publish this my last will and testament, hereby revoking and making void all former wills at any time heretofore made by me.

And first and principally I commit my soul into the hands of my  
 10 Creator, who gave it and my body to the earth to be interred at the discretion of my Executors, herein after named, and as to the worldly estate wherewith it hath pleased God to intrust me, I dispose of the same as followeth :

In the first place, it is my will and I do order and direct, that all my just debts and funeral expenses be duly paid and satisfied as soon as conveniently can be after my decease. Item. I do hereby give devise and bequeath to my son John C. Schenck, his heirs and assigns in fee simple that Homestead place on which I now reside, situate in the Township of West Windsor aforesaid and bounded  
 20 on the northwesterly by lands of my said son John, on the westerly by lands of my said son John. On the northerly by lands of my said son John, on the northerly by lands of Zebulon Morford, on the easterly by the Millstone and Stony brook, and on the southwesterly by the Road leading from Jugtown to Scudders Mills, containing about two hundred and fifty-six acres, subject however to the payment by my said son John of certain sums of money herein after mentioned and bequeathed. Item. I do hereby give devise and bequeath to my son John C. Schenck, his heirs and assigns in fee simple, all that timber lot on Bear swamp containing about  
 30 fifteen acres.

Item. I give devise and bequeath to my son John C. Schenck his heirs and assigns in fee simple, all my share and half in and of a House and lot which I hold in common with my said son John C. Schenck, situate on the southerly point of the Homestead place aforesaid, on the road leading from Jugtown to Scudders Mills and near the Bridge over Stony brook, containing about two acres. Item. I give and bequeath to my said son John C. Schenck all my part and share of and in such personal property as may be on the Homestead place at the time of my decease, except such  
 40 part thereof as is herein after disposed of. In the above bequest to my said son John C. Schenck I include all my share and interest in the farm horses, cattle, sheep, hogs, bees poultry, farming uten-

sils, all corn and grain in the ground, or in the stack, or in whatsoever state or situation it may be in threshed or not, all the hay and fodder of every description, Household and kitchen furniture except such part thereof as I have herein after given and bequeathed to my son Elias Theodore Schenck and which is particularly specified in a paper subscribed by me and inclosed in this my last will and testament. And I do hereby give and bequeath and release to my said son John C. Schenck all claim and demand whatsoever, that I may have against him on account of certain slaves or people of color sold to him some years ago. It is my will and I do order and direct that my said son John C. Schenck in consideration of the above devises and bequests do pay to my son Elias Theodore Schenck, or his lawful issue the sum of seven hundred and fifty dollars, with interest to be computed from the first day of May next after my decease to be paid as herein after mentioned. It is my will and I do order and direct, that my said son John C. Schenck for and in consideration of the above devises and bequests, do also pay to Margaret Schenck and William Schenck children and heirs at law of my beloved son William C. Schenck deceased, the sum of one thousand nine hundred and fifty-three dollars to be paid as hereafter directed.

It is my will and I do hereby give devise and bequeath to my son Elias Theodore Schenck, his heirs and assigns in fee simple all that farm and plantation with the appurtenances, situate on Penns Neck containing about two hundred and twenty-six acres being the same premises, which are described in two several deeds, one executed by Alexander Schenck and the other by John Scott. It is my will and I do order and direct, that my son John C. Schenck take the charge of the said real estate, devised to my son Elias Theodore Schenck and manage it to the best advantage in his power, till such time as when my son Elias Theodore Schenck attains his age of twenty one years at which time my son Elias is to have full possession together with the rents, issues, and profits, which may have occurred, after deducting expenses for repairs or otherwise. Item. I give and bequeath to my son Elias Theodore Schenck and his lawful issue, the sum of one thousand and five hundred dollars out of my estate, in addition to the sum of seven hundred and fifty dollars, herein before directed to be paid to the said Elias by my son John C. Schenck, which two sums are to be paid to my son Elias Theodore Schenck or his lawful issue at such time as he shall or would attain his age of twenty one years with interest to be computed from the first day of May next after my decease.

I give devise and bequeath to my son Elias Theodore Schenck and his lawful issue my seat or pew in the Princeton Church. Also my bay mare and riding chair also such and so much of my personal property as is specified in a paper subscribed by me and enclosed in this my last will and testament. It is my will and I do order and direct, that if my said son Elias Theodore Schenck should die before he arrives at the age of twenty one years, that then the estate real and personal hereby devised and bequeathed to him shall pass to his lawful issue male and female to be equally  
 10 divided between them share and share alike and if there should be no such lawful issue then I give devise and bequeath the said real and personal estate, one moiety or half part to my said son John C. Schenck and his heirs, the other moiety or half part to Margaret Schenck and William Schenck children as aforesaid of William C. Schenck deceased to be equally divided between them share and share alike to be received by them when they respectively attain their respective ages of twenty one years.

Whereas during the lifetime of my beloved son William C. Schenck deceased I advanced to him the sum of four thousand and  
 20 seventy three dollars as part of the property, that I should have bequeathed to him in and by this my last will and testament now it is my will and I order and direct, that my executors make no account or demand against the estate of my said son William C. Schenck deceased for the said sum of four thousand and seventy three dollars, which they will find in notes signed by my said son William C. Schenck deceased among my papers, which said notes I order to be cancelled.

Item. I give and bequeath to Margaret Schenck and William Schenck children and heirs at law of my said son William C. Schenck deceased the sum of three thousand five hundred and forty seven dollars herein before directed to be paid to them by my son John C. Schenck both sums to be divided between them the said Margaret and William, share and share alike. The said sum of one thousand and nine hundred and fifty three dollars is to be paid by my son John C. Schenck in three equal annual payments without interest till each annual payment become due, the first payment to become due on the first day of May next after my de-  
 40 cease. It is my will and I order and direct that my executors place out to interest so far as they conveniently can the respective sums of money hereby given and bequeathed to Marg-  
 40 ret Schenck and William Schenck children as aforesaid of my son William C. Schenck deceased and apply the interest (which is to

be computed at the rate, of six per cent per annum) so arising to the support and education of the said Margaret Schenck and William Schenck till such time as they shall respectively arrive at the age of twenty one years: when they or their lawful issue, in the event of the death of both or either of them are to receive their respective parts or moieties, the issue taking its respective parents share. And if either the said Margaret or the said William shall die, without lawful issue and before he or she arrived at the age of twenty one years, then it is my will and I do order and direct and give and bequeath his or her share and proportion to her or him that survives, and if both the said Margaret and William die without lawful issue and before they respectively attain his or her respective ages of twenty one years then it is my will and I do hereby give and bequeath the sums of money herein before given to the said Margaret and William, to my two sons John C. Schenck and Elias Theodore Schenck or their lawful issue to be equally divided between them, share and share alike, the issue to take the part or share which its parent would have taken if alive.

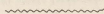
Whereas I was one of the administrators to the estate of my son William C. Schenck deceased, and while acting as such endeavored to do the best in my power for the widow and the orphans, yet still I may have in some particular, acted not strictly legal. I therefore order and direct, that if there should be any error discovered, and a suit commenced and a recovery had against my Estate, that the amount so recovered be paid out of and from the moneys hereby given and bequeathed to Margaret Schenck and William Schenck children as aforesaid of William Schenck.

Item. I give devise and bequeath to my two sons John C. Schenck and Elias Theodore Schenck their heirs and assigns forever as tenants in common all the rest and residue of my estate both real and personal after the payment of debts funeral expenses, expenses of settlement and the legacies, herein before directed to be paid out of my estate. In the above devise I include the real estate known by the name of the Slayback place and Davison lot lately belonging to Moses Morris Esq, and it is my intention, that if there should not be sufficient personal property after the payment of debts and expenses aforesaid, to pay the legacies directed to be paid out of my estate, that then the fifteen hundred dollars given to my son Elias Theodore Schenck should be first paid, and the residue of the legacies is charged on the real estate last mentioned or may be paid equally by my two sons John C. Schenck

and Elias Theodore Schenck. It is not my intention to limit the amount of commissions which the services of my sons as executors may deserve but to direct the commissions allowed them by law first to be deducted from the residue of my estate if sufficient if not sufficient then from my estate generally.

In the last place I nominate, constitute and appoint my two sons John C. Schenck and Elias Theodore Schenck the executors of this my last will and testament. And it is my will that my son John C. Schenck have the management and direction of my estate till  
 10 such time as my son Elias Theodore Schenck shall attain his age of twenty one years when he is to have the same control over my estate as his brother John C. Schenck and it is my will and I do order and direct, that if either my son John C. Schenck or my son Elias Theodore Schenck depart this life before the execution of this my will, then and in such case I do nominate constitute and appoint my nephew Isaac Story my executor to assist my surviving son to complete the execution of the same.

In witness whereof I the said Joseph Schenck have hereunto set my hand and seal this nineteenth day February in the year of  
 20 our Lord eighteen hundred and twenty two."



*The answer of Abraham W. Brown, one of the defendants, to the bill of complaint of Henry S. Terhune.*

This defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception, or otherwise, to the many errors, uncertainties, and imperfections in said bill contained, for answer thereto, or so much thereof as he is advised it is necessary or proper to make answer unto, answering  
 30 of complaint aforesaid in favor of Caleb and Enoch Johnson against John C. Schenck, Asa S. Colton and wife, William Schenck, and Isaac Story, executor of James Stoddard, deceased, defendants, out of the Court of Chancery, this defendant then being sheriff of Middlesex county, which execution hath long since been returned to this court, and to which defendant refers for all particulars touching the date, amount, and contents thereof, the levy under the same, its date, and the date of reception and return, and all

other particulars touching the same; that under the said execution, this defendant advertised a sale of said premises therein described; that before the appointed day of sale, this defendant received instructions from the complainants therein, by their solicitor, not to sell, and so delayed selling, and that afterwards, and on or about the twenty-second day of September, one thousand eight hundred and thirty-seven, this defendant received written orders from James S. Green, esq., of which the following is a copy:

"1837 Sept. 22d. Stay further proceedings on the above decree as respects Asa S. Colton and Wm. Schenck, till further orders. 10

JAS. S. GREEN, *their solicitor.*"

Which written order is contained in this defendant's docket under the statement of the said execution, the parties and the amount thereof.

And this defendant saith, that afterwards, and some time in February, one thousand eight hundred and forty-eight, as this defendant believes, he was waited upon by Cortlandt Parker, one of the solicitors of this court, who made certain inquiries respecting said suit, and referred to said docket of this defendant; and that afterwards, and about the fifth of April following, he received from the said Parker a letter enclosing another, alleged by said Parker to be signed, and which defendant believes was signed by said Asa S. Colton and wife and William Schenck, desiring him to obey the instructions of said Parker, who, in his said letter, stated to defendant that, under that authority and by virtue of an order of substitution in the said cause, he remitted the order for stay of proceedings, and ordered this defendant to proceed with the execution and sell the land, and desired him to advertise it immediately; whereupon this defendant did so advertise the same, as is stated in the bill of complaint. 20 30

And this defendant hath no knowledge of any of the matters alleged in said bill regarding or affecting the rights of the other parties, defendant or complainant, nor does he conceive himself bound to answer the same, acting merely as an officer of this court, under execution to him delivered, and by virtue of directions received from the said Colton and wife and William C. Schenck and their solicitor. 30 40

And this defendant denies all unlawful combination and confederacy in said bill charged, without this, that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently traversed or denied, answered,

confessed, or avoided, 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 humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

CORTLANDT PARKER,  
*Solicitor of defendant.*

Middlesex, ss.—*Abraham W. Brown*, the above named defendant, being duly sworn, saith, that the facts, matters, and things in  
10 the above answer contained, so far as they relate to his own acts and deeds, are true, and so far as they relate to the acts and deeds of others, he believes them to be true.

A. W. BROWN.

Sworn and subscribed, this 23d day of June, 1849, before me.

ANDREW J. DISBROW, J. P.

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EVIDENCE.

*Examination of witnesses, &c., in a cause depending in the Court of Chancery of the state of New Jersey, wherein Henry S. Terhune is complainant, and Asa S. Colton and wife, William C. Schenck and Abraham W. Brown, defendants; taken at the office of J. F. Hageman, at Princeton, state of New Jersey, on the thirtieth and
20 thirty-first days of October, in the year of our Lord one thousand eight hundred and fifty, before John F. Hageman, one of the masters and examiners of the said court, in the presence of R. S. Field, esquire, solicitor, and Stacy G. Potts, esquire, of counsel for the complainant, and of Cortlandt Parker, esquire, solicitor and of counsel for the said defendants.*

Richard S. Field, of Princeton, in the county of Mercer, a witness produced on the part of the complainant, being duly sworn, deposeth and saith:

30 I am acquainted with Caleb and Enoch Johnson. In the year 1836, I was employed by them as counsel; I was their solicitor; I filed a bill for Caleb Johnson, and one for Caleb and Enoch Johnson, in Chancery. In the spring of 1836, Caleb Johnson placed in

my hands two sets of mortgages, given by John C. Schenck, with instructions to foreclose; one set of mortgages embraced a portion of the homestead farm, containing 157 acres, and the other set of mortgages embraced what was known as the Slayback farm, with other lots of land: it became necessary, therefore, that two bills should be filed. One of the mortgages on the homestead farm was given to Caleb and Enoch Johnson, and therefore that suit is entitled *Caleb and Enoch Johnson v. John C. Schenck and others*; the other suit is entitled in the name of *Caleb Johnson v. John C. Schenck and others*. 10

In the bill filed by Caleb and Enoch Johnson, the defendants originally were John C. Schenck and wife, and Isaac Story, executor of James Stoddard, who held a subsequent mortgage. The other bill was filed against John C. Schenck and wife alone.

Asa S. Colton and wife and William Schenck were not made defendants to these suits. It became my duty, as solicitor of Caleb Johnson, to inquire what persons were interested in the property, and make all interested persons parties thereto.

I obtained a copy of will of Joseph Schenck, and ascertained, by reference to it, that a legacy of \$1953 had been left to William 20 Schenck and Margaret Schenck, grandchildren of the testator, and that, by the language of the will, this legacy might be regarded as a lien on the homestead farm that was devised to John C. Schenck. I ascertained, too, that a legacy of \$3547 had been left by the will of Joseph Schenck to William Schenck and Margaret Schenck, payable out of the estate, and charged on the residue of the real estate, which included this Slayback farm; still I did not make the legatees parties defendants in these suits. With regard to the legacy on the homestead, I ascertained that, a few months before the date of the earliest mortgage of Johnson, there had been a 30 settlement made of this legacy between John C. Schenck and Margaret, and I was led to believe, although without any positive knowledge of the fact, that a settlement had also been made with William; and with regard to the legacy of \$3547, which was payable, in the first place, out of the personal estate, I obtained a copy of the account of John C. Schenck, as the acting executor of Joseph Schenck, from the surrogate's office of the county of Middlesex, which account I now hold in my hand, and in that account John C. Schenck prays allowance for \$3547, the legacy left to Margaret and William. This was allowed, and there was a balance 40 in the hands of the executor of \$468.46. I believed, therefore, that both of these legacies had been settled, and that they were

not liens upon the real estate. The amount of these mortgages was very large, nearly \$20,000 in all, and Mr. Schenck (John C. Schenck) believed he would be ruined if we proceeded with the foreclosure of the mortgages; he represented it so; he called upon me repeatedly to see if some arrangement could be made by which some time could be given him; he told me, at last, that if he was driven to extremity, he would set up the plea of usury; for some time I believed it was his intention to put in the plea of usury. I then learned, I think from his counsel, Mr. Green, that he had
 10 come to the conclusion not to put in the plea of usury, but that he meant to set up these legacies as liens upon the real estate. I think I understood from Mr. Green that he had refused to put in an answer setting up these legacies, but that Mr. Schenck intended to get Mr. Hamilton to put in such answer for him. This was the first intimation I had that there was any pretence that these legacies were still a lien upon the real estate. As soon as I learned that Mr. Schenck intended to set up these legacies as a lien, I amended the bill, and I did so by making Asa S. Colton and Margaret his wife and William Schenck defendants, upon the ground
 20 that they claimed some interest in the premises under the will of Joseph Schenck. Answers were put in by John C. Schenck in both suits, setting up these legacies as encumbrances upon the real estate, and prior in point of time to the mortgages. I supposed Mr. Schenck's object to be merely to gain time; I had no idea it was meant to be relied upon as a serious defence.

I had a number of interviews with Mr. Schenck and his counsel, Mr. Green. Mr. Schenck seemed to think the property might bring enough to pay both the mortgages and the legacies; and at length it was proposed that a decree should be entered for the amount of
 30 the legacies, as well as the mortgages. I could have no objection to this, if the mortgages were entitled to priority; but it was answered, that if these legacies were liens at all, they were prior liens to the mortgages; and it was finally agreed that a report should be made by a master (this agreement was afterwards reduced to writing) for the amount of the legacies and mortgages in both suits, and that a decree should be signed, in pursuance of the report, declaring the legacies to be liens upon the real estate, and entitled to be first paid; that *fi. fas.* should be issued upon the decrees, and the property should be sold in both suits; but that
 40 the proceeds of the sales should first be applied to the payment of the mortgages, and the surplus, if any, should go to the legatees. My object being only to secure the payment of the mortgages, I

entered into this agreement. This agreement was signed by me, as solicitor of the complainants, by Samuel R. Hamilton, as solicitor of John C. Schenck, and James S. Green, solicitor of Asa S. Colton and wife and William Schenck.

Witness is shown the agreement, marked *Exhibit A* on the part of the complainant, says, I do not know whether I saw Mr. Green and Mr. Hamilton sign it, but I know their handwriting. The agreement is in my handwriting; I remember a blank being left for the name of the master, and Mr. Potts' name was afterwards inserted. When Mr. Potts was called upon to make this report, he was told that this was a matter of arrangement between the parties; and my impression is, that Mr. Potts made the report without going into any evidence to verify the particulars of it. My impression is, that not even the will of Joseph Schenck was submitted to Mr. Potts. The bonds and mortgages were not marked as exhibits, and I think were not before the master. Executions were delivered to Abraham W. Brown, sheriff of the county of Middlesex, and the mortgaged premises in both suits advertised for sale. 10

In the case of Caleb Johnson against John C. Schenck, the mortgaged premises were sold by the sheriff under this agreement; a portion of them was purchased by Caleb Johnson for the sum of ten thousand and two hundred dollars (\$10,200), that was the Slayback farm, containing 222 acres, and a lot of 38 acres, called the Davison lot. I ought to have stated that when the executions were delivered to the sheriff, he was informed, by me, of the agreement that had been made, as before referred to, as to the manner in which the proceeds of these sales were to be disposed of. He accordingly made a deed to Caleb Johnson for the mortgaged premises which he had bought, and took the amount due to Caleb Johnson upon his mortgages, as ascertained by the decree, as part payment of the purchase money. The amount that was due to Caleb Johnson was \$8840.41, including costs; that left a balance of (\$1359.53), one thousand three hundred and fifty-nine dollars and fifty-three cents. He gave for the Slayback farm \$6700, for the Davison lot \$3500. The Van Arsdalen lot, of 27 acres, sold for \$750, and the wood lot, of 22 acres, sold for \$2100. Thus the agreement before referred to was carried out. 20

In the case of Caleb and Enoch Johnson, the property mortgaged was not sold by the sheriff. It became apparent that if it were sold it would not bring more than enough to pay the amount of the mortgages. These mortgages, with costs, amounted to upwards of \$10,000. 40

John C. Schenck, pending these proceedings in Chancery, had made an assignment for the benefit of his creditors. Isaac Story, the assignee, advertised for sale the homestead farm, including the mortgaged premises. It was sold subject, of course, to encumbrances. It was purchased by John Gulick; I think it was struck off to him for \$87. It was perfectly notorious that Mr. Gulick was purchasing for John C. Schenck; he said so himself, and afterwards, as I shall have occasion to state, conveyed the property to John C. Schenck. As soon as this property was purchased by
 10 John Gulick, it was agreed that an effort should be made to pay off these mortgages to the Johnsons without selling the property under the execution. "It was believed that the property would be sacrificed if sold, and that there would be nothing left for the legatees under the agreement which had been entered into." It was proposed that John Gulick should mortgage the property, in order to raise money for the purpose of paying off these mortgages. To enable him to do this, it was necessary that the property should be relieved of all encumbrances. The property which Mr. Gulick proposed to mortgage to raise money, as just before stated, was
 20 the 157 acres, the portion of the homestead farm which is now in dispute. The mortgages were to be paid off, and the decree in Chancery was to be settled, and money was to be raised upon the property by new mortgages.

The property, the 157 acres, was accordingly mortgaged by John Gulick to James Bishop, for nearly \$6000. The mortgages of Caleb and Enoch Johnson were paid off. They amounted to \$10,285.76; \$2500 was paid on the 13th March, 1837, and \$7785.76 were paid on the 30th of March, and on that day, the 30th, I informed the sheriff that the execution in this case was settled by the
 30 parties; and I paid him the amount of his fees, to which he was entitled by law. As the case was settled, the sheriff claimed fees and centage on the whole amount of execution, legacies as well as mortgages, and I paid it to him. I paid him \$88.74, and took his receipt for the same in my docket. The receipt runs thus:

"Received March 30 1837, of Richard S. Field eighty-eight dollars and seventy-four cents in full of my fees, in the above case, including centage upon the whole amount of the execution. Signed A. W. Brown, sheriff." I considered the decree as entirely settled, and I thought it a beneficial arrangement for the legatees. The
 40 legatees had presented their claims to the assignee of John C. Schenck. I hold one of those claims in my hand, it is signed by John C. Schenck, trustee of Margaret Colton, wife of Asa S. Col-

ton, and has an affidavit of Asa S. Colton and wife annexed to it, marked *Exhibit B*.

John Gulick conveyed these 157 acres to John C. Schenck. Mr. Bishop consented to take John C. Schenck's bond and mortgage in the place of Gulick's. This mortgage bears date 28th of June, 1839, for the payment of \$6000; this is the mortgage that was assigned to the complainant of this suit on the 27th day of May, 1843.

Then John C. Schenck gave to Isaac Story, executor of James Stoddard, a second mortgage, for the amount found to be due him 10 in the decree before referred to (\$2669). Then there was a third mortgage, given by John C. Schenck to John Gulick, for \$2200, all on the same premises. I mention this third mortgage, because afterwards it was assigned to the Princeton Bank, while I was president and attorney of the bank. And I had repeated interviews with John C. Schenck about the time the bank took this mortgage, both before and afterwards. It became important for the bank to inquire as to what prior encumbrances there were on the property.

John C. Schenck always represented to me that Bishop's mortgage was the first encumbrance upon the property. I think I may 20 say that, from the time of the agreement up to the time of Mr. Schenck's death, he always spoke of the decree as settled, and that the legacies were no longer an encumbrance or lien upon the property. The bank would not have taken an assignment of this mortgage from John Gulick if they had supposed these legacies were an encumbrance on the property, and that this decree was not entirely settled. I may further say, that when this last arrangement was made, it was supposed that the estate of John C. Schenck would pay a large dividend. Mr. Schenck always stated that he believed confidently that his property, if it sold for anything like 30 its value, was sufficient to pay all his debts. Two dividends were paid by Mr. Story, as the assignee of Schenck. The first dividend that was received by John C. Schenck, for Colton and wife, was \$486.73. This receipt is signed by John C. Schenck; I know his handwriting; the body of the receipt is in Mr. Green's handwriting, date Nov. 1, 1837; marked *Exhibit C*.

There was another payment made of \$685.31, date Aug. 31, 1841; the receipt signed by John C. Schenck, trustee of Colton and wife, marked *Exhibit D*.

William Schenck's claim was not allowed by the court, upon 40 the ground, as alleged in the decree, that it had been satisfied out of the real estate. A certified copy of the order of Middlesex

Pleas, in matter of assignment of John C. Schenck, is produced, marked *Exhibit E*.

I believe that the claim of William C. Schenck has been paid, or secured to be paid, by John C. Schenck. I have in my hand a paper, in the handwriting of John C. Schenck, which purports to be a statement of the manner in which it had been arranged; the paper is endorsed, "Duplicate copy of arrangement made between John C. Schenck and William Schenck; dated March 9, 1839." This paper came from William Schenck, through Mr. Hageman, 10 the attorney of William Schenck. This paper is accompanied by one of the bonds and mortgages referred to in the statement. This paper, or statement, is marked *Exhibit F*.

The said bond is produced, and marked *Exhibit G*, and the mortgage produced, and marked *Exhibit H*. The bond is dated 9th March, 1839, and mortgage the same date, for the sum of \$1100.

Knowing this decree to have been settled, I was greatly surprised when I saw that the property was advertised by the sheriff under this old execution. I was the solicitor on the execution; I had not authorized it. I called upon Mr. Green, who represented 20 Colton and wife and William Schenck upon the record; and he informed me he had not authorized it, and was entirely ignorant of it until he saw it in the paper. Upon applying to the sheriff, he told me he was acting under the instruction of Mr. Parker, the solicitor of the defendants, and that he had received a letter from Mr. Colton, who directed him to obey the instruction of Mr. Parker, and not to obey Mr. Green. I neglected to say, in its proper place, that I was aware that this legacy of \$1953, if a charge at all upon the real estate, was a charge upon the whole of the homestead; and that the mortgages upon the 157 acres, being prior in 30 point of time to any encumbrances upon the 100 acres, I believed that these legacies would have to be first paid out of the 100 acres, and should have so insisted, had it not been for the arrangement that was made.

Cross-examined, says—In answer to the question, to whom did you refer when you stated that it was agreed, after the property had been purchased by John Gulick, that an effort should be made to pay off these mortgages without sale; I mean that it was understood, agreed, and arranged among the parties to the suit in Chancery, between Caleb and Enoch Johnson and John C. Schenck 40 and others, or those who represented them. These persons were John C. Schenck, in his own person, Isaac Story, executor of James Stoddard, in person, James S. Green, solicitor for Colton and wife

and William Schenck, and John C. Schenck, as trustee of Margaret Colton. I myself, as solicitor of complainants, represented them, and John Gulick, who acted as the friend of John C. Schenck, and who was to aid in carrying out the arrangement. With all these persons, either separately or together, I had repeated conversations in regard to the matter. My understanding at the time, and I am satisfied that it was the understanding of all the parties, that the execution was to be considered settled, and so that the property might be freed from encumbrances, in order to enable Mr. Gulick to raise money by new mortgages. My interest was only to get my money; and we much preferred having the money paid than to have had the property sold, when Mr. Johnson would probably have been obliged to purchase it. 10

I am not able, at this distance of time, to recollect the precise language used by any of the parties at the time, but my impression is clear that it was the understanding of all the parties that the execution was to be considered settled. There was no other way, as I suppose, in which the arrangement could be carried out. I do not think that the supposition I speak of governs or generates the impression that I had, as before stated. 20

Without having conversation with Colton and wife or William Schenck, I have no doubt that such was the understanding of the parties I have mentioned, and that this has been their understanding ever since. I have not referred to any writing to refresh my recollection, except those I have already mentioned.

The sheriff's docket being produced containing the entry of the suit of Caleb and Enoch Johnson against John C. Schenck and others, a copy of which entry is made, by consent of parties, *Exhibit I* on the part of the defendant, witness says, that the entry at the bottom is in the handwriting of Mr. Green. The entry is dated September 22, 1837, and is thus: "Stay further proceedings on the above decree as respects Asa S. Colton and William Schenck till further orders. James S. Green, their solicitor." I was not interested, or in anywise concerned as the counsel of James Bishop in that matter. 30

Question. Do you know how it happened, or why it was, that Mr. Story's claim was eventually renewed upon the property, while that of the legatees was left off?

Answer. Mr. Story's claim I supposed remained wholly unpaid. William Schenck's share of the legacy was arranged, as I understood. There was no necessity then of William Schenck's share to be made a lien upon the property. And as to Colton's share, I 40

supposed that was in the way of being settled. Colton and wife were to receive a dividend upon the whole amount of their legacies, and it was thought, at that time, that their dividend would be large.

I do not know whether Isaac Story expected to receive a dividend upon his claim, as Colton and wife expected to receive a dividend on their claim at that time, or not; but I take it for granted that after his new mortgage was executed, he was expected to renounce all claim to his dividends.

10 I have no personal knowledge of the fact of John C. Schenck having paid William Schenck, nor of the manner in which that payment was effected; my belief has always been that the claim had been settled, and my belief is founded not only upon the settlement referred to, and which is in evidence, but upon the fact, that this legacy had been left for the education and maintenance of these grandchildren; that many years had elapsed since the death of the testator; and that John C. Schenck had an account against William for moneys advanced and paid to him; and from the fact that the claim had been rejected by the court.

20 I have heard it stated that William Schenck was brought up and educated by his mother; I never heard it before I saw it in the answer. I have no knowledge of the fact one way or the other. I did not believe at the time that John C. Schenck made his claim under oath against this assignee that these legacies had been settled. I had no doubt but that they had been so far settled at that time that they were no lien upon the real estate, but that they constituted a personal claim upon John C. Schenck. I had been counsel for the Johnsons ever since I have pursued my profession in Princeton. I cannot say that I was counsel for them at the time
30 of the giving these mortgages to Johnson. I do not know in whose handwriting they are.

The mortgage from John Gulick to James Bishop bears date 30th March, 1837; the amount of it is \$5969.46. Mr. Bishop had held prior mortgages on other portions of Schenck's property, and those mortgages had just been paid off. I suppose this sum of \$5969.46 was the amount which Mr. Bishop received upon those mortgages.

Paper, purporting to be Booraem's search, marked *Exhibit I*, produced on the part of the complainant, and admitted by consent.

40 At this distance of time, it is impossible for me to recollect when I obtained the copy of the account of John C. Schenck, acting executor of Joseph Schenck, deceased, to which I before referred. I

find it among the papers in the case of Caleb and Enoch Johnson *v.* John C. Schenck and others—among my papers in that case; but I cannot say whether I obtained it before filing the bills or not. I was counsel for creditors who filed exceptions to the account of the assignee, which exceptions were referred to auditors.

Re-examined in chief.—I have made several efforts to obtain these books of John C. Schenck; I have called upon his widow once or twice in reference to them; at the first time, she promised to look them up, and let me see them; the last time I called, she told me Mr. Colton had taken the book in which the accounts of 10 William and Margaret were kept about a year ago. I last called yesterday morning.

Bond of John C. Schenck to William C. Schenck, date 7th August, 1837, to secure the payment of \$3283.40, and mortgage accompanying the same, of same date, cancelled, produced, marked *Exhibits J and K.*

R. S. FIELD.

Sworn and subscribed, this 30th day of October, 1850, at Princeton, before me.

J. F. HAGEMAN, *M. C.* 20

James S. Green, esquire, a witness produced on the part of the complainant, being duly sworn, deposes and saith: The paper I hold in my hand purports to be a marriage settlement between Asa S. Colton and Margaret Schenck, dated 18th February, 1833, is in my handwriting. I had drawn the will, according to my recollection, of Joseph Schenck; I think it is in my handwriting; I was witness to the will. Having drawn the will, I was employed as the counsel of the estate, by John C. Schenck, after the death of Joseph Schenck; to refresh my recollection, for I have no recollection for dates, I went to the surrogate's office to see the ac- 30 count of John C. Schenck, executor of Joseph Schenck; I think the estate was settled in 1826. With my knowledge of Joseph Schenck's estate, this marriage settlement was prepared by me; and I understood from John C. Schenck and Miss Margaret Schenck, that a settlement had taken place between them, a settlement of the account between Margaret Schenck and John C. Schenck, executor of Joseph Schenck; and hence the recital in the marriage settlement to that effect, in which both legacies are named. I have, at this late day, no recollection how the particular sum named in the marriage settlement (\$4256.92) was reached. 40

This paper, marked *Exhibit L*, was executed by Margaret Schenck and John C. Schenck and Asa S. Colton.

At the time this settlement was made, I believed John C. Schenck to be a man of large property, and that was his reputation—a man of character and standing in this community.

In justice to myself, I ought to say, that I looked upon the settlement as transferring all the interest Margaret Schenck had under the will of her grandfather to John C. Schenck, as her trustee, and under that impression I acted throughout the whole of this
10 business; that was, as I understood also, the understanding of the parties.

In 1836, when the Johnsons had commenced to foreclose their mortgages against John C. Schenck, John C. Schenck applied to me in reference to the suits. [Exception taken, by defendant's counsel, to all the conversations had by John C. Schenck, and James S. Green, as his counsel.] I had a conversation with him in regard to the nature of his defence. He spoke of usury. I was satisfied, from the examination of the matter, there was nothing in that. He then spoke of these legacies. According to the best of
20 my recollection, I made these remarks, that I considered, under the marriage settlement, the claim of Margaret was transferred to him, and that the land was relieved from it. I think I further remarked, that in addition to that, that he had exhibited to his assignees the claim, as trustee, of Asa Colton and wife, and had thus made his election. In regard to the claim of William, that that claim had also been exhibited, and that there was an unsettled account between himself and William for moneys which had been advanced by John C. Schenck to William, which was expected to be deducted from the claim presented to the assignee. These were the
30 reasons, so far as I can recollect, that led me to decline to put in the answer, and to act as his solicitor in the case; I could be of no use to him, in the view I took of the subject, either as to the plea of usury or the legacies.

The great object of Mr. Schenck appeared to me to be to gain time. He thought he had property enough to meet all the demands of his creditors. He wanted time.

In that suit, I appeared afterwards for William C. Schenck and Mr. Colton and wife. Mr. William C. Schenck nor Colton and wife ever instructed me to put in an answer setting up those legacies as a lien upon the property. I think I saw William C. Schenck
40 and Colton once or twice—cannot recollect how often. I understood from them, and so I understood myself instructed to manage

this matter as would best subserve the interest of John C. Schenck and themselves. They seemed to give up the entire matter to John C. Schenck. I put in, on their part, a demurrer, according to the record; my object was to gain time; that demurrer was overruled, and I filed no answer.

My recollection is, that the decree signed in that case was a matter of agreement between the parties altogether. I signed the paper marked *Exhibit A*, as solicitor of Colton and wife and William Schenck. I made a copy of the agreement in regard to the decree, which I kept; and a few days ago I found the original one 10 among my papers connected with Schenck's affairs.

The certified copies of the decrees and proceedings of the two suits in Chancery of the Johnsons against John C. Schenck and others produced by Mr. Green, and marked *Exhibits M* and *N*, admitted by consent.

[And it is agreed, by solicitors of both parties, that all the papers on file in the Court of Chancery in the case of the Johnsons v. Schenck and others, and H. S. Terhune v. Schenck and others, shall be considered as exhibits in the cause.]

I continued to be the counsel of John C. Schenck in regard to 20 the settlement of the estate of Joseph Schenck. I was counsel of John C. Schenck, as executor. I stated the account, and it is in my handwriting, and was passed by the court.

Reports were made, decrees signed, and executions were issued, in both of the suits in Chancery, in pursuance of the agreement. The sheriff advertised the property for sale in both suits and in the Slayback case; the mortgaged premises were sold by the sheriff.

Without having a distinct recollection of the fact, my impression is, that the proceeds of the sale were disposed of according to the agreement; I have no doubt of it. In the case of Caleb and Enoch 30 Johnson, my impression is, that the mortgaged premises were not sold under the execution; it had been advertised by the assignee. I don't distinctly recollect whether the sheriff advertised the homestead farm, but have no doubt it was so. I have no recollection of the arrangement between John C. Schenck and his creditors respecting the homestead, except so far as it is refreshed by an examination of the papers.

The arrangement, as I recollect it, refreshed as I have said, was that the assignee should sell, and John Gulick should become the purchaser; that money enough should be borrowed, or raised, 40 to discharge the decree, so that a clear title might be given to the man who should loan the money; and that idea was carried out.

James Bishop, according to my recollection, had a mortgage on some other property of Schenck, which he was quite willing Schenck should have upon his receiving the first mortgage on this property free of all encumbrances. The money, which in this way had been raised upon other property, instead of being paid over to Mr. Bishop, was retained, and a new mortgage given by John Gulick. Money, so retained, was used to carry out this arrangement. It was a part of that arrangement that the decree, which had been entered in pursuance of the original agreement, should
10 be considered as satisfied; that was the only way that was suggested or supposed that money could be raised. I believed, in my judgment, that this arrangement was the most beneficial one that could be made for the legatees and Mr. Schenck, and, I may say, for the creditors. The mortgaged premises, if they had been sold by the sheriff, in my opinion, would not have brought enough to pay the mortgages, though in Mr. Schenck's opinion, I suppose, it was very valuable. I do not mean to say, by the last remark, that Schenck thought that, if the property had been sold at the time, it would have brought more than the amount of the mortgages. I
20 think the complainants, through Mr. Field, I don't recollect of seeing the complainants themselves. John C. Schenck, individually, and as trustee of Colton and wife, myself, as solicitor of William C. Schenck and Colton and wife, were parties to this agreement. From the time this last arrangement was made, I have considered this decree settled. I have never been called upon by Colton and wife or William Schenck to have proceedings under that execution. Mr. Colton called on me some two or three years ago, don't recollect precisely when, to make inquiries into it; and I went over this subject, and, according to the best of my recollection of that
30 subject, I told him I thought it settled. I have no other recollection as to William, except that he came into my office, a year or two ago, to inquire in regard to a mortgage which had been given him. My statement to him was, that I thought it was upon record. Neither Colton nor William ever informed me that they intended to have another solicitor appointed in my stead. I never received any notice, to my recollection, of an application to substitute Mr. Parker as solicitor in my place; it was by seeing the advertisement of the sheriff, or by Mr. Field's calling upon me, that I first learned that the property had been advertised by sheriff. The im-
40 pression on my mind was, that the estate of Schenck was so large that it would enable the assignee to make a handsome dividend. My recollection is, that this property was bought for Mr. Schenck,

and he ultimately received the deed for it in his own name. My recollection is, also, that the whole arrangement was made for the benefit of Schenck and his creditors, that he might be able to pay off all his creditors. Schenck was very sanguine that if he remained in possession of the homestead farm for some years he would be able to pay all his debts. [Witness is shown a deed from John Gullick and wife to John C. Schenck, dated 28th June, 1839, marked *Exhibit O*, and says, that it is the deed conveying the homestead farm to Mr. Schenck, as he believes.] I am subscribing witness to that deed, and was the master before whom it was acknowledged. 10
I do not recollect the particular circumstances under which I gave the stay of execution to sheriff Brown; but I have no doubt it was considered the best mode of carrying out the agreement. It was to protect the sheriff from the charge of neglect, and I think he asked it of me; that is my recollection of it.

Being cross-examined, says: I cannot tell the time I saw William Schenck and Colton during the pendency of the Johnson suit; it was before the putting in the demurrer. I don't know what was the particular topic of conversation; it was, of course, in relation to their interest in the legacies under Joseph Schenck's will and 20
under those suits. I have no recollection of having communicated to them, either by letter or personally, about the agreement in that suit. I had no other specific authority from them to make that agreement than what I have stated in my examination in chief. After the decree entered in that suit, I have no recollection of having an interview with them about that decree, nor of having communicated with them about the decree, either by writing or verbally. I think I had no communication with them touching the arrangement of the new mortgage on the homestead.

I have no recollection of ever having mentioned to them that it 30
was proposed that the decree in their favor should be considered satisfied.

Question. Had you ever any specific authority from them, or either of them, to make any arrangement on their behalf whereby the decree in their favor should be considered satisfied?

Answer. I had the authority, as detailed in my examination in chief, which I considered as extending to the whole of that proceeding. I think I had been John C. Schenck's counsel from the time of the death of Joseph Schenck; I was his counsel during all his troubles, when it did not conflict with my duty as counsel of 40
his assignee and for Colton and wife and William Schenck. I considered myself as the friend, as well as the counsellor, of John C.

Schenck during all his troubles. I don't know that there was any counsel of Mr. Bishop in regard to his mortgage; I believe he and John Schenck arranged the business themselves. James Bishop and John C. Schenck were on friendly terms, as far as I know; I never heard to the contrary. I can't tell where William Schenck lived during the pendency of these proceedings; I can't say that I had seen him frequently during that time. I can't say where Colton and wife lived during that time. Since the filing the demurrer, my intercourse and communication on the subject of the
 10 Schenck business has been principally with John C. Schenck; at the time of filing John C. Schenck's answers, setting up the legacies as a lien, I knew they were going in. I ought to say, in justice to myself, that I did not advise it, but rather remonstrated against it, for I did not see how he could make the affidavit. I considered that Mr. Colton had transferred all his interest in the matter to John C. Schenck, as I said in my examination in chief; and from Mr. Schenck's conversation, in which he said he had an unsettled account with William. I drew the affidavit of John C. Schenck, as executor of Joseph Schenck, to this claim against his
 20 assignee, as relating to the legacy of William C. Schenck.

The bond and mortgage, marked *Exhibits J* and *K*, were drawn in my office; they were given for legacy of William Schenck, decreed for in the suit of Caleb Johnson, on the Slayback farm.

Copy of the entry of Mr. Green's docket, produced and marked *Exhibit Q* on the part of the defendants.

In regard to this matter of bond and mortgage, it was submitted to William Schenck, with whom I had a personal interview, and he approved of it. As to the money receipted in the sheriff's docket in the Slayback suit, I have no distinct recollection as to
 30 how it was disposed of, but it was passed over to John C. Schenck.

Question. In regard to the stay of execution in sheriff Brown's docket, is it your habit, when an execution is settled, and you wish to receipt it to the sheriff, to give him a stay of execution?

Answer. I have no such habit, although I think in this particular case the stay was proper.

Question. Looking at the stay of execution in the sheriff's docket, is there not a possibility of your being mistaken as to this execution being considered settled at the time?

Answer. There is a possibility of my being mistaken in sup-
 40 posing that at the time of giving that stay the decree was settled, but I do not think I am.

Question. Do you know whether the mortgage, the proceeds of

which you think were invested in Mr. Bishop's mortgage on the homestead, was a first mortgage, or not?

Answer. I have not recently examined the papers in regard to this question, and therefore cannot say that I know that Mr. Bishop's mortgage was first, but such is my belief. The papers referred to, from which I refreshed my memory as to the arrangement, and as stated in my examination in chief, are my papers, generally, touching Mr. Schenck's business, not to any particular paper. I have no memorandum of the arrangement to which I can refer, as to the decree being satisfied. 10

Re-examined in chief.

Question. You have stated, in your cross-examination, that there was a possibility of your being mistaken as to its being understood by the parties that the decree was to be considered as satisfied, have you any doubt in your mind that such was the understanding?

Answer. I have no doubt; and I made use of the word possible to guard against the bare possibility.

Being again cross-examined, says:

Question. Do you recollect any particular conversation, with time, place, or other circumstance, when this understanding was 20 expressed, occurring about the time of this transaction?

Answer. I have no recollection, other than what I have detailed in my examination in chief.

John C. Schenck died about June, 1846, James Bishop is deceased; and so is Isaac Story. John C. Schenck resided on the homestead at the time of proceedings and up to the time of his death, as I believe.

JAMES S. GREEN.

Sworn and subscribed, at Princeton, this 31st day of October, 1850, by me. 30

J. F. HAGEMAN, M. C.

IN CHANCERY OF NEW JERSEY.

Examination of witnesses taken in a cause depending in the Court of Chancery of New Jersey, wherein Henry S. Terhune, complainant, and Asa S. Colton and wife and William C. Schenck and others, defendants, at the office of George A. Vroom, in the city of New Brunswick, on Tuesday, the tenth day of December,

eighteen hundred and fifty, in the presence of Courtlandt Parker, esquire, of counsel with the defendants, and Richard S. Field, esquire, solicitor of the complainant, notice of taking such examination being admitted.

Abraham W. Brown, a witness produced on the part of the defendants, being duly sworn according to law, on his oath says : I was sheriff of the county of Middlesex from the year eighteen hundred and thirty-six to the year eighteen hundred and thirty-nine. In that capacity, on the third day of February, eighteen hundred
 10 and thirty-seven, as appears by my docket, I received an execution from Chancery in the case of Caleb Johnson and Enoch Johnson, complainants, and John C. Schenck and others, defendants. I did not sell under that execution. I advertised the property, I think, for sale on the tenth day of May, eighteen hundred and thirty-seven, and, on the twenty-ninth day of March, I received a letter from Mr. Field, asking me to meet him at Princeton the next day. On the thirtieth, I met Mr. Field at Princeton. On that day, the claims of the Johnsons under that execution was settled, and I received my fees upon the whole execution. I inquired of Mr.
 20 Field why the second claim was paid before the first, and he said it was an agreement between himself and Mr. Green that they should be paid first, because there was some doubts about the Schenck and Colton claim, and I was also directed by Mr. Green to pay those other claims first. That is about all the conversation I have ever had about it, except Mr. Green giving me this stay in my docket. The reason why I did not proceed to sell for the claims of Colton and wife and William C. Schenck was, it was stayed in my hands, and I have never had orders to do so from Mr. Green. Mr. Green, on the thirtieth of March, when we met, pro-
 30 mised to give me a stay, but he did not do it on that day. On the twenty-second of September following, I had business with Mr. Green, and I made it my business to have this matter arranged for him to give me a stay. I think all the conversation that took place between me and Mr. Green was, he said I will give you a stay upon the execution for the present. He did give me the stay on that day. To the question, was it or not your expectation at that time that the execution was at some time to be proceeded with? witness says—it always was my impression that I should some day be called on to do something with the execution, and I told
 40 Mr. Parker so the day he called to see me about it. I never was informed, either by Mr. Field or Mr. Green, that the execution, so

far as regards the claim of Colton and wife and Schenck, was settled or discharged in any way. To the question, you receipted on Mr. Field's docket for your fees on the whole amount of the execution, will you state how that came to pass? he says, I think it was made up by the direction of Mr. Field. I always made it a rule, when executions were placed in my hands, and stayed after a year, to demand of the plaintiff the fees allowed by law in case of a settlement of an execution by the parties. In this case the year had not expired when the stay was given, and the reason why I received the whole fees was, I think, in consequence of Mr. 10 Field's offer, not because I demanded it.

The witness being cross-examined, says, I have no recollection of the day when I received this execution, except from the memorandum of it in my docket; I have no recollection of the date when the stay was given, except from the memorandum in the docket. To the question, do you recollect that, at the time when the execution was delivered to you, you were informed that, notwithstanding, by the terms of the execution, you were to sell the property, and pay first the legacies, and afterwards the mortgages, yet that there had been an agreement made between the parties by 20 which the mortgages were to be first paid? he answers, I received no such instructions at the time of receiving the execution; I received the execution with others in a wrapper; they were handed to me, as I think, at a public house in Washington, South river, with instructions to advertise and sell. The instructions were from Mr. Field, in a letter addressed to me accompanying the execution. I have not got that letter; I don't know where it is; I think the letter was short, saying Mr. Field sent so many executions, and designating the place of sale, Princeton. I think I may have seen Mr. Field at the succeeding March term. To my knowledge, noth- 30 ing was said to me previous to the thirtieth day of March, eighteen hundred and thirty-seven, as to the agreement between the parties. At the same time I received an execution out of Chancery at the suit of Caleb Johnson against John C. Schenck and others, I think I received instructions to advertise and sell under that execution in the same note spoken of above. I did advertise and sell under that execution. To the question, did that execution also direct you to apply the proceeds of the sale first to the payment of the legacies, and then to the payment of the mortgages? witness says, yes, it did; I applied the proceeds of this sale agreeably to the 40 directions of Mr. Green and Mr. Field; first I paid the mortgages, and then applied the surplus to the payment of the legatees. I

- think the farm sold was called the Slayback farm, though I cannot say positively. Caleb Johnson bought the farm; Mr. Johnson did not pay me the money for that farm which he bought. I made him a deed for it. I did this because so directed by Mr. Field and Mr. Green. I cannot say when I received the first intimation from Mr. Field and Mr. Green that the mortgages were to be first paid in this execution. I think I am quite clear that Mr. Field did not, at the March court, inform me of the agreement between the counsel. I did not understand that this agreement had been reduced to writing.
- 10 To the question, did you feel yourself at liberty to disregard the plain commands of the execution, upon being told there had been an agreement made, without inquiring into the nature or form of the agreement? I acted under the instructions of Mr. Field and Mr. Green in the matter; so long as I was discharged I was satisfied. I made a statement of this execution, and filed it in the Middlesex clerk's office. I filed no statement in the Court of Chancery. I remember Mr. Field signing the receipt in my docket in the case of Caleb and Enoch Johnson against John C. Schenck and others, on the thirtieth day of March, eighteen hundred and
- 20 thirty-seven. I think I understood that the money for which the receipt was given came from Cornelius C. Cruser and some other person, perhaps from Cruser alone. I suppose the money came from the sale of some of the mortgaged premises, but I cannot tell. I do not know that the mortgaged premises were sold. This is merely a supposition. I don't pretend to know where the money came from. To the question, did you know what the particulars of the arrangement between the parties were? he says, no more than Mr. Green and Mr. Field had told me; they did not tell me where the money came from, that I remember.
- 30 The reason why I received the fees upon the whole of the execution, which was only settled in part, was because it was by Mr. Field's instruction and offer to pay it. The reason why I believed that I would be called upon to proceed further upon this execution was, because it was stayed in my hands. From the time it was stayed, until Mr. Parker called on me, I never heard a word from any person about it. It was my practice to leave executions unsettled in this way. There are, I think, some two or three executions yet in my hands stayed in this way, which have been in my hands ten years and more, and which I suppose amount to a settlement,
- 40 if nothing more is done. I suppose I am not liable. I transacted business more or less with Mr. Green during my term. I never inquired of him, or anybody else, whether I was expected to pro-

ceed under the execution. I do not recollect that Mr. Green and Mr. Field explained how it was proposed to raise money to pay off the mortgages of the Johnsons. I called on Mr. Green in September, at his own office, for the stay. It was my motive in calling upon him that I might be discharged from liability and have the thing straight, as I did with others. In making a deed to Mr. Johnson for the Slayback farm, it strikes me that no money passed through my hands, except some little surplus. The residue of the purchase money was arranged between the solicitor and his client without my agency. 10

I do not recollect the contents of the statement filed by me in the clerk's office, nor how I stated the money was applied. The Slayback farm, I think, was sold on the tenth of July, eighteen hundred and thirty-seven; it may be, it was within a few days of it. I don't know that I understood, on the 30th of March, that this arrangement between the solicitors extended to both suits. I don't know whether or not I have the letter I got from Mr. Field, written in March, eighteen hundred and thirty-seven, requesting me to come to Princeton for the purpose of settling this execution. I think the homestead property was advertised to be sold on the 20
tenth of May, eighteen hundred and thirty-seven.

To the question, why did you not proceed to sell the homestead under the advertisement for the tenth of May? because a part was stayed in my hands and a part was settled. The last advertisement of this property, for sale in eighteen hundred and forty-eight, was under Mr. Parker's instruction. I had no instruction from Mr. Green. I obeyed Mr. Parker's instructions, in consequence of his calling on me, and bringing a letter from Colton and wife and Schenck, telling me to obey Mr. Parker's instructions. Parker first called on me in reference to it in January or February, 1848. I had 30
heard nothing of the matter from the stay given by Mr. Green till the time when Mr. Parker called.

A. W. BROWN.

Sworn and subscribed, at New Brunswick, in the county of Middlesex, this 10th day of December, A. D. 1850, before me.

GEO. A. VROOM, M. C.

IN CHANCERY OF NEW JERSEY.

Examination of witnesses taken in a cause depending in the Court of Chancery of New Jersey, wherein Henry S. Terhune is complainant, and Asa S. Colton and wife and William C. Schenck and others defendants, at the office of J. F. Hageman, at Princeton, in the county of Mercer, on Wednesday, the twenty-first day of July, eighteen hundred and fifty-two, in the presence of Cortlandt Parker, esquire, of counsel with the defendants, and Richard S. Field, esquire, solicitor of the complainant, notice of taking such examination being admitted.

10

John F. Hageman, a witness produced on the part of the defendants, being duly sworn, on his oath doth say :

Question. Had you been attorney for William C. Schenck in any Chancery suit ?

Answer. Yes ; I have foreclosed a mortgage for him.

Question. Look at *Exhibits G* and *H* on the part of the complainant, and state whether *Exhibit H* is the mortgage, and *Exhibit G* the bond, on which that foreclosure suit was brought ?

Answer. They are. The parties to that suit were William C. Schenck, complainant, Mary Ann Schenck, George W. Schenck, William C. Schenck, John C. Schenck, the President, Directors and Company of the Princeton Bank, defendants. The subpoena was returnable September term, 1848 ; final decree was obtained March 27, 1849 ; final decree was for \$1758.17, for complainant ; costs \$65.83. A *feri facias* was issued upon this decree, with a credit of \$644.13 for John C. Schenck's account against William C. Schenck endorsed on the execution. There was a sale, and the proceeds of it were \$372.50 ; that was the whole amount of the sale.

30 Witness, being shown a copy of an account marked *Exhibit (3)* on the part of the defendants in this cause, says : •This account is the one which was the basis of the credit given, as above, on the execution.

The defendants produced four notes, purporting to be signed by John C. Schenck, the execution of which was admitted by the complainant, and marked *Exhibits (4) (5) (6) and (7)* in this cause, on the part of the defendants. The witness says : I think I had these notes in my possession ; I must have had them ; I made the calculation for the credit on the execution by them ; I deducted their

40 amount from the original account, and thus made the credit \$644.13.

The solicitor for the defendants offered in evidence the book of accounts admitted to be the book of accounts kept by John C. Schenck, and marked *Exhibit* (8) on the part of the defendants. It was agreed, between the solicitors of the parties in this suit, that copies of the accounts of William C. Schenck and Colton and wife may be read in evidence upon the hearing of this cause without the production of the book of accounts, marked *Exhibit* (8).

Exhibit marked *No.* (9) on the part of the defendants, was admitted by the complainant to be in the handwriting of John C. Schenck. Being shown to the witness, he says: These papers 10
have been in my possession, and were given to me by William C. Schenck, to aid me in ascertaining how matters stood between him and John C. Schenck; they are in the handwriting of John C. Schenck.

After the sale under the foreclosure spoken of above, there was left a large balance still due on the decree.

Being cross-examined, witness says: Before this mortgage was foreclosed, and since John C. Schenck's death, William C. Schenck cut off from the said mortgaged premises wood and timber and bark and rails to the amount of about \$225, including the expenses 20
of cutting, for which John C. Schenck has had no credit. I acted as the agent of William C. Schenck in that matter at the time this wood was cut off. John C. Schenck desired William to take possession of it during his lifetime. I advised him against it. He did not do so. After the death of John C. Schenck, he did take possession of it by my advice, and proceeded to cut wood. The only object in foreclosing the mortgage was to get title. I bought the property for Mr. Schenck, and afterwards conveyed it to George I. Bastedo. I held it about a year before selling it, and sold it at an advance of \$25, or thereabouts. I purchased it and held it, and 30
sold it afterwards for the benefit of Mr. Schenck.

Examination in chief being resumed: This was a lot of woodland. When it was sold under the execution there was quite a collection of bidders; there were men there bidding for the property who I supposed would run it up higher than they did. It was my object to get as much money as possible for it at the sale. I did not intend to buy the property when I went to the sale, but bid for the purpose of increasing the price. When I foreclosed the mortgage, my object was to get title, in order to raise the money. I did not care whether the money came to me from a private or 40
public sale. The yearly value of that property to Mr. Schenck,

while it was in his possession, was nothing; nothing was ever realized, to my knowledge, from that property, except the proceeds of the sale and from cutting the wood before mentioned.

Cross-examination resumed: I would not have foreclosed the mortgage if I could have sold the property, and made a good title to it.

Question. From the fact of your having advised William C. Schenck to take possession of the mortgaged premises after the death of John C. Schenck, and from the fact of your stating that
10 you would not have foreclosed the mortgage if you could have sold the property at private sale, and made a good title to it, I understand you to have been under the impression, that whatever might be the deficiency in paying the mortgage out of the proceeds of the sale, William C. Schenck would have to bear the loss, and would be without any remedy?

Answer. So far as I then knew, I say yes. At that time I had not seen the account of John C. Schenck, marked *Exhibit* (3) on the part of the defendants. But it would have made no difference, I think, if I had seen it. John C. Schenck was insolvent at the time
20 of his death; I knew that fact. I had been the agent of William C. Schenck since 1843, I think. I had a power of attorney to collect debts from William C. Schenck, dated in March, 1844. I had a broader power afterwards—a verbal one. I acted as his general agent, executed leases for him, and continued to do so from that time till this. I have been, I believe, his legal adviser, as well as his attorney in fact, in all matters, except in this suit.

Direct examination resumed: He has advised with me respecting the subject matters of this suit before it was commenced. I promised him to look into it, and afterwards I learned that Mr.
30 Parker had charge of the matter. Mr. William C. Schenck is a person of very retired and reserved habits.

Cross-examination resumed: William C. Schenck read law in my office nearly three years, from 1844 to 1847. He was so reserved and inexperienced in the world as to be hardly competent to attend to his own business. He was a fine scholar; he stood high in his class at Rutgers College, where he graduated. He was an eccentric and exceedingly diffident man. From the fall of 1847, he was solitary and recluse in his habits, and did not associate with anybody scarcely; and since the winter of 1849-50, he became
40 infirm and confined to his house, and most of the time to his bed, and is so now.

Sworn and subscribed, before me, at Princeton, this 21st day of July, A. D. 1852.

AMZI DODD, M. C.

IN CHANCERY OF NEW JERSEY.

Examination of witnesses taken in a cause depending in the Court of Chancery of New Jersey, wherein Henry S. Terhune is complainant, and Asa S. Colton and wife and William C. Schenck and others, are defendants, at the office of R. S. Field, esquire, in Princeton, on Wednesday, the twenty-ninth day of December, eighteen hundred and fifty-two, in the presence of R. S. Field, esquire, solicitor and of counsel with the complainant, and Courtlandt Parker, esquire, solicitor and of counsel with the defendants, notice having been admitted, on the part of the complainant.

John Gulick, of Washington, D. C., a witness called on the part of the complainant, being sworn, saith :

I formerly resided in this neighborhood ; I was acquainted with the late John C. Schenck ; I was acquainted for twenty-five or thirty years, and for some ten or fifteen years was intimately acquainted with him. He was in the habit of consulting me, from time to time as a friend, respecting his affairs. I understood that he had made an assignment of his property, for the benefit of his creditors, to Isaac Story ; I had it directly from Mr. Story and from Mr. Schenck himself. [The counsel of defendant here object to all the declarations of John C. Schenck.]

He had a large property to assign, and was largely indebted. He represented to me, from time to time until the last, that he believed his property would be sufficient for the payment of all his debts ; and believing so, he regretted that he had ever made the assignment, and remarked, if he had to do it over again, he would not do it. I was somewhat acquainted with what is called the homestead farm. At the assignee's sale, I became the purchaser of the whole of the homestead farm, subject to all encumbrances. I think I gave between \$50 and \$100 for it ; I purchased it solely for the benefit of John C. Schenck, to enable him to get upon his feet again. He suggested to me that I might take off of it some wood, inasmuch as I had interposed for him. I remember that at the time this homestead farm was sold, it was advertised for sale

by the sheriff of Middlesex (Abraham W. Brown), under an execution out of the Court of Chancery, at the suit of Caleb Johnson and others. The property was not sold by the sheriff.

Question. Did you understand that the execution under which the property was advertised had been settled by the parties? [Objected to.]

Answer. That was my understanding and belief, from the fact of the assignee proceeding to sell.

Question. Did you understand it from your conversations with
10 Mr. Schenck and Mr. Green? [Objected to.]

Answer. I derived it from that source. I had it from Mr. Green and Mr. Schenck, that this judgment was settled, which caused the assignee to sell. I am not certain but an execution was out.

Question. What do you mean by saying you are not certain but that an execution was out? Have you any doubt that an execution was out, having stated that the property was advertised by the sheriff for sale?

Answer. In thinking of it, I have no doubt that an execution was issued. I had repeated conversations with Mr. Green and Mr.
20 Schenck with regard to the settlement of the execution by the parties. I executed a mortgage to James Bishop upon a part of this homestead farm, 157 acres of it; I don't exactly recollect, but it was for about six thousand dollars. This money was for the benefit of Mr. Schenck. At the time of my giving this mortgage, I understood that, in consequence of the settlement of this execution by the parties, this property was relieved of all encumbrances. This representation was made to Mr. Bishop.

Question. Do you believe you could have obtained that money if he had not so understood it? [Objected to.]

30 *Answer.* I don't believe James Bishop would have loaned the money if he had believed there was any encumbrance on it. I have no personal knowledge how that money was applied, but I understood it was for paying off the encumbrances on the property. I don't know whether it was confined to paying off Mr. Johnson's mortgages. I understood clearly that that money was applied to the carrying out the agreement of the parties. I reconveyed this property to John C. Schenck. [Defendant's counsel object to all the statements of witness as to his understanding.]

Witness is shown *Exhibit O* on the part of complainant, and
40 says, this is the deed that I and my wife executed to John C. Schenck. When I reconveyed this property to Mr. Schenck, I think John C. Schenck substituted his mortgage to Mr. Bishop

when, or after, he obtained my deed. I knew the Rocky hill wood lot, of 22 acres, which was mortgaged by John C. Schenck to William C. Schenck. It would sell at that time, 1839, I suppose, for fifty or sixty, perhaps seventy dollars an acre. Its value consisted principally in the wood upon it; it was well wooded. I would have considered a mortgage for \$1100 an ample security for that amount on that lot at that time, 1839.

Being cross-examined, says: I left this state and neighborhood in 1845. I have not been engaged in active business during the period since that time. In November, 1845, I ceased having any 10 business transactions with John C. Schenck. After my reconveying the farm to him, I do not recollect of ever engaging in his affairs. I can fix no dates as to when I understood that that execution of which I have spoken was settled; at this lapse of time I cannot recollect dates; the date of that mortgage to Bishop will show the time. I cannot tell but Mr. Schenck may have stated to me particularly, or shown me papers; but my impression is, and my clear understanding was, that the property was clear of encumbrances before my mortgage to Mr. Bishop. I cannot recollect any particu- 20 lar occasion when these statements were made. It was the understanding that Bishop should be satisfied that all the encumbrances should be taken off of the property. I did not receive a cent from Mr. Bishop. I did not pay off any encumbrances. I have no knowledge, except what I understood from others, that any part of these encumbrances had been paid off.

Question. Is it not your impression that the encumbrances were paid off, derived from your belief that unless such were the case, the assignee would not sell?

Answer. Yes. This information was obtained on or about the period I purchased the property at the assignee's sale. I under- 30 stood by encumbrances all manner of encumbrances that were paid off. I don't know that any particular encumbrances were understood by me to be paid off. I think Johnson's encumbrances was one that was on the property; there might have been others, but I don't recollect them; I paid but little attention to those matters. I did not pay the assignee anything for that deed; I did not pay any interest on my mortgage; I received nothing and paid nothing. I permitted Schenck to occupy the property. I have no distinct recollection now whether a bond was given, or not, to Bishop with the mortgage. I left this 22 acre wood lot in the pos- 40 session of Schenck (J. C. Schenck) when I went away from here. I don't know that any sale took place of the lot.

Re-examined in chief.

Question. Did you understand from John C. Schenck and Mr. Green, before you mortgaged the property to Bishop, that the execution out of Chancery had been settled, and the property relieved of all encumbrances? [Objected to.]

Answer. I am clear in that. My reasons are, that I was interested, before I put my hand to that mortgage, to understand that there were no other encumbrances on the property.

Cross-examined.—I think the mortgage given to Mr. Bishop by
10 me was in place of another mortgage, previously held by him on another piece of property, for a less sum; can't say exactly for how much less a sum; I took no minute of it; my impression and understanding then was, and ever has been since, that the property was cleared of all encumbrances whatever.

The witness desiring to explain, says, that this agreement and arrangement referred to was made before I purchased, and I would not have purchased, if the arrangement to pay off the execution had not been made.

In chief.—It was named to me that a legacy coming to Mrs. Col-
20 ton was an encumbrance on the property. I don't know that William Schenck was mentioned. The legacy was coming under the will of John C. Schenck's father.

JNO. GULICK.

Sworn and subscribed, this 29th day of December, A. D. 1852,
before me, at Princeton.

J. F. HAGEMAN, M. C.

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INTERLOCUTORY DECREE.

This cause coming on to be heard upon the bill, answers, and proofs taken in the cause, and the matters thereon arising having  
30 been debated by Richard S. Field and William L. Dayton, of counsel for the complainant, and Cortlandt Parker and Abraham O. Zabriskie, of counsel for the defendants, and having been duly considered by the Chancellor, it is, on this eighth day of February, in the year of our Lord one thousand eight hundred and fifty-four, on motion of Cortlandt Parker, solicitor and of counsel for the defendants, ordered and decreed by the Chancellor, that the said

complainant is not entitled to the relief prayed by him in his said bill of complaint, and that the said defendants, Asa S. Colton and Margaret his wife and William C. Schenck, have, by virtue of the decree of this court, mentioned and referred to in their answers filed in this cause, and dated on the eleventh day of February, in the year of our Lord one thousand eight hundred and thirty-seven, in the said cause in this court, wherein Caleb Johnson and Enoch Johnson were complainants, and John C. Schenck, Isaac Story, executor of James Stoddard, deceased, and the said Asa S. Colton and Margaret his wife and William C. Schenck were defendants, 10 a right and interest in and lien upon the premises described in the bill of complaint filed in the last mentioned cause, and referred to in the bill of complaint of the said Henry S. Terhune aforesaid, and are entitled to a sale thereof under the writ of *feri facias* for the sale of mortgaged premises thereon issued and levied upon the said premises by the said Abraham W. Brown, then sheriff of the county of Middlesex, one of the above mentioned defendants in this suit, in order to raise and satisfy the moneys due to the said Asa S. Colton and Margaret his wife upon the said decree, and that the order of this court, made in this cause, enjoining and re- 20 straining them from proceeding upon said execution ought to be set aside, in order to their proceeding under the said execution to make and raise the moneys still due to them upon the said decree, it not appearing to the Chancellor that the moneys due to said defendants upon said decree are paid and satisfied, or that said defendants have otherwise lost or been deprived of the benefit of their said decree. And it is further ordered and decreed, in order that the rights of the parties complainant and defendant may be completely and accurately ascertained, that it be referred to James Wilson, esquire, one of the masters of this court, to take and state 30 an account of the principal and interest moneys due to the said defendants, Asa S. Colton and Margaret his wife and William C. Schenck, upon the decrees in favor of them respectively made by this court, as aforesaid, in the said suit between Caleb and Enoch Johnson, complainants, and John C. Schenck, Asa S. Colton and wife, William C. Schenck, and Isaac Story, executor of James Stoddard, deceased, defendants, bearing date the eleventh day of February, one thousand eight hundred and thirty-seven, and to report to this court with all convenient speed the amounts to them, the said defendants, respectively due and owing at the date of his 40 report, after crediting all payments made thereon, if any. And it is further ordered, that the parties complainant and defendant shall

be at liberty to examine such further witnesses and produce such further exhibits, in addition to the depositions and exhibits already taken in this cause, before said master, in relation to the amount due to the said defendants on such decree, as they may deem expedient; and all other equities between the parties, and the final order and decree of this court in the cause are reserved until the coming in of said report.

B. WILLIAMSON, C.

MASTER'S REPORT.

10

IN CHANCERY OF NEW JERSEY.

Between

Henry S. Terhune, complainant,

and

Asa S. Colton and Margaret his wife and William C. Schenck, defendants,

} On bill, &c.

I, James Wilson, one of the masters of this court, do hereby certify and report to his Honor the Chancellor, that, under the interlocutory decree and order of reference made in this cause, bearing date on the eighth day of February last, whereby it was ordered that it be referred to me to take and state an account of the principal and interest moneys due to the said defendants, Asa S. Colton and Margaret his wife and William C. Schenck, upon the decree in favor of them, respectively, made by this court in the suit between Caleb Johnson and Enoch Johnson, complainants, and John C. Schenck, Asa S. Colton and wife, William C. Schenck, and Isaac Story, executor of James Stoddard, deceased, defendants, bearing date the eleventh day of February, one thousand eight hundred and thirty-seven, and to report to this court the amounts to them, the said defendants, due and owing at the date of such report, and after crediting all payments made thereon, if any—I appointed the sixth day of July last, at my office, in the city of Trenton, to examine into and consider the matters so referred to me as aforesaid, and duly summoned the parties to appear before me at the time and place so appointed; and on that day, and other days, to which the said examination and hearing before me was,

by consent and agreement of parties, duly adjourned, I was attended by Richard S. Field, esq., solicitor of the complainant, and Courtlandt Parker, esq., solicitor of the defendants, and in their presence I proceeded to examine into and consider the matters so referred to me. And certain witnesses were sworn and examined before me, and their testimony reduced to writing, and certain exhibits were produced and marked before me, all which will fully appear by the depositions of said witnesses and the minute of marking said exhibits hereto annexed.

And I further certify, that on the day of the date of the said decree, to wit, the eleventh day of February, in the year eighteen hundred and thirty-seven, there was due to the said William C. Schenck, under the said decree, the sum of one thousand seven hundred and twenty-four dollars and thirty-eight cents, and that the interest upon the same, from the date of said decree to the date of this report, amounts to the sum of one thousand eight hundred and forty-five dollars and three cents, which said sums of principal and interest amount together to three thousand five hundred and sixty-nine dollars and forty-one cents.

It was insisted before me, on the part of the complainant, that there were certain sums due from the said William C. Schenck to the said John C. Schenck, which should be deducted from the amount due to said William upon said decree, to wit, a book account, prior to the first day of April, in the year eighteen hundred and thirty-nine, amounting, as per statement rendered by said John to said William, on the ninth day of March, in the year last mentioned, to the sum of six hundred and seven dollars and forty-three cents; and also a certain other book account, by said John against said William, subsequent to the said first day of April, eighteen hundred and thirty-nine, amounting to nine hundred and four dollars and eighty-two cents; which said two last mentioned sums upon book account the complainant claimed were due from said William to said John, and that the same, with suitable allowance for interest thereon, should be appropriated and applied towards the payment and satisfaction of the amount due to the said William C. Schenck upon the said decree. And on the part of said William C. Schenck, it was insisted before me, that, in a certain arrangement or settlement of accounts had between him and the said John C. Schenck, on or about the first day of April, eighteen hundred and thirty-nine, all the moneys then due to the said John on said book account were, by said John C. Schenck himself, appropriated and applied in part payment of a certain other debt,

due from him to said William on bond and mortgage; and that moreover, that if the same were not then so appropriated and applied, that the said William did afterwards so appropriate and apply both the aforesaid sums due from him on book account, as well the account before, as the account subsequent to the first day of April, eighteen hundred and thirty-nine. And I am of opinion, from the evidence before me, that the said John C. Schenck did himself appropriate and apply the said book account, so due to him on the said first day of April—that is to say, the said sum of  
 10 six hundred and seven dollars and forty-three cents, towards the payment of the moneys due from him to said William on said bond and mortgage, and that, therefore, the same ought not now to be deducted from the amount due said William upon the aforesaid decree. And in regard to the said other sum of nine hundred and four dollars and eighty-two cents, due from said William on book account subsequent to the first day of April, eighteen hundred and thirty-nine, I am of opinion that the same has been by him, the said William, appropriated and applied towards the payment of the debt due to him from the said John C. Schenck upon  
 20 a certain other bond and mortgage, and that he had a right so to apply the same, and that, therefore, no part thereof ought now to be deducted from the amount due to him upon the said decree.

And the complainant further insisted, that the said William C. Schenck had cut and taken away, from off the premises covered by said last mentioned mortgage, a considerable quantity of wood, whereby said premises were lessened in value, and that he ought to be charged with the amount and value of the wood so taken.

But I find that, even if he were so charged, there would still remain a large balance due to him, the said William, upon the debt  
 30 secured by said bond and mortgage, towards the payment of which he might rightfully apply the amount so as aforesaid due from him on book account subsequent to the first day of April, eighteen hundred and thirty-nine; and said balance would not be fully paid by such application, but a portion thereof would still remain due and unpaid.

I am therefore of opinion, that the aforesaid sums and items, claimed and insisted upon by the complainant as deductions from the amount due to the said William C. Schenck upon said decree, ought not to be deducted therefrom. And I find that there is now  
 40 due to the said William C. Schenck, upon said decree, the sum of one thousand seven hundred and twenty-four dollars and thirty-eight cents, together with one thousand eight hundred and forty-five

dollars and three cents, interest thereon from the date of said decree to the date of this report, and making in the aggregate the sum of three thousand five hundred and sixty-nine dollars and forty-one cents, due to said William at this time, for principal and interest upon said decree, as will appear by the schedule, marked No. 1, hereto annexed.

And I further report, that there was due to the said Asa S. Colton and Margaret his wife, upon said decree, on the day of the date thereof, the sum of one thousand seven hundred and twenty-four dollars and thirty-eight cents, and that the interest thereon, 10  
from the date of said decree to the date of this report, is the sum of one thousand eight hundred and forty-five dollars and three cents, making in the whole the sum of three thousand five hundred and sixty-nine dollars and forty-one cents.

And it was insisted before me, on the part of the complainant, that John C. Schenck, trustee of said Margaret Colton, did, on the first day of November, in the year eighteen hundred and thirty-seven, receive from Isaac Story, assignee of said John C. Schenck, the sum of four hundred and eighty-six dollars and seventy-three cents, and on the twenty-first day of August, in the year eighteen 20  
hundred and forty-one, the further sum of six hundred and eighty-five dollars and thirty cents, and that said two sums were received by the said John C. Schenck, as trustee for said Margaret Colton, as dividends upon two certain legacies, for which he had presented a statement and claim to said assignee, and that one of said legacies (called by the parties in this cause "the homestead legacy") is the same for which the above mentioned decree was made in her favor, and that, therefore, a due proportion of said two dividends, to wit, the sum of four hundred and twelve dollars, ought to be appropriated and applied towards the payment of said homestead 30  
legacy, and should now, together with interest thereon, be credited upon and deducted from the amount due to her upon said decree.

But I am of opinion that this claim for credit should not be allowed. At the time that the said first dividend was paid to said John C. Schenck, he was really the owner of the land charged with the said homestead legacy. It is true that the legal title to it was then vested in John Gulick, who had bought it at the assignee's sale. But he had bought it for the benefit of John C. Schenck, as appears by the pleadings and proofs in this cause, and afterwards conveyed it to him. He bought it for the benefit of Schenck, and 40  
held it for him. Schenck was, therefore, the party beneficially interested therein, and in equity the owner of the land. Before the

time when the second of said dividends was paid to said John C. Schenck, the said farm had been conveyed to him in due form, and he was vested with the legal title. He being, therefore, at the time when he received the said dividends, the owner of the land on which the said homestead legacy was charged, the land could not be considered as discharged to the extent of said payments, or of so much thereof as was applicable to the homestead legacy, unless he paid the same to Mrs. Colton, or duly invested it for her use. He did not do either. He could not, therefore, claim that the land  
 10 was discharged, and the complainant in this suit cannot, in this respect, claim more than John C. Schenck could do if he were now before the court.

I do not, therefore, consider that the said land charged with the said legacy was to any extent released by the payment of said dividends to said John C. Schenck, nor that anything should on that account be now deducted from the amount due to said Asa S. Colton and wife at this time upon the said decree.

And I further certify, that it appears, by the account books and ledger of the said John C. Schenck, made exhibits in this cause,  
 20 that the said John C. Schenck had an account against the said Asa S. Colton and wife, running from the thirteenth day of July, eighteen hundred and thirty-seven, to the fourth day of May, eighteen hundred and forty-three, inclusive, amounting to one thousand five hundred and ninety-two dollars and eighty-seven cents, and that the same was chiefly for checks and notes given by him to them, four of which notes, amounting in the whole to three hundred and thirty dollars and thirty-seven cents, remain unpaid, the amount whereof, being deducted from said account, reduces the same to  
 30 twelve hundred and sixty-two dollars and fifty cents. And it appears to me, from the evidence in this cause, that the said notes and checks charged in said account were intended, by said parties, to pay the interest on the said homestead legacy and on certain other moneys due from said John C. Schenck to said Asa S. Colton and wife, which, together with said legacy, amounted to five thousand dollars. I am therefore of opinion, that a part of said sum of twelve hundred and sixty-two dollars and fifty cents should be taken and considered as paid on the said homestead legacy, and that such part should bear the same proportion to the said last mentioned sum as the said legacy does to the said sum of five  
 40 thousand dollars, which part I find to be four hundred and thirty-four dollars and forty-one cents, and I have accordingly deducted

the said last mentioned sum from the amount of principal and interest due said Asa S. Colton and wife upon the said decree.

And I find that the amount due to said Asa S. Colton and wife on said decree, on the day of the date thereof, was one thousand seven hundred and twenty-four dollars and thirty-eight cents, and that the interest on the same, from that time to the date of this report, is one thousand eight hundred and forty-five dollars and three cents, making in the aggregate the sum of three thousand five hundred and sixty-nine dollars and forty-one cents; and that after deducting therefrom the sum of four hundred and thirty-four 10 dollars and forty-one cents, above mentioned, there remains the sum of three thousand one hundred and thirty-five dollars, which I find to be the amount remaining due to said Asa S. Colton and Margaret his wife, at the date of this report, for principal and interest upon the said decree, as will more fully appear by *Schedule No. 2*, hereto annexed.

And I further certify and report, that the complainant's solicitor insisted before me, that in taking and stating the account upon the matters referred to me as aforesaid, I ought to go back of the aforesaid decree, made in the said suit between the said Caleb 20 Johnson and Enoch Johnson, complainants, and John C. Schenck and others, defendants, and allow all payments (if any) which had been made before the said decree. But I considered it my duty, under the order referring said matters to me, not to do so, but to take and state an account of what was due to the said defendants upon the said decree, crediting all payments which had been made thereon, if any; and I have therefore proceeded and made my inquiries, and stated my account of the matters aforesaid accordingly, as will appear by the foregoing report and the schedules hereto annexed. 30

All which is respectfully submitted.

Dated this eleventh day of December, in the year of our Lord eighteen hundred and fifty-four.

J. WILSON, M. C.

*SCHEDULE No. 1, referred to in the foregoing report.*

By the decree, dated 11th February, 1837, made in the suit between Caleb and Enoch Johnson, complainants, and John C. Schenck *et al.*, defendants, the amount declared to be due to William C. Schenck is \$1724.38, \$1724 38

Interest on that sum from 11th February, 1837, to 11th  
December, 1854, seventeen years ten months, \$1845 03

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Amount due to William C. Schenck, for principal and  
interest on said decree, on this 11th December, 1854, \$3569 41

Dated 11th December, 1854.

J. WILSON, M. C.

*SCHEDULE No. 2, referred to in the foregoing report.*

By the decree, dated 11th February, 1837, made in the  
suit between Enoch and Caleb Johnson, complainants,  
10 and John C. Schenck and others, defendants, the  
amount declared to be due to Asa S. Colton and wife  
is \$1724.38, \$1724 38

Interest on same from 11th February, 1837, to 11th De-  
cember, 1854, seventeen years ten months, 1845 03

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\$3569 41

Amount of book account of John C. Schenck  
against Colton and wife, is \$1592 87

Deduct four notes, included in said account,  
and remaining unpaid, to wit :

|    |           |                          |         |  |
|----|-----------|--------------------------|---------|--|
| 20 | One dated | 28th February, 1842, for | \$75 00 |  |
|    | " "       | 23d April, 1842, for     | 77 25   |  |
|    | " "       | " " " " " "              | 78 12   |  |
|    | " "       | 6th May, 1843, for       | 100 00  |  |
|    |           |                          | 330 37  |  |

\$1262 50

Of which \$1262.50 there is to be applied to  
the homestead legacy the sum of \$435.41,  
which bears the same proportion to \$1262.50  
as \$1724.38 does to \$5000.

30 Deduct \$434.41, 434 41

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Amount remaining due to Asa S. Colton and wife, for  
principal and interest on said decree, this 11th De-  
cember, 1854, \$3135 00

J. WILSON, M. C.

## IN CHANCERY OF NEW JERSEY.

Between

Henry S. Terhune, complainant,

and

Asa S. Colton and wife and others, defendants, }

} On bill, &amp;c.

*Examination of witnesses taken before me, at my office in the city of Trenton, in the above stated cause, on this sixth day of July, eighteen hundred and fifty-four, commencing at half-past twelve o'clock (noon) in the presence of Cortlandt Parker, esquire, solicitor of the defendants, and Richard S. Field, esquire, solicitor of complainant.* 10

*Abraham W. Brown, esq.,* (one of the defendants) being called on the part of the defendants, and being duly sworn, on his oath saith: I was sheriff of the county of Middlesex, from October eighteen hundred and thirty-six to October eighteen hundred and thirty-nine. As such sheriff, I received an execution from Chancery in the case of Caleb Johnson, complainant, against John C. Schenck, and Asa S. Colton and wife and William Schenck, defendants. Under that execution, I sold according to the command of the writ. At that sale, William Packer was a purchaser; I think he 20 bought two lots outside of the Slayback farm, called the outside lots, for twenty-eight hundred and fifty dollars; I don't think that I recollect distinctly what each lot brought separately. Mr. Packer did not buy with money, but with an order. [A paper is here produced, and marked *Exhibit A 1, ex parte* defendants, and being shown the witness, he says]: This is the order which Mr. Packer purchased under; I did not see a cent of his money. This paper was handed to me by Samuel R. Hamilton, personally, at the sale at Princeton. I suppose he was the solicitor for John C. Schenck.

The amount of sales on the execution I have spoken of was 30 thirteen thousand and fifty dollars; that is the amount of the whole sales on the whole execution. The Slayback farm and the Davison lot sold for ten thousand and two hundred dollars; they were sold together; Caleb Johnson bought them. [Sheriff's docket, heretofore marked an exhibit in this cause, being shown the witness, he says]: Some part of the sum for which James S. Green, as solicitor for Colton and wife and William Schenck, gave me a receipt

in this docket, under that execution, was paid to me in money, but I cannot say how much.

[A paper is here produced, and marked *Exhibit A 2, ex parte* defendants, and being shown the witness, he says]: This is a true extract, as far as it goes, from my statement of the sales, now on file at New Brunswick.

[A letter is here produced, and marked *Exhibit A 3, ex parte* defendants, and being shown to the witness, he says]: This is the letter from Mr. Field, in which he enclosed to me the execution I 10 have spoken of.

A. W. BROWN.

Sworn and subscribed, this 6th day of July, A. D. 1854, before me.

J. WILSON, M. C.

A paper, purporting to be an abstract from the record of deeds of the county of Middlesex, certified under seal by Nicholas Booraem, esq., clerk of said county, is here produced, and marked *Exhibit A 4, ex parte* defendants.

A paper, purporting to be a copy of the "decree of distribution 20 on report of auditors" in matter of Isaac Story, assignee of John C. Schenck, is here produced, and, by consent of the complainant's solicitor, is marked *Exhibit A 5, ex parte* defendants.

*Mrs. Mary Ann Schenck*, a witness called on the part of the defendants, being duly sworn, on her oath saith: I live in Princeton; I am the widow of John C. Schenck, deceased.

[A book is here produced, and marked *Exhibit A 6, ex parte* defendants, being shown the witness, she says]: This is my husband's day-book; most of the entries in it are in his own handwriting; since his death, it has been in my possession; I don't think it has 30 been out of my possession since he died.

[Another book is here produced, heretofore marked *Exhibit No. 8, ex parte* defendants in this cause, and being shown the witness, she says]: This is my husband's ledger; most of the entries in it are in his own handwriting.

[A paper is here produced, and marked *Exhibit A 7, ex parte* defendants, and being shown the witness, she says]: The signature to this paper is the signature of my deceased husband, John C. Schenck. The body of the paper, I cannot say whether it is his

hand or not; but if it is not his hand, it is the handwriting of my son, William C. Schenck.

I recollect my husband's embarrassments in business and his failure. I recollect his saying that he was indebted to Mrs. Asa S. Colton, and that he said he had to pay her the interest upon five thousand dollars, which was three hundred dollars a year. It was his wish to pay her the interest quarterly, and it was her wish too, but he could not always accomplish it. The arrangement was for him to pay her seventy-five dollars a quarter. He endeavored to pay her that sum per quarter after his failure, though I don't think he al- 10 ways did it. My husband failed, I think, in the year eighteen hundred and thirty-six or thirty-seven. I remember his trying to send her the quarterly payments of interest. I think I heard him say, in the later periods of his life, that he wished to send her that sum quarterly; that he ought to do it. But he could not always do it. I don't know whether he felt that he ought to do it as matter of moral duty, or whether he thought it was legally due to her. But it is my impression that he thought it was her legal right. I think I heard my husband say that the money that was due from him to Mrs. Colton was a legacy left her by his father. He told me that 20 his father had left these children a legacy, and that he had not paid Mrs. Colton the amount due to her because she had left it in his hands; that it was an arrangement between them.

And being cross-examined by Mr. Field, the witness says: I have heard Mr. Colton talk with Mr. Schenck about this legacy after Mr. Schenck's failure, but I cannot recollect what they said. I think that since Mr. Schenck's failure that he paid Mrs. Colton money on account of this legacy—I know that he sent her notes on account of this legacy. It appears to me that he paid her money, also, on account of the legacy, but I cannot recollect it distinctly; 30 but I think it highly probable that he did. I cannot recollect that Mr. Schenck, after his failure, paid Mrs. Colton money on account of the legacy, yet I am very much impressed with the idea that he did. I know that Mr. Schenck wished very much to accommodate her, and her want of money was very great.

When Mr. Schenck told me that the reason he had not paid Mrs. Colton the legacy, was because there was an arrangement between them to leave it in his hands, he did not tell me what the arrangement was, so far as I recollect. Mrs. Colton did not live with Mr. Schenck until she was married; she lived at other places; at the 40 time of her marriage, she was living with her grandfather Scudder, but was married at Mr. Schenck's house. William C. Schenck

boarded with Mr. Schenck for one session while he was in the seminary, also afterwards; perhaps it was eighteen months in all. I suppose Mr. Schenck entered all those matters in the book; he was very particular in such matters.

I was married to Mr. Schenck in the year eighteen hundred and thirty-three.

I cannot say that I ever heard Mr. Schenck speak of his being bound to pay William C. Schenck money in the same way and to the same amount as he said he was bound to pay Margaret, that is  
 10 Mrs. Colton; I cannot recollect that he ever said so to me. I have a recollection of William's mother getting from Mr. Schenck either money or money's worth for William. I think the books will be sufficient to show what was got for William. I cannot tell on what account this money or money's worth was got by William's mother for him. I heard Mr. Schenck once say that his father had left those two children (William and Margaret) a legacy in his will. I cannot remember his saying anything about paying money to William on account of the legacy. Mr. Schenck was under obligation to pay William money, but I don't know whether it was on ac-  
 20 count of the legacy or not. I don't recollect for what, or on what account he was to pay William money.

I think Margaret received money from Mr. Schenck before his failure. I have no recollection of any of the quarterly payments I have mentioned having been made to her on account of that legacy before the failure. I never heard anything about quarterly payments before the failure.

Being again examined in chief, the witness says: I suppose that the money received by Margaret from Mr. Schenck before his failure was paid on the same account as the money she received from  
 30 him after the failure, but I don't know anything about it.

MARY ANN SCHENCK.

Sworn and subscribed, this 6th July, A. D. 1854, before me.

J. WILSON, M. C.

By agreement of the solicitors above named, this examination is adjourned to the eighteenth day of July, instant, at half-past ten o'clock, at my office in the city of Trenton.

Dated 6th July, 1854.

J. WILSON, M. C.

1854, July 18. The parties did not, nor did any of them, attend at my office this day, pursuant to the last adjournment.

J. WILSON, M. C.

1854, August 1. The parties, by their solicitors above named, met at my office by agreement, and continued the examination of witnesses.

J. WILSON, M. C.

*Reverend William E. Schenck*, a witness called on the part of the defendants, being duly sworn, on his oath saith: I reside in the city of Philadelphia, in the state of Pennsylvania, and am the son 10 of John C. Schenck, deceased. A paper marked *Exhibit A 7, ex parte* defendants, being shown the witness, he says, the body of this paper is in my handwriting; the signature is that of my father; I believe that this letter was written to the Reverend Asa S. Colton. During the period from the year eighteen hundred and thirty-six, until about the year eighteen hundred and forty, I was a student in college, residing in my father's house, and during that time he frequently employed me to do writing for him. I fully believe, from what my father said and did during that period, that he regarded himself as indebted to Mrs. Asa S. Colton. He was in the 20 habit of sending her a quarterly payment on a sum that was due to her. To the best of my recollection, it was seventy-five dollars a quarter, in the form of a note, which was for interest upon a sum due to her. I am not able to state positively and definitely the shape of the indebtedness, but it was upon some indebtedness that grew out of the will of my grandfather. I always heard that the indebtedness was originally in the shape of a legacy, but what it was at the time of the payment of this interest I can't say. The reason for my hesitating on this point is, that there were subsequent transactions, but whether they altered the shape of the in- 30 debtedness, or not, I don't know.

And being cross-examined by Mr. Field, the witness says: I have no knowledge of any payments to Mrs. Colton being actually made in money during the time I have spoken of.

I have not any knowledge of my father's having considered himself indebted to William C. Schenck during the time I have spoken of, or any time subsequent to that.

Again examined in chief by Mr. Parker, the witness says: I was in the habit of writing for my father as late as the year eighteen hundred and forty-one—as late as the date of *Exhibit A 7, ex parte* 40

defendants. I recollect writing for him for some months later than that. I know that some of the notes given by my father to Mrs. Colton, as I have mentioned, were paid when they came due. When I said that I did not know of any payments to her being actually made in money, I spoke of payments in money in the first instance; I know that some of the notes referred to were paid when they fell due; I have a clear recollection that there were payments made on those notes.

Being again cross-examined by Mr. Field, the witness says: I don't recollect that I saw any of the money paid on those notes. I was employed, generally, in writing those notes, and when any of them were not paid I usually wrote a renewal; and, from the whole circumstances of the case, my impression is clear that there were payments made on them, though they were not all paid. I cannot now state how many of those notes I wrote myself, nor how many of them were not paid; but they were usually given quarterly. But I cannot say that they were always given quarterly during that period, that is, I mean I cannot say that one was given every quarter.

20

W. E. SCHENCK.

Sworn and subscribed, this 1st August, A. D. 1854, before me.

J. WILSON, M. C.

*James S. Green*, called on the part of the defendants, (and having been heretofore sworn as a witness, and given testimony in this cause) on his oath saith: I reside at Princeton, in this state. I stated, when I was examined before, that I was solicitor for Asa S. Colton and wife and William C. Schenck, in the suit in Chancery brought by Caleb Johnson respecting the Slayback farm. [The docket of sheriff Brown is here shown the witness, and his attention is called to the statement of the suit just mentioned.] I find here a receipt under the date of the second of August, eighteen hundred and thirty-seven, a receipt signed "James S. Green Sol." It is a receipt for the sum of three thousand four hundred and nineteen dollars and seventy-five cents, expressed to be in part of claim of Asa S. Colton and William Schenck. That receipt and the signature is in my handwriting. I have no recollection of the transaction, further than what I infer from papers; I have no other recollection how it was done. After receiving notice to come here, I overhauled all the papers of the Schencks in my hands, and I found some having reference to that business, as I suppose; and

40

I now hold in my hands one of three papers which I suppose has —[The paper here referred to by witness is here marked *Exhibit A 8, ex parte* defendants.]

[The witness, also, here produced his own private receipt book, and holding the same in his hands, he says]: I find here a receipt bearing date in the year eighteen hundred and thirty-seven, August the tenth, for one hundred and ninety-eight dollars and eighty-three cents, expressed as money received from Abraham W. Brown, sheriff of Middlesex, which receipt is signed by John C. Schenck, trustee of Margaret Colton; the money is mentioned as being received 10 from me. According to the best of my recollection and belief, this was all the cash paid to me by sheriff Brown in that suit, and I do not recollect of having paid any part of it to Asa S. Colton or his wife, considering John C. Schenck as the trustee, and therefore entitled to receive it. I refer to the suit by Caleb Johnson as to the Slayback farm. I have no recollection of ever having paid a dollar to Mr. Colton or to his wife, either on this or any other account. The balance of the money for which I gave, in the sheriff's docket, the receipt I have before referred to, bearing date on the second day of August, eighteen hundred and thirty-seven, was ar- 20 ranged by the real estate bid for by William Packer, according to my best recollection.

Being cross-examined by Mr. Field, the witness says: I have in my possession two letters which I received from Asa S. Colton, and also a paper, dated the twenty-ninth day of March, eighteen hundred and thirty-six, signed by Margaret Colton and William C. Schenck, giving me authority to act in the suit in Chancery brought by Caleb Johnson. [The witness here produces the two letters and the other paper referred to by him, and the same are now marked by me *Exhibits B 1, B 2, and B 3, ex parte* complain- 30 ant.]

JAS. S. GREEN.

Taken and subscribed, before me, this 1st August, 1854.

J. WILSON, M. C.

A day-book of John C. Schenck is here produced by Mr. Parker, and is, by consent, marked *Exhibit A 9, ex parte* defendants.

J. WILSON, M. C.

[The enclosed are the statements referred to by the witness, in her answer to the fifth interrogatory. She swears that they are in the handwriting of Mr. John C. Schenck.

September 16th, 1852.

Sworn before David Thomas.

WILLIAM G. HOWARD.]

A statement of monies due by John C. Schenck, as acting executor of Joseph Schenck, to Margaret Schenck, grand daughter of Joseph Schenck, up to this 16th day of Feb'y, 1833, computed  
10 at compound interest.

|                                                                                               |           |
|-----------------------------------------------------------------------------------------------|-----------|
| First half of general legacy from estate, <i>viz.</i> \$3547, to<br>be divided in 2 legacies, | \$1773 50 |
| Interest from Oct. 22, 1823, one year after testator's<br>death, to Oct. 22, 1824, 1 year,    | 106 41    |
| Due 22 Oct. 1824,                                                                             | \$1879 91 |
| Interest from 22 Oct. 1824, to 22 Oct. 1825, 1 year,                                          | 112 79    |
| Due 22 Oct. 1825,                                                                             | \$1992 70 |
| Interest from 22 Oct. 1825, to 22 Oct. 1826, 1 year,                                          | 119 56    |
| Due 22 Oct. 1826,                                                                             | \$2112 26 |
| 20 Interest from 22 Oct. 1826, to Oct. 22, 1827, 1 year,                                      | 126 73    |
| Due 22 Oct. 1827,                                                                             | \$2238 99 |
| Interest from Oct. 22, 1827, to Oct. 22, 1828, 1 year,                                        | 134 33    |
| Due 22 Oct. 1828,                                                                             | \$2373 32 |
| Interest from Oct. 22, 1828, to Oct. 22, 1829, 1 year,                                        | 142 39    |
| Due 22 Oct. 1829,                                                                             | \$2515 71 |
| Interest from Oct. 22, 1829, to Oct. 22, 1830, 1 year,                                        | 150 94    |
| Due 22 Oct. 1830,                                                                             | \$2666 65 |
| Interest from Oct. 22, 1830, to Oct. 22, 1831, 1 year,                                        | 159 99    |
| Due Oct. 22, 1831,                                                                            | \$2826 64 |
| 30 Interest from Oct. 22, 1831, to Oct. 22, 1832, 1 year,                                     | 169 59    |
| Interest from 22 Oct. 1832, to Feb'y 10, 1833, 3 mo.<br>25 days,                              | \$2996 23 |
|                                                                                               | 57 41     |

|                                                                    |                       |
|--------------------------------------------------------------------|-----------------------|
|                                                                    | \$3053 64             |
| Legacy to be paid by Jno. C. Schenck and interest<br>brought over, | 1632 37               |
|                                                                    | <hr/> \$4686 01 <hr/> |

Devise to be paid by John C. Schenck in 3 annual payments, without interest till each payment becomes due; first payment became due on the first day of May, 1823, by testator's death.

\$1953 one half of which is to Margaret Schenck.

|                                           |                       |    |
|-------------------------------------------|-----------------------|----|
| $\frac{1}{3}$ of which                    | \$976 50              |    |
| is                                        | <hr/> \$325 50 <hr/>  | 10 |
| Due 1st May, 1823,                        | \$325 50              |    |
| Interest on do. 1 year, to May 1st, 1824, | 19 53                 |    |
| Second payment due May 1, 1824,           | 325 50                |    |
|                                           | <hr/> \$670 53 <hr/>  |    |
| Interest on do. 1 year, to May 1, 1825,   | 40 23                 |    |
| Third instalment due May 1, 1825,         | 325 50                |    |
|                                           | <hr/> \$1036 26 <hr/> |    |
| Interest 1 year, to May 1, 1826,          | 62 17                 |    |
| Due May 1, 1826,                          | \$1098 43             |    |
| Interest 1 year, to May 1, 1827,          | 65 90                 |    |
|                                           | <hr/> \$1164 33 <hr/> |    |
| Interest 1 year, to May 1, 1828,          | 69 85                 |    |
|                                           | <hr/> \$1234 18 <hr/> |    |
| Interest 1 year, to May 1, 1829,          | 74 05                 | 20 |
|                                           | <hr/> \$1308 23 <hr/> |    |
| Interest 1 year, to May 1, 1830,          | 78 49                 |    |
|                                           | <hr/> \$1386 72 <hr/> |    |
| Interest to May 1, 1831, 1 year,          | 83 20                 |    |
|                                           | <hr/> \$1469 92 <hr/> |    |
| Interest to May 1, 1832, 1 year,          | 88 19                 |    |
|                                           | <hr/>                 |    |

|                                               |                |
|-----------------------------------------------|----------------|
|                                               | \$1558 11      |
| Interest to Feb'y 16, 1833, 9 mo. and 6 days, | 74 26          |
| Carried over,                                 | <u>1632 37</u> |

## STATEMENT NO. 1.

| Mrs. Eliza Ann Schenck |           | To John C. Schenck                                            | DR.                                 |
|------------------------|-----------|---------------------------------------------------------------|-------------------------------------|
|                        |           | As per charged to Eliza Ann Schenck.                          |                                     |
| 1826.                  |           |                                                               |                                     |
| 10                     | Nov. 10,  | To cash,                                                      | \$18 00                             |
| 1827.                  |           |                                                               |                                     |
|                        | July 27,  | To cash,                                                      | 1 00                                |
| 1828.                  |           |                                                               |                                     |
|                        | Jan'y 31, | To cash by Mr. Halsey,                                        | 35 00                               |
|                        | Feb'y 2,  | To cash by Wm. Gulick,                                        | 5 00                                |
|                        | April 22, | To cash by (Margaret Schenck),                                | 40 00                               |
| 1829.                  |           |                                                               |                                     |
|                        | Jan'y 6,  | To cash paid passage to New Brunswick,                        | \$1.50                              |
|                        |           | Subscription for missionary society,                          | .50                                 |
| 20                     |           | 1 pair hose for daughter,                                     | .56 $\frac{1}{4}$                   |
|                        |           |                                                               | <u>2 56<math>\frac{1}{4}</math></u> |
|                        | Mar. 13,  | To check on State Bk. N. Brunswick,                           | 40 00                               |
|                        |           | To cash Jan'y 16th, (omitted in place),                       | 20 00                               |
|                        | Ap'l 23,  | To cash,                                                      | 20 00                               |
|                        | May 2,    | To cash pd. her April 30th,                                   | 50 00                               |
|                        | " 12,     | To cash per Wm. Packer,                                       | 4 00                                |
|                        | " 13,     | To cash by her sister Maria,                                  | 50 00                               |
|                        | " 27,     | To do. pd. her,                                               | 20 00                               |
|                        | June 20,  | To cash pd. D. Fenton, No. 32 Encyclopedia,                   | 4 00                                |
|                        | July 21,  | To cash by James Van Deventer,                                | 75 00                               |
| 30                     | Sept. 26, | To check on State Bk. New Brunswick, dated<br>Sept. 21, 1829, | 50 00                               |
|                        | Oct. 21,  | To check on do.,                                              | 50 00                               |
|                        | Nov. 5,   | To cash had by her on 3d instant,                             | 20 00                               |
|                        | Dec. 23,  | To check on State Bk. N. Brunswick,<br>1830.                  | 70 00                               |
|                        | Jan'y 2,  | To cash to Dan'l Fenton No. 33 Encyclopedia,                  | 4 00                                |
|                        | Feb'y 20, | To check on State Bk. N. Bk. per W. Packer,                   | 40 00                               |
|                        | Mar. 9,   | To cash,                                                      | 100 00                              |
| 40                     | Apr. 13,  | To cash paid her on 7th inst.,                                | 30 00                               |



## STATEMENT NO. 2.

Of amount of monies received by John C. Schenck of Eliza Ann Schenck, and monies paid her.

|                                                                                                                                              |                         |
|----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| John C. Schenck gave his note to Eliza Ann Schenck,<br>dated August 4, 1826,                                                                 | \$1591 37               |
| Interest on do. from 4th Aug't, 1826, to Jan'y 1st, 1828,<br>1 yr. 4 mo. and 27 days,                                                        | 134 45                  |
| Rd. of Doc. Jacob Scudder, Jan'y 15, 1827, as by re-<br>quest of Jos. Scudder, adm'r, which I am willing to<br>10 pay when properly secured, | 408 92                  |
| Interest on do. to Jan'y 1, 1828, 11 mo. 15 days,                                                                                            | 23 52                   |
|                                                                                                                                              | <hr/>                   |
|                                                                                                                                              | \$2158 26               |
| Paid previous to Jan'y 1, 1829,                                                                                                              | 99 00                   |
|                                                                                                                                              | <hr/>                   |
|                                                                                                                                              | \$2059 26               |
| Interest on do. to Jan'y 1, 1829, 1 yr.,                                                                                                     | 123 55                  |
|                                                                                                                                              | <hr/>                   |
|                                                                                                                                              | \$2182 81               |
| Paid previous to Jan'y 1, 1830,                                                                                                              | 475 56 $\frac{1}{4}$    |
|                                                                                                                                              | <hr/>                   |
|                                                                                                                                              | \$1707 24 $\frac{3}{4}$ |
| Interest to Jan'y 1, 1830, 1 year,                                                                                                           | 102 43                  |
|                                                                                                                                              | <hr/>                   |
| 20                                                                                                                                           | \$1809 67 $\frac{3}{4}$ |
| Paid previous to January 1, 1831,                                                                                                            | 399 00                  |
|                                                                                                                                              | <hr/>                   |
|                                                                                                                                              | \$1410 67 $\frac{3}{4}$ |
| Interest on do. to Jan'y 1, 1831, 1 year,                                                                                                    | 84 63                   |
|                                                                                                                                              | <hr/>                   |
|                                                                                                                                              | \$1495 30 $\frac{1}{4}$ |
| Received of Garret D. Wall, for E. A. Schenck, per<br>order March 9, 1830,                                                                   | 200 00                  |
| Interest on do. from March 9, 1830, to Jan'y 1, 1831,<br>9 mo. 21 days,                                                                      | 9 70                    |
|                                                                                                                                              | <hr/>                   |
|                                                                                                                                              | \$1705 00 $\frac{1}{4}$ |
| 30 Paid previous to Jan'y 1, 1832,                                                                                                           | 344 50                  |
|                                                                                                                                              | <hr/>                   |
|                                                                                                                                              | \$1360 50 $\frac{1}{4}$ |
| Interest on balance from Jan'y 1, 1831, to Jan'y 1,<br>1832,                                                                                 | 81 63                   |

|                                                                   |            |    |
|-------------------------------------------------------------------|------------|----|
| Received of Garret D. Wall, previous to May 20, 1831,             | \$125 00   |    |
| Interest on do. to Jan'y 1, 1832, say 9 mo.,                      | 5 62½      |    |
|                                                                   | <hr/>      |    |
|                                                                   | \$1572 75¾ |    |
| Paid previous to Jan'y 1, 1833,                                   | 528 00     |    |
|                                                                   | <hr/>      |    |
|                                                                   | \$1044 75¾ |    |
| Interest on balance from Jan'y 1, 1832, to Jan'y 1,<br>1833,      | 62 68      |    |
| Received Sept. 12, 1831, of Mrs. Schenck,                         | 100 00     |    |
| Interest on do. to Jan'y 1, 1833, 1 yr. 3 mo. 18 d.,              | 7 80       |    |
| Received June 1, 1832, by Wm. Packer,                             | 200 00     | 10 |
| Interest on do. to Jan'y 1, 1832, 7 mo.,                          | 7 00       |    |
| Received August 28, 1832,                                         | 100 00     |    |
| Interest on do. to Jan'y 1, 1833, 4 mo.,                          | 2 00       |    |
|                                                                   | <hr/>      |    |
|                                                                   | \$1524 23  |    |
| Paid since Jan'y 1, 1833,                                         | 100 00     |    |
|                                                                   | <hr/>      |    |
| Balance due to Eliza Ann Schenck,                                 | \$1424 23  |    |
| Feb'y 21, 1833, John Bray's note received of her (en-<br>dorsed), | 100 00     |    |
| Interest on do. to this date, 1 yr. 2 mo. and 15 days,            | 7 25       |    |
|                                                                   | <hr/>      |    |
|                                                                   | \$1531 48  | 20 |

Interrogatories to be administered to Mrs. Eliza A. Schenck, a witness residing at Urbana, Frederick county, Maryland, to be produced sworn and examined in a certain cause depending in the High Court of Chancery of New Jersey, wherein Henry S. Terhune is complainant, and Asa S. Colton and Margaret his wife, William C. Schenck, and Abraham W. Brown are defendants, on the part of said defendants.

*Interrogatory first.* Do you know the parties defendant in this suit? Are they in anywise connected with or related to you? If yea, state how. 30

*Interrogatory second.* Did you know John C. Schenck, late of Princeton, deceased, in his lifetime? Were you in anywise connected with or related to him?

*Interrogatory third.* Did you ever, in the lifetime of said John C. Schenck, and since July, 1839, converse with him as to or hear

him say anything in relation to the legacies, or either of them, bequeathed to said Margaret Colton or William C. Schenck by their grandfather, Joseph Schenck, deceased, the payment of them or either of them, and as to their being in anywise secured or safe? If yea, state as nearly as you can, what the said John C. Schenck said to you in regard to the said legacies, their payment or being secured to be paid, giving his words and the dates of his so speaking, as nearly as you can.

*Interrogatory fourth.* Did you ever, since July, 1839, hear the 10 said John C. Schenck say anything in relation to the decree entered in the Court of Chancery of New Jersey for the payment of said legacies out of the homestead farm of John C. Schenck, and as to the said decree being still in force or null and void? If yea, state particularly what you heard him say, giving the words he used as nearly as you can, and the date and occasion of his so speaking.

*Fifth.* Do you know from what monies the said William C. Schenck or Margaret Colton were educated and maintained during their minority, whether out of the proceeds of any legacy left 20 them by the said Joseph Schenck, deceased, or otherwise? If yea, state what you know thereupon, and your means of knowledge.

*Sixth.* Do you know of any other matter or thing which may be of benefit to the defendants? If yea, declare it.

CORTLANDT PARKER,

*Solicitor and of counsel with defendants.*

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SCHEDULE.

Be it remembered, that on this sixteenth day of September, in the year of our Lord one thousand eight hundred and fifty-two, at the house of the Rev. Asa S. Colton, in the district of Urbana, in the county of Frederick, and state of Maryland, being the time and 30 place for taking the examination of the witness named in the commission to which this schedule is annexed, we, Wm. G. Howard and David Thomas the commissioners therein named, having first taken the oath required of us in this behalf, proceeded to examine the witness aforesaid upon the interrogatories annexed to the said commission, as therein directed, and caused such examination to be taken down in writing, and signed by the witness, and signed the same ourselves, as herein after follows:

*Mrs. Eliza Ann Schenck*, the said witness, appearing before us, and being by us duly sworn that the answers she should give to the said interrogatories should be the truth, the whole truth, and nothing but the truth,—to the first interrogatory she says—Yes, I know the parties; Asa S. Colton is my son-in-law; Margaret Colton, his wife, is my daughter; William C. Schenck is my son.

To the second interrogatory she says—Yes, I was acquainted with John C. Schenck, late of Princeton, deceased; he was my brother-in-law.

To the third interrogatory she says—I heard Mr. John C. Schenck 10 often speak of those legacies bequeathed to Margaret Schenck and William C. Schenck by their grandfather, Mr. Joseph Schenck, deceased, and he always professed to have secured them. He said he had done all he could to secure them. They allowed the legacies to remain with Mr. Schenck as a favor. He thought that arrangement would enable him to extricate himself from his pecuniary difficulties, and he seemed to feel particularly obligated to secure them. He said, at one time (1844), that there was one point about which he wished to consult a lawyer. What that point was he did not tell me, and I do not know. I spent two weeks at his house at this time, in the fall of 1844, and heard much, I think, 20 about this business, but it being of the nature of former assurances, I have not much recollection of particular expressions. Mr. John C. Schenck said at this time (1844), the last time I saw him, that William C. Schenck had a claim on the homestead farm, but he did not wish him to know it, as he might mention it, and he feared a certain man, to whom William was in debt, might take the opportunity to commence some law proceedings against him. He made me promise not to tell William.

To the fourth interrogatory she says—I spent four weeks at Mr. 30 Schenck's house in the summer of 1837, and during my visit there, he made assurances of security to Margaret and William. In all that I heard him say, he seemed to dwell on that decree in Chancery with great satisfaction, as having secured the legatees. I saw him for a short time in the fall of 1837, and then I did not see him again till the fall of 1844, when I spent two weeks at his house. His conversation at this time had the same bearing, and was in accordance, as I thought, with former declarations in their favor. Think he always spoke with confidence respecting what he had done for Margaret and William, whatever that was, unless some- 40 thing contained in the answer to 3d interrogatory could be thought to express doubt. He said not a word about the decree in Chan-

cery being "null and void," or of its not "being still in force," and I imbibed no such idea. I think he told me at this time (1844), and I am almost certain of it, that the decree in Chancery would bring Margaret and William in before any other claimants. He never spoke of it in any other way to me. I think Mr. Schenck was desirous to fulfil the intentions of his father's will, and seemed anxious that Margaret and William should get what was due to them.

To the fifth interrogatory she says—My father, Joseph Scudder, 10 esq., and Mr. Joseph Schenck, my father-in-law, were executors of my husband's estate. After the decease of Mr. Joseph Schenck, Mr. John C. Schenck had the management of his father's affairs. I was in the habit of getting money from my father, and also from Mr. John C. Schenck, for the education and maintenance of the children. At the time Margaret Schenck was of age, Mr. John C. Schenck said there was interest due on the interest, 400 dolls. compound interest due to Margaret, and that 400 dolls. compound interest would be due to William, when he should be of age. He told me, in the fall of 1844, that I was charged with certain mo- 20 neys, which had been paid to me, and said either then, or at some other time, that I would have to settle with my children. I think, too, he told me, at another time previous, that his money charges were against me. So that, so far as I know, he must have set down the expenses of Margaret and William to their father's estate, and charged me with them. I do not now recollect anything to the contrary, and, in confirmation of this testimony, I offer the statements by Mr. John C. Schenck, marked No. 1, No. 2, No. 3.

To the sixth interrogatory she says—I can only say, that I do not now recollect anything.

30

ELIZA A. SCHENCK.

State of Maryland, Frederick county, to wit.—Be it remembered, that on this sixteenth day of September, 1852, personally appeared Eliza A. Schenck before us, and made oath that the answers annexed to the foregoing interrogatories are just and true, according to the best of her knowledge and belief.

Sworn to before

WILLIAM G. HOWARD,  
DAVID THOMAS.

## EXHIBITS FOR DEFENDANT.

*Exhibit No. 1.*—Extracts from sheriff Brown's docket, pages 26, 27.

## IN CHANCERY OF NEW JERSEY.

Between

|                                                |                                                                                 |
|------------------------------------------------|---------------------------------------------------------------------------------|
| Caleb Johnson and Enoch Johnson, complainants, | } <i>Fi. fa. for</i><br><i>state of</i><br><i>mortgaged</i><br><i>premises.</i> |
| <i>and</i>                                     |                                                                                 |
| John C. Schenck, et al., defendants,           |                                                                                 |
| Ret'ble to April term, 1837.                   |                                                                                 |

R. S. FIELD, *Sol'r.*

|                                                 |              |
|-------------------------------------------------|--------------|
| Levy—Decree for Asa S. Colton,                  | \$1724 38 10 |
| Interest thereon from 7 Feb., 1837, until paid, |              |
| William Schenck,                                | 1724 38      |
| Interest as aforesaid,                          |              |
| Caleb Johnson,                                  | 4904 00      |
| Interest as aforesaid,                          |              |
| Enoch Johnson,                                  | 2697 20      |
| Interest as aforesaid,                          |              |
| Costs of complainants, taxed at                 | 73 81        |
| Caleb Johnson,                                  | 2441 00      |
| Interest as aforesaid,                          | 20           |
| Isaac Story, ex'r,                              | 2642 06      |
| Interest as aforesaid,]                         |              |
| Costs of said Story taxed at                    | 21 75        |
|                                                 | <hr/>        |

Besides sheriff's execution fees.

Rec'd this writ Feb. 3d, 1837.

Rec'd March 30th, 1837, of Abraham W. Brown, esq., ten thousand two hundred and three dollars and ninety-nine cents, in full of the principal and interest due the complainant in the above case.

\$10,203.99.

30

RICHARD S. FIELD,  
*Solicitor for complainants.*

1837, Sept. 22d.—Stay further proceedings on the above decree, as respects Asa S. Colton and Wm. Schenck, till further orders.

JAMES S. GREEN.

Extracts from pages 24, 25.

## IN CHANCERY OF NEW JERSEY.

Between

Caleb Johnson, complainant,

and

John C. Schenck and wife, Asa S. Colton and  
wife, and William Schenck, defendants,} *Fi. fa. for*  
} *state of mort-*  
} *gaged premi-*  
} *ses.*

Ret'ble to April term, 1837.

R. S. FIELD, *Sol'r.*

|                                            |           |
|--------------------------------------------|-----------|
| Levy—Decree for Asa S. Colton, levy,       | \$3187 82 |
| 10 Interest from 7 Feb. 1837, till paid,   |           |
| William Schenck,                           | 3187 82   |
| Interest as aforesaid,                     |           |
| Complainants,                              | 3678 00   |
| And the further sum of,                    | 2697 20   |
| And the further sum of,                    | 2166 35   |
| With interest as aforesaid,                |           |
| Costs of complainants, taxed at the sum of | 97 11     |
| Besides sheriff's execution fees,          | 153 12    |
| Rec'd this writ Feb. 3d, 1837.             |           |

20 Rec'vd July 21st, 1837, of A. W. Brown, esq., sheriff of Middlesex, eight thousand eight hundred and forty .47, in full of the principal and interest due complainant in the above case, and also the costs.

\$8840.47.

R. S. FIELD,  
*Solicitor for complainant.*

1837, August 2d. Rec'vd from Sheriff Brown three thousand four hundred and nineteen dollars and seventy-five cents, in part of claim of Asa C. Colton and Wm. Schenck.

30 \$3419.75.

JAS. S. GREEN.

1837, August 2d. Recv'd from Sheriff Brown six hundred and twenty-nine dollars and eight cents, in full of surplus money.  
\$629.08.

JOHN C. SCHENCK.

*Exhibit No. 2.*—Entry in Jas. Green's docket of Slayback suit, being receipt for mortgage, &c.

Caleb Johnson, complainant,

and

John C. Schenck and Mary Ann his wife, William C. Schenck, defendants.

} On bill.

Bill filed March 7th, 1836.

Append. and general demurrer, filed and set down for hearing at July term, 1836,

Amount due to William C. Schenck, Feb. 7, 1837, \$3187 82

Int. to Aug. 7, 1837, 95 58

---

\$3283 40 10

Rec'd, from James S. Green the bond and mortgage of John C. Schenck, dated Augt. 1837, for \$3283.40, payable Augt. 7, 1838, in full of the above decree.

A true copy from my docket.

JAS. S. GREEN.

Nov. 1, 1850.

*Exhibit No. 3.*—Copy of acc't of Wm. C. Schenck, in acc't with J. C. Schenck.

| CR. <i>William C. Schenck, in account with John C. Schenck.</i> |             | DR.                            |            |
|-----------------------------------------------------------------|-------------|--------------------------------|------------|
| 1840.                                                           |             | 1839.                          |            |
| Feb. 11, By a note returned,                                    | \$96 24     | Ap'l 13, To draft sent him,    | \$50 00 20 |
| 1844.                                                           |             | May 15, To cash,               | 15 00      |
| Jan. 11, By rent rec'd of John                                  |             | July 17, To my check,          | 15 00      |
| Bergen,                                                         | \$56.37½    | Sept. 6, To my check,          | 16 24      |
| " " Less by tax                                                 |             | 1840.                          |            |
| deducted,                                                       | 3.12½       | Jan. 20, To checks,            | 50 00      |
|                                                                 | <hr/> 53 75 | Feb. 11, To cash,              | 10 00      |
| " 15, By rent rec'd of                                          |             | June 5, To note,               | 50 00      |
| J. Van Mar-                                                     |             | Sept. 5, To my note,           | 75 00      |
| ter for one                                                     |             | Oct. 30, To my note and check, | 75 00      |
| year, 1842-                                                     |             | 1841.                          | 30         |
| 1843,                                                           | \$32.50     | Feb. 9, To my note payable at  |            |
| " " Less by tax,                                                | 1.25        | Princeton Bank, da-            |            |
|                                                                 | <hr/> 31 25 | ted 15th,                      | 75 00      |
| Feb. 23, By rent received of                                    |             | Feb. 23, To my note payable    |            |
| Wm. Leggett, two                                                |             | at Princeton Bank,             |            |
| years,                                                          | \$65.00     | dated August 24th,             | 75 00      |
| " " Less by tax of                                              |             | Sep. 15, To my note to renew,  | 75 00      |
| 2 years,                                                        | 3.16        | Nov. 20, To my note for \$75,  |            |
|                                                                 | <hr/> 62 84 | dated 20th Nov. at             |            |
| Nov. 11, By note returned by                                    |             | 61 days,                       | 75 00 40   |
| his mother,                                                     | 75 00       | 1842.                          |            |
|                                                                 | <hr/> 75 00 | Jan. 13, To my note at sixty   |            |
|                                                                 | \$319 08    | days, &c.,                     | 75 78      |

|    |                         |          |                                                                 |         |
|----|-------------------------|----------|-----------------------------------------------------------------|---------|
|    | Amount brought forward, | \$319 08 | Mar. 11 to 15, To sundries for his house,                       | \$14 69 |
|    |                         |          | Mar. 22, 24, 26, To sundries for his house,                     | 5 50    |
|    |                         |          | Ap'l 30, To bill of nails paid Paxson,                          | 1 47    |
|    |                         |          | Oct. 22, To Steadman's work, &c.,                               | 73 25   |
| 10 |                         |          | Dec. 30, To H. Laird's and H. I. Maple's account, repairs, &c., | 46 05   |
|    |                         |          | 1843.                                                           |         |
|    |                         |          | Oct. 27, To Taylor's bill for brick, &c.,                       | 25 42   |
|    |                         |          | 1844.                                                           |         |
|    |                         |          | Jan. 11, To my note for \$30, dated,                            | 30 00   |
|    |                         |          | " " To work for locks, &c., paid Wm. Hunt,                      | 82½     |
| 20 |                         |          | " 15, 25, To sundries,                                          | 5 62½   |
|    |                         |          | Feb. 1, 2, To hay account,                                      | 13 00   |
|    |                         |          | " 16, 24, To board and cash,                                    | 10 00   |
|    |                         |          | Mar. 5, 9, " " " "                                              | 7 00    |
|    |                         |          | " 13, 16, To boots, &c.,                                        | 8 50    |
|    |                         |          | Ap'l 12, To board, &c.,                                         | 8 14    |
|    |                         |          | July 10, " " "                                                  | 4 00    |
|    |                         |          | " 17, " " "                                                     | 3 00    |
|    |                         |          | Aug. 20, 23, To note paid, board, &c.,                          | 33 71   |
| 30 |                         |          | Sept. 2, To note paid, board, &c.,                              | 3 00    |
|    |                         |          | Oct. 4, To 5 weeks' board,                                      | 15 00   |
|    |                         |          | " 19, " " " "                                                   | 9 00    |
|    |                         |          | Nov. 1, To board,                                               | 6 00    |
|    |                         |          | " 11, To sundries and board,                                    | 8 33    |
|    |                         |          | " 23, To board,                                                 | 6 00    |
|    |                         |          | 1845.                                                           |         |
|    |                         |          | Mar. 31, To land account,                                       | 1 20    |
| 40 |                         |          | May 14, 23, To board, &c.,                                      | 78 50   |
|    |                         |          | " 20, To sundries,                                              | 25      |
|    |                         |          | " 30, and June 2, Sundries,                                     | 32      |
|    |                         |          | June 2, 6, Sundries,                                            | 1 11    |
|    |                         |          | " 11, 14, "                                                     | 1 19    |
|    |                         |          | " 16, 21, "                                                     | 1 22    |
|    |                         |          | " 24, 28, "                                                     | 1 30½   |
|    |                         |          | " 30 to July 5, Sundries,                                       | 1 13½   |
|    |                         |          | July 7, 15, "                                                   | 1 05½   |
|    |                         |          | " 15, 21, "                                                     | 3 11½   |
|    |                         |          | " 23 to Aug. 1, "                                               | 96½     |
| 50 |                         |          | Aug. 2, "                                                       | 15½     |
|    |                         |          | " 9, 16, "                                                      | 1 01½   |

|                         |          |                         |                  |    |
|-------------------------|----------|-------------------------|------------------|----|
| Amount brought forward, | \$319 08 | Aug. 18, 24, Sundries,  | \$0 99           |    |
|                         |          | " 25, 29, "             | 1 00             |    |
|                         |          | Sept. 2, 5, "           | 1 10½            |    |
|                         |          | " 6, 12, "              | 1 58             |    |
|                         |          | " 16, 20, "             | 91               |    |
|                         |          | " 26, 27, "             | 58               |    |
|                         |          | " 30 to Oct. 4, "       | 94               |    |
|                         |          | Oct. 6, 10, "           | 95               |    |
|                         |          | " 13, 17, "             | 1 20             |    |
|                         |          | " 20, 22, "             | 57               | 10 |
|                         |          | " 23, 25, "             | 57               |    |
|                         |          | Nov. 1, "               | 97½              |    |
|                         |          | " 3, 6, "               | 3 75             |    |
|                         |          | " 10, 11, "             | 31½              |    |
|                         |          | " 13, 15, "             | 82               |    |
|                         |          | " 16, 18, "             | 31½              |    |
|                         |          | " 22, "                 | 44               |    |
|                         |          | " 24, 27, "             | 76               |    |
|                         |          | " 28, 29, "             | 63               |    |
|                         |          | Dec. 6, "               | 10 69            | 20 |
|                         |          | " 11, 13, To wood, &c., | 3 69             |    |
|                         |          | " 20, To cash, &c.,     | 1 19             |    |
|                         |          | " 27, "                 | 1 00             |    |
|                         |          | 1846.                   |                  |    |
|                         |          | Jan. 1, "               | 1 00             |    |
|                         |          | " 10, "                 | 3 50             |    |
|                         |          | " 23, "                 | 1 00             |    |
|                         |          | " 28, 30, "             | 3 62½            |    |
|                         |          | Feb. 6, 13, "           | 4 78             |    |
|                         |          | " 19, "                 | 2 12½            | 30 |
|                         |          | " 26, 27, "             | 3 62½            |    |
|                         |          | Mar. 4, "               | 1 00             |    |
|                         |          | " 11, "                 | 1 12½            |    |
|                         |          | " 16, 25, To wood, &c., | 4 62½            |    |
|                         |          |                         | <u>\$1224 00</u> |    |
|                         |          | Subtract,               | 319 08           |    |
|                         |          |                         | <u>\$903 92</u>  |    |
|                         |          | In pencil mark,         | 259 79           |    |
|                         |          |                         | <u>\$644 13</u>  |    |
|                         |          |                         |                  | 40 |
|                         |          |                         | 95.79            |    |
|                         |          |                         | 75               |    |
|                         |          |                         | 75               |    |
|                         |          |                         | 30               |    |
|                         |          | 29.24                   | <u>        </u>  |    |
|                         |          | 9.03                    | 255.79           |    |
|                         |          |                         | <u>319.08</u>    |    |
|                         |          | 20.11                   | <u>        </u>  |    |
|                         |          |                         | 574.87           |    |
|                         |          |                         | <u>1224</u>      |    |
|                         |          |                         | 699.13           | 50 |

CR.

*Account previous to the year 1839.*

DR.

|    |           |                                                                                            |             |
|----|-----------|--------------------------------------------------------------------------------------------|-------------|
|    | 1836.     |                                                                                            |             |
|    | Dec. 29,  | To cash, and began to board Dec. 23,                                                       | \$5 00      |
|    | 1837.     |                                                                                            |             |
| 10 | Feb. 3,   | To cash and expenses to Newark, board from 23d Dec. to Feb. 3d, 5 weeks 6 days, at \$1.75, | 10 25       |
|    |           | Washing, fire-wood, and other incidental expenses, per week, 50 c. per week,               | 2 93        |
|    | May 11,   | To cash,                                                                                   | 10 00       |
|    |           | Board from March 10th to May 11th, 1837, 9 weeks washing and other incidental expenses,    | 20 25       |
| 20 | Aug. 23,  | To order on Blackwood for hat,                                                             | 4 00        |
|    | Sept. 5,  | To cash,                                                                                   | 10 00       |
|    | " 23,     | " "                                                                                        | 25 00       |
|    |           | Bill of S. White, to be paid by me,                                                        | 30 75       |
|    |           | To board from June 26th, to Sept. 28th, 1837, (except one week) 12 weeks, at \$1.75,       | \$21.00     |
| 30 |           | Washing and incidental expenses, per week, 50 c.,                                          | 6.00        |
|    |           |                                                                                            | <hr/> 27 00 |
|    |           | Fees paid J. S. Green, esq., for him, August, 1837, per receipt,                           | 25 00       |
| 40 | 1838.     |                                                                                            |             |
|    | Sept. 27, | To cash,                                                                                   | 10 00       |
|    | Dec. 18,  | To draft drawn by Princeton Bank upon Bank of N. York,                                     | 75 00       |
|    |           | Per centage charged by bank,                                                               | 37½         |
|    | 1839.     |                                                                                            |             |
|    | Feb. 1,   | To draft, &c.,                                                                             | 75 00       |
|    |           | Per centage, &c.,                                                                          | 50          |

|                                                                            |              |    |
|----------------------------------------------------------------------------|--------------|----|
| To my note, dated Oct.<br>3, 1837, and paya-<br>ble at Princeton<br>Bank,  | \$96 00      |    |
| To my note, payable<br>at Princeton Bank,<br>dated March 17th,<br>1830,    | 75 00        |    |
| To my note, dated July<br>3d, 1838, and paya-<br>ble at Princeton<br>Bank, | 78 00        | 10 |
|                                                                            | <u>78 00</u> |    |
|                                                                            | \$587 61½    |    |

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*Exhibit No. 4.*—Note by J. C. Schenck to order of Wm. C. Schenck, dated April 18, 1843, for \$30, at Princeton Bank.

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*Exhibit No. 5.*—Note by same to same, Sept. 18, 60 days, for \$75.79, at Princeton Bank.

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*Exhibit No. 6.*—Note by same to same, Aug. 24, 1843, at 6 mos., at Princeton Bank, for \$75.

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*Exhibit No. 7.*—Note by same to same, Feb. 15, 1841, at 7 mos., 20 at Princeton Bank, for \$75.

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*Exhibit No. 8.*—John C. Schenck's ledger, Colton's acc't, page 35.

| DR.      | Colton.                                    | [P. 35.   |
|----------|--------------------------------------------|-----------|
| 1837.    |                                            |           |
| July 13, | To sundries,                               | \$118 63½ |
| Dec. 23, | To note and check,                         | 92 72     |
| 1838.    |                                            |           |
| Nov. 2,  | To my note,                                | 75 00     |
| “ “      | To my note, 4 mos., dated Feb. 4th,        | 75 00 30  |
| “ “      | To my note, 4 mos., dated May 17, 1839,    | 75 00     |
| July 17, | To my check for \$15, and note for \$60,   | 75 00     |
| Oct. 5,  | To my note, at 4 mos.,                     | 75 00     |
| 1840.    |                                            |           |
| Jan. 29, | To my note, at 4 mos., dated Feb. 1, 1840, | 75 00     |
| May 9,   | To my note at 5 mos., dated May 28, 1840,  | 75 00     |

|    |           |                                                                                              |                       |
|----|-----------|----------------------------------------------------------------------------------------------|-----------------------|
|    | Sept. 5,  | To my note, dated Aug. 12, 1840, at 4 mos.,                                                  | \$75 00               |
|    | Oct. 30,  | To my note, dated Oct. 21, at 4 mos.,                                                        | 75 00                 |
|    | 1841.     |                                                                                              |                       |
|    | Feb. 15,  | To my note, dated 15th July, payable at Princeton Bank, 6 mos.,                              | 75 00                 |
|    | " 24,     | To my note \$75, and discount to renew note, dated 21st Oct., 1840, old note to be returned, |                       |
|    | April 16, | To my note for \$75, payable at Princeton Bank, at 6 mos.,                                   | 75 00                 |
| 10 | " "       | To my note at 30 days, to renew old note returned,                                           |                       |
|    | Aug. 23,  | To my note, payable at Princeton Bank, 5 mos.,                                               | 75 00                 |
|    | Nov. 20,  | To my note, payable at Princeton Bank, 6 mos., date 17 Nov. '41,                             | 75 00                 |
|    | 1842.     |                                                                                              |                       |
|    | Jan. 15,  | To my note for \$76.15,                                                                      | 76 15                 |
|    | Feb. 21,  | To my note, at 6 mos., dated Feb. 28th, 1842,                                                | 75 00                 |
| 20 | April 23, | To 2 notes, payable at Princeton Bank, and dated payable Sept. 23—26, and Oct. 23—28, 1842,  | 155 37                |
|    | 1843.     |                                                                                              |                       |
|    | May 4,    | To note,                                                                                     | 100 00                |
|    |           |                                                                                              | Pencil mark, 1592 87½ |

Wm. C. Schenck's acc't, p. 29, 72, 139.

| Dr. | <i>William C. Schenck.</i> | [P. 29.                                                                           |        |
|-----|----------------------------|-----------------------------------------------------------------------------------|--------|
|     | 1836.                      |                                                                                   |        |
|     | Dec. 29,                   | To cash, and began to board Dec. 23d,                                             | \$5 00 |
| 30  | 1837.                      |                                                                                   |        |
|     | Feb. 3,                    | To cash and expenses to Newark,                                                   | 10 56½ |
|     | " "                        | Board from 23d Dec. to Feb. 3d, 5 weeks 6 days, at \$1.75,                        | 10 25  |
|     | " "                        | Washing, firewood, and other incidental expenses, 50c. per week, ret. March 10th, | 2 93   |
|     | May 11th,                  | To cash,                                                                          | 10 00  |
|     | " "                        | Board from Mar. 10th, to May 11th, 1837, 9 weeks,                                 |        |
|     | " "                        | Washing and other incidental expenses, ret. June 26,                              | 4 50   |
| 40  |                            |                                                                                   |        |

|           |                                                                                    |         |              |
|-----------|------------------------------------------------------------------------------------|---------|--------------|
| Aug. 23,  | To order on Blackwood for hat,                                                     | \$4 00  |              |
| Sept. 5.  | To cash,                                                                           | 10 00   |              |
| " 28,     | To cash,                                                                           | \$25.00 |              |
| " "       | Bill of T. White, to be paid by me,                                                | 30.75   |              |
|           |                                                                                    | <hr/>   | 55 75        |
| " "       | To board from June 26th, to Sept. 28th, 1837, (except 1 week) 12 weeks, at \$1.75, | \$21.30 |              |
| " "       | Washing and other incidental expenses, per week, 50 cents,                         | 6.00    | 10           |
|           |                                                                                    | <hr/>   | 27 00        |
| " "       | Fees paid J. S. Green, esq., for him, Aug. 1837, per receipt,                      | 25 00   |              |
| 1838.     |                                                                                    |         |              |
| Sept. 27. | To cash paid him,                                                                  | 10 00   |              |
| Dec. 18,  | To draft drawn by Princeton Bank on Bank of New York,                              | \$75.00 |              |
|           | Per centage charged by bank,                                                       | .37½    |              |
|           |                                                                                    | <hr/>   | 75 37½       |
| 1830.     |                                                                                    |         | 20           |
| Feb. 1,   | To draft, &c.,                                                                     | \$75.00 |              |
| " "       | Per centage, &c.,                                                                  | .50     |              |
|           |                                                                                    | <hr/>   | 75 50        |
| " "       | To my note, dated Oct. 3, 1837, and payable at Princeton Bank,                     | 96 00   |              |
| " "       | To my note, payable at P. Bank, dated March 17th, 1838,                            | 75 00   |              |
| " "       | To my note, dated July 3, 1838, payable at P. Bank, paid by me at,                 | 75 00   |              |
|           |                                                                                    | <hr/>   | \$587 61¾ 30 |

March 9, 1839, (in pencil). [For credit side of foregoing page, reference is made to the following, page 72.]

|           |                            |          |
|-----------|----------------------------|----------|
| Dr.       | <i>William C. Schenck.</i> | [P. 72.] |
| 1839.     |                            |          |
| April 13, | To draft sent him,         | \$50 00  |
| May 15,   | To cash,                   | 15 00    |
| July 17,  | To my check,               | 15 00    |
| Sept. 6,  | To my check,               | 16 24    |

|    |                |                                                                  |         |
|----|----------------|------------------------------------------------------------------|---------|
|    | 1840.          |                                                                  |         |
|    | Jan. 20,       | To checks,                                                       | \$50 00 |
|    | Feb. 11,       | To cash,                                                         | 10 00   |
|    | June 5,        | To note,                                                         | 50 00   |
|    | Sept. 5,       | To my note,                                                      | 75 00   |
|    | Oct. 30,       | To my note and check,                                            | 75 00   |
|    | 1841.          |                                                                  |         |
|    | Feb. 9,        | To my note, payable at Princeton Bank, at<br>7 mos., dated 15th, | 75 00   |
|    | " 23,          | To my note, payable at P. Bank, dated Aug.<br>24th,              | 75 00   |
| 10 | 1841.          |                                                                  |         |
|    | Sept. 15,      | To my note, &c., renewal,                                        | 75 00   |
|    | Nov. 20,       | To my note for \$75, dated 28th Nov., at 60<br>days,             | 75 00   |
|    | 1842.          |                                                                  |         |
|    | Jan. 13,       | To my note at 60 days, &c.,                                      | 75 78   |
|    | Mar. 11 to 15, | To sundries for his house,                                       | 14 69   |
|    | " 22, 24, 26,  | To " " "                                                         | 5 50    |
|    | April 30,      | To bill of nails paid Paxson,                                    | 1 47    |
|    | Oct. 22,       | To Steadman's work, &c.,                                         | 73 25   |
| 20 | Dec. 30,       | To H. Laird's and D. S. Maple's acc't, re-<br>pairs, &c.,        | 46 05   |
|    | 1843.          |                                                                  |         |
|    | Oct. 27,       | To Taylor's bill for brick, &c.,                                 | 25 42   |
|    | 1844.          |                                                                  |         |
|    | Jan. 11,       | To my note for \$30, dated                                       | 30 00   |
|    | " "            | To work for locks, &c., paid Wm. Hunt,                           | 82½     |
|    | " 15 to 25,    | To sundries,                                                     | 5 62½   |
|    | Feb. 1, 2,     | To hay acc't,                                                    | 13 00   |
|    | " 16 to 24,    | To board and cash,                                               | 10 00   |
|    | Mar. 5, 9,     | To board,                                                        | 7 00    |
| 30 | " 13, 16,      | To boots acc't,                                                  | 8 50    |
|    | April 12,      | To board acc't,                                                  | 8 14    |
|    | July 10,       | To board acc't,                                                  | 4 00    |
|    | " 17,          | To do.,                                                          | 3 00    |
|    | Aug. 20, 23,   | To notes paid board,                                             | 33 71   |
|    | Sept. 2,       | " "                                                              | 3 00    |
|    | Oct. 4,        | To 5 weeks' board, &c.,                                          | 15 00   |
|    | " 19,          | " " "                                                            | 9 00    |

---

 \$1049 20

|                    |                                         | Cr.       |
|--------------------|-----------------------------------------|-----------|
| P. 72.]            | <i>Credit side of Wm. C. S's acc't,</i> |           |
| 1840.              |                                         |           |
| Feb. 11,           | By a note returned,                     | \$96 24   |
| 1844.              |                                         |           |
| Jan. 11,           | By rent rec'd of John Bergen,           | \$56.87½  |
| " "                | Less by tax deducted,                   | 3.12½     |
|                    |                                         | 53 75     |
| " 15,              | By rent rec'd of J. Vanmater, 1         |           |
|                    | year, 1842-3,                           | \$32.50   |
| " "                | Less by tax,                            | 1.25      |
|                    |                                         | 10        |
|                    |                                         | 31 25     |
| Feb. 28,           | By rent rec'd of Wm. Leggett, 2         |           |
|                    | years,                                  | \$65.00   |
| " "                | Less by tax of 2 years,                 | 3.16      |
|                    |                                         | 62 84     |
|                    |                                         | \$244 08  |
| <br>               |                                         |           |
| DR.                | <i>Wm. C. Schenck.</i>                  | [P. 139.  |
| 1844.              | Brought from page 72,                   | \$1049 20 |
| Nov. 1,            | To board,                               | 6 00 20   |
| " 11,              | To sundries and board,                  | 8 38      |
| " 28,              | To board,                               | 6 00      |
| 1845.              |                                         |           |
| March 31,          | To sand, &c.,                           | 1 20      |
| May 19, 23,        | To board, &c.,                          | 78 50     |
| " 26,              | To sundries,                            | 25        |
| May 30 to June 2d, | To sundries,                            | 82        |
| June 3d to 6th,    | To sundries,                            | 1 11      |
| " 11 to 14,        | do.                                     | 1 19      |
| " 16, 21,          | do.                                     | 1 22 30   |
| " 24, 28,          | do.                                     | 1 30½     |
| " 30 to 5th July,  | To sundries,                            | 1 13½     |
| July 7, 15,        | " "                                     | 1 05½     |
| " 15, 21,          | " "                                     | 3 11½     |
| " 28, 1st Aug.     | " "                                     | 96½       |
| Aug. 2,            | " "                                     | 15½       |
| " 9, 16,           | " "                                     | 1 01½     |
| " 18, 24,          | " "                                     | 99        |
| " 25, 29,          | " "                                     | 1 01      |
| Sept. 2, 5th,      | " "                                     | 1 10½ 40  |
| " 6 to 12,         | " "                                     | 1 58      |

|    |               |              |            |
|----|---------------|--------------|------------|
|    | Sept. 16, 20, | To sundries, | \$0 91     |
|    | " 26, 27,     | " "          | 58         |
|    | Oct. 6, 10,   | " "          | 95         |
|    | " 13, 17,     | " "          | 1 20       |
|    | " 20, 23,     | " "          | 57         |
|    | " 23, 25,     | " "          | 57         |
|    | Nov. 1,       | " "          | 97½        |
|    | " 3, 6,       | " "          | 3 75       |
| 10 | " 10, 11,     | " "          | 31½        |
|    | " 13, 15,     | " "          | 82         |
|    | " 16, 18,     | " "          | 31½        |
|    | " 22,         | " "          | 44         |
|    |               |              | <hr/>      |
|    |               |              | \$1179 63½ |


|          |                                  |          |
|----------|----------------------------------|----------|
| P. 139.] | <i>Wm. C. Schenck,</i>           | CR.      |
| 1844.    | Brought from page 72,            | \$244 08 |
| Nov. 11, | By notes returned by his mother, | 75 00    |
|          |                                  | <hr/>    |
|          |                                  | \$319 08 |

20 1846.

|    |                 |                        |            |
|----|-----------------|------------------------|------------|
|    |                 | Brought from Dr. side, | \$1179 63½ |
|    | Nov. 24, 27,    | To " "                 | 76         |
|    | " 28, 29,       | " " "                  | 63         |
|    | Dec. 6,         | " sundries,            | 10 69      |
|    | " 11, 13,       | " wood, &c.,           | 3 69       |
|    | " 20,           | " cash, &c.,           | 1 19       |
|    | " 27,           | " " "                  | 1 00       |
|    | 1846.           |                        |            |
|    | Jan. 1st,       | " " "                  | 1 00       |
| 30 | " 10,           | " " "                  | 3 50       |
|    | " 23,           | " " "                  | 1 00       |
|    | " 28, 30,       | " " "                  | 3 62½      |
|    | Feb. 6th, 13th, | To " "                 | 4 78       |
|    | " 19,           | " " "                  | 2 12½      |
|    | " 26, 27,       | " " "                  | 3 62½      |
|    |                 |                        | <hr/>      |
|    |                 |                        | \$1217 25  |
|    | Mar. 4,         | " " "                  | 1 00       |
|    | " 11,           | " " "                  | 1 12½      |

|                                  |           |  |
|----------------------------------|-----------|--|
| Mar. 18, 25, To wood, cash, &c., | \$4 62½   |  |
|                                  | <hr/>     |  |
|                                  | \$1224 00 |  |
| In pencil mark,                  | 319 08    |  |
|                                  | <hr/>     |  |
| Bal.                             | \$904 92  |  |
|                                  | <hr/>     |  |

*Exhibit No. 9.*—Acc't stated in 2 papers.

|                                                                                                                                                 |                     |        |
|-------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--------|
| John C. Schenck, bond and mortgage, dated August 7, 1837, for  | \$3283 40           |        |
| Interest on do. from Aug. 7th, 1837, to March 7, 1839, 1 year and 7 months,                                                                     | 311 83              | 10     |
|                                                                                                                                                 | <hr/>               |        |
|                                                                                                                                                 | \$3595 23           |        |
| Paid purchase money of house and lot, as per endorsement on bond, Feb. 25, 1839,                                                                | 1800 00             |        |
|                                                                                                                                                 | <hr/>               |        |
|                                                                                                                                                 | \$1795 23           |        |
| Amount of account of money paid to W. C. Schenck, &c., as rendered Mar. 9, 1839,                                                                | 607 43              | 20     |
|                                                                                                                                                 | <hr/>               |        |
|                                                                                                                                                 | \$1187 79½          |        |
| Add interest on bal. from March 7th, to April 1, 1839, 24 days,                                                                                 | 4 45                |        |
| Add amount of passage to and from New York to arrange this business,                                                                            | 4 00                |        |
|                                                                                                                                                 | <hr/>               |        |
|                                                                                                                                                 | \$1196 24½          |        |
| Deduct amount of new bond and mortgage with interest from April 1, 1839,                                                                        | 1100 00             | 30     |
|                                                                                                                                                 | <hr/>               |        |
|                                                                                                                                                 | \$96 24½            |        |
| Balance paid by a note given for the balance, and due April 15, 1839,                                                                           | 96 24½              |        |
|                                                                                                                                                 | <hr/>               |        |
| Duplicate copy.                                                                                                                                 |                     |        |
| Mr. William C. Schenck,                                                                                                                         | To John C. Schenck, | Dr.    |
| 1836.                                                                                                                                           |                     |        |
| Dec. 29, To cash,                                                                                                                               |                     | \$5 00 |

|            |                                                                                          |                              |                        |
|------------|------------------------------------------------------------------------------------------|------------------------------|------------------------|
| 1837.      |                                                                                          |                              |                        |
| Feb'y 3,   | To cash and expenses to Newark,                                                          |                              | \$10 56 $\frac{1}{4}$  |
|            | To board from 23d Dec. to Feb. 3, 5 weeks<br>and 6 days, at \$1.75 per week,             | \$10.25                      |                        |
|            | Washing, firewood, and incidental ex-<br>penses, 50 c. per week,                         | 2.93                         |                        |
|            |                                                                                          | —                            | 13 18                  |
| May 11,    | To cash,                                                                                 |                              | 10 00                  |
|            | To board from March 10th to May 11th, 9<br>weeks, at \$1.75,                             | \$15.75                      |                        |
| 10         | Washing, &c., 50 c. per week,                                                            | 4.50                         |                        |
|            |                                                                                          | —                            | 20 25                  |
| August 23, | To order on Blackwood for hat,                                                           |                              | 4 00                   |
| Sept. 5,   | To cash,                                                                                 |                              | 10 00                  |
| " 28,      | " "                                                                                      | \$25.00                      |                        |
|            | Bill of T. White, assured by me,                                                         | 30.75                        |                        |
|            |                                                                                          | —                            | 55 75                  |
|            | To board from June 26 to Sept. 28th, (1<br>week excepted) twelve weeks, at<br>\$1.75,    | \$21.00                      |                        |
| 20         | Washing do. 50 c. per week,                                                              | 6.00                         |                        |
|            |                                                                                          | —                            | 27 00                  |
| Aug. 18,   | To cash pd. J. S. Green, esq., as per rec.,                                              |                              | 25 00                  |
| Oct. 3,    | To my note payable at Princeton Bank,                                                    |                              | 96 00                  |
| 1838.      |                                                                                          |                              |                        |
| March 17,  | To my note payable at do.,                                                               |                              | 75 00                  |
| July 3,    | To my note payable at do.,                                                               |                              | 75 00                  |
| Sept. 27,  | To cash,                                                                                 |                              | 10 00                  |
| Dec. 18,   | To a draft by Princeton Bank on N. Y. \$75,<br>premium .37 $\frac{1}{2}$ , ch'd by bank, |                              | 75 37 $\frac{1}{2}$    |
| 30 Feb. 1, | To a draft by P. B.,<br>Premium,                                                         | \$75.00<br>.37 $\frac{1}{2}$ |                        |
|            |                                                                                          | —                            | 75 37 $\frac{1}{2}$    |
|            | Errors excepted Mar. 7, 1839,                                                            |                              | \$587 48 $\frac{1}{4}$ |
| May 9,     | To cash paid Job G. Olden,                                                               |                              | 5 45                   |
|            | To amount of John Tounly account, as-<br>sured to be paid by me,                         |                              | 14 $\frac{1}{2}$ 50    |
| 40         |                                                                                          |                              | \$607 43 $\frac{1}{2}$ |

Received the above in full by endorsement on my bond.

March 9, 1839.

JOHN C. SCHENCK.

*Exhibit No. 10.*—Note by Jno. C. Schenck to Asa S. Colton, dated April 23, 1842, at Princeton Bank, for \$77.25, at six mos.

*Exhibit No. 11.*—Note by same to same, May 6, 1843, at Princeton Bank, for \$100, at four mos.

*Exhibit No. 12.*—Note by same to same, Feb. 28, 1842, at same place, for \$75, at six mos.

*Exhibit No. 13.*—Note by same to same, April 23, 1842, at same place, for \$78.12, at four months.

[The original papers in the two foreclosure suits in Chancery, referred to in the pleadings, are exhibits in the cause by agreement. 10 They do not need to be here printed.]

Exhibits before James Wilson, master in Chancery, *A 1*.

To Abm. W. Brown, esq., sheriff of the county of Middlesex.

Sir,—At the sale of the property of John C. Schenck, held by you this day, you are authorized to take the bids of Mr. William Packer to the full amount of our claims against said John C. Schenck.

Yours, &c.,

MARGARET COLTON,  
WILLIAM C. SCHENCK. 20

Princeton, July 10th, 1837.

The sheriff is hereby authorized to postpone the payment of the ten per cent. upon the purchase this day made by Wm. Packer under the above order and upon his conditions of sale.

July 10, 1837.

SAML. R. HAMILTON, *Solicitor, &c.*

*Exhibit A 2.*—(Copy of sheriff Brown's statement).

IN CHANCERY OF NEW JERSEY.

Between

Caleb Johnson, complainant,

30

and

John C. Schenck and wife, Asa S. Colton and wife, and William C. Schenck, defendants.

Returnable to April term, 1837.

R. S. FIELD, *Solicitor.*

|                                                                |           |
|----------------------------------------------------------------|-----------|
| Levy for Asa S. Colton.                                        |           |
| Amount of sales, sold July 10th, 1837,                         | \$13050   |
| Paid R. S. Field, for Caleb Johnson,                           | \$8840 47 |
| Paid J. S. Green, for Asa S. Colton and wife, William Schenck, | 3419 75   |
| Paid John C. Schenck surplus,                                  | 629 08    |
| Sheriff fees,                                                  | 160 70    |

(In pencil mark.)

|  |         |       |
|--|---------|-------|
|  | 8340.47 |       |
|  | 160.70  |       |
|  | 629.00  |       |
|  | <hr/>   |       |
|  | 9630.25 |       |
|  |         | 10200 |
|  |         | 9630  |
|  |         | <hr/> |
|  |         | 570   |

*Exhibit A 3.*—Mr. Field's letter to sheriff Brown.

Princeton, 23d February, 1837.

- 20 Dear sir,—Enclosed are four executions out of Chancery against John C. Schenck. Mr. Schenck some time ago made an assignment of all his estate for the benefit of his creditors, and Mr. Story, his assignee, has lately sold some of the mortgaged premises contained in the executions. Of course they were sold subject to the mortgages, and some of the purchasers are I know endeavoring to raise money to pay off the mortgages. They have not, however, succeeded as yet in doing so, and therefore I send you the executions. Should they be prepared before the day of sale to pay off the mortgages, I will inform you of it, in order that proceedings  
30 may be stayed.

I will thank you to advertise the property without delay, to be sold at Princeton. Would it be well to insert the advertisement in the Princeton paper?

In the case of William Gulick, there is a credit of something \$3000 to be given on the mortgage in favor of Fish. Fish had some stock as collateral security, and has sold it, I think, for that sum. I will furnish with the precise amount before the sale.

Yours, very respectfully,

RICHARD S. FIELD.

- 40 Abram W. Brown, esq., sheriff of Middlesex.

*Exhibit A 4.*—Search in Middlesex.

Abraham W. Brown, sheriff of Middlesex, to William Packer.—Deed dated July 21, 1837. Recorded Book 32, 412. Acknowledged before Littleton Kirkpatrick, M. C., July 21, 1837.—Received August 15, 1837, under execution from Chancery founded on a decree dated 11th February, 1837, in cause wherein Caleb Johnson is complainant, and John C. Schenck and Mary Ann his wife, Asa S. Colton and Margaret his wife, and Wm. Schenck are defendants.

Conveys to Wm. Packer two lots.

10

1. For consideration of \$750, the lot containing (twenty) seven acres, set forth in execution, and the same which Abrm. Vanarsdale, sheriff of Middlesex, by deed, dated August 8, 1820, sold and conveyed to Margaret Haines, William Gulick, Jacob Scudder, and ——— Beatty, as tenants in common.

2. For consideration of \$2100, the lot, containing twenty-two acres, described in said execution, beginning at a stone corner of lands of the late Jacob Van Dick, &c.

William Packer and Sarah his wife to John C. Schenck.—Deed dated 3 August, 1837. Recorded Book 32, 420, \$3850. Acknowledged before I. ———, M. C., August 3, 1837.

Conveys—

1. Tract, above mentioned, of twenty-seven acres, by like description as in deed from sheriff Brown.

2. Tract above mentioned, of twenty-two acres, by like description as in deed from sheriff Brown.

3. Lot of ground in borough of Princeton, on Main street; same conveyed, in consideration of \$1000, by sheriff Brown to Wm. Packer, under execution from Chancery in favor of John O. Killman and Margaret his wife against John C. Schenck, and ads. 30

I, Nicholas Booraem, clerk of the county of Middlesex, and state of New Jersey, do hereby certify, that there exists of record in my office, as within stated, deeds of land of which the within are correct abstracts, respectively recorded and acknowledged as within expressed.

Witness my hand, this 6th day of July, A. D. 1854.

N. BOORAEM, *Clerk.*

*Exhibit A 5.*—(Copy of decree of distribution *in re* Isaac Story, assignee of John C. Schenck.)

Isaac Story, assignee of John C. Schenck.—Decree of distribution on report of auditors.

The account of Isaac Story, assignee of John C. Schenck, having been audited, stated, and reported by the surrogate, and exceptions having been made thereto, and the same having been referred to auditors, and the said auditors having made report to this court, it is decreed that the same be allowed in all things. And it appearing, by the report of the said auditors, that the amount of claims duly exhibited against the estate is the sum of thirty-four  
10 thousand four hundred and eighty-five .06 dollars. That the sum of ten per cent. has been paid upon that sum to the respective claimants by the said assignee, making three thousand four hundred and forty-eight dollars and fifty cents, leaving a balance of claims amounting to thirty-one thousand and thirty-six dollars and fifty-six cents.

And it further appearing, by a settlement made with the Orphans Court, in the term of September, 1840, agreeably to the report of the said auditors, that the balance of the estate in hand, after deducting the expenses, is four thousand nine hundred and  
20 eight dollars and thirty-three cents, by which it appears that there will be due to each auditor the sum of fourteen cents and two mills on each and every dollar—It is therefore decreed by the court, that the said assignee do pay to each and every auditor the said sum of fourteen cents and two mills on each and every dollar.

PETER P. RUNYON,  
JOHN LA TOURRETTE,  
ICHABOD POTTER.

|    |              |          |         |
|----|--------------|----------|---------|
|    | (In pencil.) |          |         |
| 30 | 4843.11      | 31036.56 | 3136.56 |
|    |              | 3448.50  | 341     |
|    | 31           | 34485.06 |         |

*Exhibit A 6.*—J. C. Schenck's day-book. Copy of entries, as in ledger, corresponding to dates in Colton's and W. C. S's account.

*Princeton, July 6th, 1837.*

July 13th.

|                                                                            |          |
|----------------------------------------------------------------------------|----------|
| Mrs. Colton's, Asa,                                                        | Dr.      |
| To her bill at John Van Dour & Co., assured to be paid<br>by me, at 6 mo., | \$112 76 |
| 40 To 16 lbs. sugar 10,                                                    | \$1.60   |
| To 2½ lbs. coffee 15,                                                      | .37½     |

|                                |        |           |
|--------------------------------|--------|-----------|
| To 12 mackarel,                | \$0.50 |           |
| To 2 lbs. butter 20,           | .40    |           |
| Team and driver to Bordentown, | 3.00   |           |
|                                |        | 5 87½     |
|                                |        | <hr/>     |
|                                |        | \$118 63½ |

Dec. 23d.

|                        |         |           |
|------------------------|---------|-----------|
| Rev. Asa S. Colton,    |         | DR.       |
| To my note at 30 days, | \$75.00 |           |
| Certified check,       | 17.72   |           |
|                        | <hr/>   | *92 72 10 |

Nov. 2d, 1838.

|                                                                                    |  |       |
|------------------------------------------------------------------------------------|--|-------|
| Asa S. Colton,                                                                     |  | DR.   |
| To my note at 90 days, payable at Princeton Bank, his<br>interest to Oct. 1, 1838, |  | 75 00 |

Feb. 1st, 1839.

|                                     |  |       |
|-------------------------------------|--|-------|
| A. S. Colton,                       |  | DR.   |
| To my note, dated Feb. 4, at 4 mo., |  | 75 00 |

May 16th, 1839.

|                                                                   |  |       |
|-------------------------------------------------------------------|--|-------|
| Asa S. Colton,                                                    |  | DR.   |
| To my note at 4 months, payable at Princeton Bank,<br>dated 17th, |  | 75 00 |
|                                                                   |  | 20    |

July 17th.

|                                |         |       |
|--------------------------------|---------|-------|
| Rev. Asa S. Colton,            |         | DR.   |
| To my check on Princeton Bank, | \$15.00 |       |
| My note at 4 mo.,              | 60.00   |       |
|                                | <hr/>   | 75 00 |

Oct. 5th.

|                                                   |  |       |
|---------------------------------------------------|--|-------|
| Rev. Asa S. Colton,                               |  | DR.   |
| To my note at 4 months payable at Princeton Bank, |  | 75 00 |

July 29th, 1840.

|                                                                                 |  |       |
|---------------------------------------------------------------------------------|--|-------|
| Asa S. Colton,                                                                  |  | DR.   |
| To my note at 4 months, dated Feb. 1, 1840, and paya-<br>ble at Princeton Bank, |  | 75 00 |
|                                                                                 |  | 30    |

May 9th.

|                                                                          |  |       |
|--------------------------------------------------------------------------|--|-------|
| Rev. Asa S. Colton,                                                      |  | DR.   |
| To my note dated May 28th, payable at five months, at<br>Princeton Bank, |  | 75 00 |
| Interest to April 1, 1840,                                               |  |       |

|    |                                                                                                                                           |         |     |
|----|-------------------------------------------------------------------------------------------------------------------------------------------|---------|-----|
|    | Sept. 5th.                                                                                                                                |         |     |
|    | Rev. Asa S. Colton,                                                                                                                       |         | DR. |
|    | To my note dated Aug. 12, at 4 mo., payable at Princeton Bank,                                                                            | \$75 00 |     |
|    | Oct. 30th.                                                                                                                                |         |     |
|    | Asa S. Colton,                                                                                                                            |         | DR. |
|    | To a note dated 21st October, for \$75, at 4 mo., payable at the Princeton Bank,                                                          | 75 00   |     |
|    | Feb. 9th, 1841.                                                                                                                           |         |     |
| 10 | Rev. Asa S. Colton,                                                                                                                       |         | DR. |
|    | To my note dated Feb'y 15, 1841, payable at Princeton Bank at 6 mo. from date,                                                            | 75 00   |     |
|    | Feb. 27th.                                                                                                                                |         |     |
|    | Rev. Asa S. Colton,                                                                                                                       |         | DR. |
|    | To my note dated Feb. 24, 1841, at 60 days, payable at Princeton Bank, for \$75.78,                                                       | 75 78   |     |
|    | April 16th.                                                                                                                               |         |     |
|    | Rev. Asa S. Colton,                                                                                                                       |         | DR. |
|    | To my note payable at Princeton Bank, at 6 mo.,                                                                                           | 75 00   |     |
| 20 | [The note is returned.]                                                                                                                   |         |     |
|    | Do. note dated 28th, to renew at 30 days, for                                                                                             | 75 00   |     |
|    | Aug. 23d, 1841.                                                                                                                           |         |     |
|    | Rev. Asa S. Colton,                                                                                                                       |         | DR. |
|    | To my note payable at Princeton Bank, at 5 mo. from date, dated Aug. 24th,                                                                | 75 00   |     |
|    | Nov. 20.                                                                                                                                  |         |     |
|    | Asa S. Colton,                                                                                                                            |         | DR. |
|    | To my note dated Nov. 17, 1841, payable at 6 mo. after date, at the Princeton Bank,                                                       | 75 00   |     |
| 30 | Jan. 15th, 1852.                                                                                                                          |         |     |
|    | Asa S. Colton,                                                                                                                            |         | DR. |
|    | To my note payable at Princeton Bank at 90 days, dated Jan. 27, 1842, for \$76.15. This note is to renew one then due and to be returned, | 76 15   |     |
|    | Feb. 21st.                                                                                                                                |         |     |
|    | Rev. Asa S. Colton,                                                                                                                       |         | DR. |
|    | To my note dated Feb. 28, and payable at Princeton Bank at 6 months from date,                                                            | 75 00   |     |
|    | April 23d.                                                                                                                                |         |     |
| 40 | Asa S. Colton,                                                                                                                            |         | DR. |
|    | To my note payable at Princeton Bank, to renew note                                                                                       |         |     |

|                                                                                                                                                           |                                                               |       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|-------|
| due April 28th and May, for \$76.25; new note is for \$78.12, payable at Princeton Bank Sept. 23—26,                                                      | \$78 12                                                       |       |
| To my note to renew note due May 17—20, for \$75; new note is for \$77.25, payable at Princeton Bank at 6 mo., and due Oct. 23—26, dated 23d April, 1842, | 77 25                                                         |       |
| May 4th, 1843.                                                                                                                                            |                                                               |       |
| To my note dated May 6th, 1843, at 4 mo., payable at Princeton Bank,                                                                                      | 100 00                                                        |       |
| Day book of J. C. Schenck, corresponding to dates in W. C. Schenck's account.                                                                             |                                                               | 10    |
| <i>Princeton, Dec. 29th, 1836.</i>                                                                                                                        |                                                               |       |
| Wm. C. Schenck,                                                                                                                                           |                                                               | Dr.   |
| To cash,                                                                                                                                                  | \$5 00                                                        |       |
| Began board Dec. 23, 1836.                                                                                                                                |                                                               |       |
| Feb. 3d, 1837.                                                                                                                                            |                                                               |       |
| To cash on trip to Newark,                                                                                                                                | 10 56 $\frac{1}{4}$                                           |       |
| Ret. March 10, 1837.                                                                                                                                      |                                                               |       |
| May 11th.                                                                                                                                                 |                                                               |       |
| To cash,                                                                                                                                                  | 10 00                                                         |       |
| July 4th.                                                                                                                                                 |                                                               | 20    |
| To board from June 26th,                                                                                                                                  |                                                               |       |
| Aug. 23.                                                                                                                                                  |                                                               |       |
| To order on Blackwood for hat,                                                                                                                            | 4 00                                                          |       |
| Sept. 5th.                                                                                                                                                |                                                               |       |
| To cash,                                                                                                                                                  | 10 00                                                         |       |
| Sept. 28.                                                                                                                                                 |                                                               |       |
| To cash,                                                                                                                                                  | \$25.00                                                       |       |
| Bill of Thos. White,                                                                                                                                      | 30.75                                                         |       |
|                                                                                                                                                           | <hr style="width: 10%; margin-left: auto; margin-right: 0;"/> | 55 75 |
| Sept. boarding, &c.                                                                                                                                       |                                                               | 30    |
| Sept. 28th, 1838.                                                                                                                                         |                                                               |       |
| To cash paid him,                                                                                                                                         | 10 00                                                         |       |
| Dec. 18th.                                                                                                                                                |                                                               |       |
| To a draft drawn by the Princeton Bank on the Bank of New York, to him or his order, of the date,                                                         | 75 00                                                         |       |
| Feb. 1st, 1839.                                                                                                                                           |                                                               |       |
| To a draft on Bank New York drawn to my order by Princeton Bank,                                                                                          | \$75.00                                                       |       |

|    |                                                                                                                |         |          |
|----|----------------------------------------------------------------------------------------------------------------|---------|----------|
|    | Premium on 2 drafts,                                                                                           | \$0.62½ |          |
|    | Postage on 4 letters on business from him,                                                                     | .40     |          |
|    |                                                                                                                | <hr/>   | \$76 12½ |
|    | April 13, 1839.                                                                                                |         |          |
|    | To a draft of U. States in favor of J. S. Green, made to his order by cashier Smith, payable at Brooklyn Bank, |         | 50 00    |
|    | May 15.                                                                                                        |         |          |
|    | To cash,                                                                                                       |         | 15 00    |
| 10 | July 17.                                                                                                       |         |          |
|    | To my check on Princeton Bank, dated 18th,                                                                     |         | 15 00    |
|    | Sept. 6th.                                                                                                     |         |          |
|    | To my check dated Sept., for                                                                                   |         | 16 24    |
|    | Jan. 20, 1840.                                                                                                 |         |          |
|    | To cash by check, dated                                                                                        |         | 25 00    |
|    | Check of to-day on Princeton Bank,                                                                             |         | 25 00    |
|    | Feb. 11.                                                                                                       |         |          |
|    | To cash,                                                                                                       |         | 10 00    |
|    | June 5th.                                                                                                      |         |          |
| 20 | To my note payable at 5 months after date, and dated June 15, 1840, and payable at Princeton Bank,             |         | 50 00    |
|    | Sept. 5th.                                                                                                     |         |          |
|    | To my note dated August 12th, 1840, and payable at Princeton Bank at 5 mo. after date,                         |         | 75 00    |
|    | Oct. 30th.                                                                                                     |         |          |
|    | To a note payable at the Princeton Bank at 5 mo. for \$50, dated Oct. 21st,                                    | \$50.00 |          |
|    | A certified check dated about 19 Oct., payable to his order,                                                   | 25.00   |          |
| 30 |                                                                                                                | <hr/>   | 75 00    |
|    | Feb. 9th, 1841.                                                                                                |         |          |
|    | To my note dated Feb'y 15, 1841, at 6 months after date, and payable at Princeton Bank,                        |         | 75 00    |
|    | Aug. 23d.                                                                                                      |         |          |
|    | To my check payable at Princeton Bank at 5 mo. after date, dated Aug. 24th,                                    |         | 75 00    |
|    | Sept. 15th, 1841.                                                                                              |         |          |
|    | To my note to renew,                                                                                           |         | 75 00    |

Nov. 20.

To my note for \$75, payable at Princeton Bank at 60 days, dated 20th Nov., \$75 00

Jan. 13, 1842.

To my note payable at Princeton Bank at 60 days, dated Jan. 20—22, 1842; this note to renew one then due and to be returned, 75 78

Mar. 10th to 15th.

|                                                   |        |     |      |
|---------------------------------------------------|--------|-----|------|
| Wm. C. Schenck, per Wm. E. Schenck,               |        | DR. |      |
| To carting bricks one day,                        | \$2.00 |     | 10   |
| Loam, clay, &c.,                                  | 2.00   |     |      |
| Clay and lath, &c.,                               | 1.00   |     |      |
| 1 bu. lime of J. Murphy,                          | .50    |     |      |
| 2 $\frac{3}{4}$ do. fell lime of D. Maples,       | .69    |     |      |
| 8 hundred lath, 25,                               | 2.00   |     |      |
| Carting lath, brick, and clay, $\frac{1}{2}$ day, | 1.00   |     |      |
| $\frac{1}{2}$ day tending mason,                  | .50    |     |      |
|                                                   | —      |     | 9 69 |

(15th.)

To 10 bu. lime bot. of D. Maples, 50 c., 5 00 20

22d.

To 400 lath bot. of Wm. Furn Clett, 25, \$1.00

(24th.)

2 loads of sand and carting, 1.00  
— 2 00

Carting sand  $\frac{1}{2}$  day, \$1.00

2 loads do. &c., .25

1 hand tending mason, 1.00

— 2 25

26th.

To man  $\frac{1}{2}$  day tending mason, .50

Horse, cart, and driver  $\frac{1}{2}$  day to cart brick, .75

— 1 25

April 30th.

To amount paid S. Paxson for nails for house, 1 47

Oct. 22d.

To Chas. Steadman's account paid by me for work on Wm. C. Schenck's house in Princeton, as per his receipt, 73 25

|    |                                                                      |         |      |
|----|----------------------------------------------------------------------|---------|------|
|    | Dec. 30.                                                             |         |      |
|    | To lime, per D. Maple's bill,                                        | \$2     | 50   |
|    | Oct. 27th, 1843.                                                     |         |      |
|    | To Taylor's bill for brick had in the spring of 1842, for his house, | 24      | 42   |
|    | Jan. 11th, 1844.                                                     |         |      |
|    | To repairs to locks, &c., for house, paid Wm. Hunt,                  | 82      | ½    |
|    | Jan. 16th.                                                           |         |      |
|    | To 10 yds. Canton flannel at 12½,                                    | 1       | 25   |
| 10 | 22d.                                                                 |         |      |
|    | To 1 week's board to 20th inst.,                                     | 3       | 30   |
|    | Making 2 flannel shirts and drawers,                                 | 75      |      |
|    | "    1 pair woolen hose,                                             | 62      | ½    |
|    | Feb. 1st.                                                            |         |      |
|    | To amount per Doc. Schenck's bill,                                   | 7       | 00   |
|    | To 2 weeks board and washing and mending,                            | 6       | 00   |
|    | Feb. 16th.                                                           |         |      |
|    | To cash,                                                             | \$1.00  |      |
|    | 2 weeks board,                                                       | 6.00    |      |
| 20 | 24th.                                                                | —       | 7 00 |
|    | To 1 weeks board to 23d inst.,                                       | 3       | 00   |
|    | March 5th, 1844.                                                     |         |      |
|    | To cash,                                                             | \$1.00  |      |
|    | To 1 weeks board to Mar. 1st,                                        | 3.00    |      |
|    | Mar. 8th.                                                            | —       | 4 00 |
|    | To 1 weeks board to 8th inst.,                                       | 3       | 00   |
|    | 13th.                                                                |         |      |
| 30 | To 1 weeks board,                                                    | 3       | 00   |
|    | 16th.                                                                |         |      |
|    | To John Van Mater, making pair boots for him,                        | 5       | 50   |
|    | Wm. C. Schenck,                                                      | Cr.     |      |
|    | Feb. 11th, 1840.                                                     |         |      |
|    | By a note returned,                                                  | 96      | 24   |
|    | Jan. 11, 1844.                                                       |         |      |
|    | By rent received of John Bergen by Wm. Hunt,                         | \$48.37 | ½    |
|    | Cash by his wife per rt.,                                            | 7.00    |      |
|    | Work done by him for me,                                             | 1.50    |      |

Tax for 2 years on property, paid by him, \$3.12½  
 ----- \$56 87½

Jan. 15th.

By rent received of J. C. Vanmater, for year  
 1842, &c., \$32.50  
 Less by tax, 1.25

----- 31 25

Feb. 28.

By rent received of Wm. Leggett, 65 00  
 Dr. to 2 years tax on house pd., 3 16

*Exhibit A 7.*—Letter of Jno. C. Schenck, April 11, 1841. 10

Princeton,

Dear sir,—Above I send you a note for your last quarter, according to your request. The last note I sent you should have been dated April 28th, which you will please to insert. I am sorry you have been put to so much expense for postage.

As it has been done to accommodate me, you will please to charge those items to my account, and when we settle I will allow you for them. The 18¾ cents must have been a mistake of the postmaster's.

We are all as well as usual, and send our love to you all. 20

Yours, &c.,

JOHN C. SCHENCK.

*Exhibit A 8.*—Pencil calculations, &c., in Jas. S. Green's handwriting, explaining the probable manner in which the accounts of the receipts in sheriff Brown's docket were made up.

|            |             |       |
|------------|-------------|-------|
| 2166.35    | 30)10.83(36 |       |
| 6          | 90 3        |       |
| -----      | -----       |       |
| 3)12968.10 | 133 108     |       |
| -----      |             |       |
| 4266.00    |             |       |
| 1033       |             |       |
| 108        |             |       |
| -----      |             |       |
| 54.57      |             |       |
| 2166.35    |             |       |
| -----      |             |       |
| 2220.92    |             |       |
| 12         | 55.84       | 55.84 |
|            | 6           | 1.31  |
|            | -----       | ----- |
| 1000       | 3)3.30      | 57.21 |
| 91.16      | -----       | 30.95 |
| -----      | 1.60        | ----- |
| 908.84     | 27          | 91.16 |
|            | -----       | ----- |
|            | 1.37        |       |

30

|    |               |                                    |                  |                 |
|----|---------------|------------------------------------|------------------|-----------------|
|    |               | 1457                               |                  | 5½              |
|    |               | 6                                  |                  |                 |
| 10 | 12            | <u>3)87.16</u>                     |                  |                 |
|    |               | 29.05                              |                  |                 |
|    | 2             | 7.26                               |                  |                 |
|    |               | <u>3.63</u>                        |                  |                 |
|    |               | 39.94                              |                  |                 |
|    |               |                                    | 1451.88          |                 |
|    |               |                                    | <u>39.94</u>     |                 |
|    |               | 1198.83                            | 1492.32          |                 |
|    |               |                                    | <u>908.84</u>    |                 |
|    |               |                                    | 583.98           |                 |
| 20 | Wm. Packer    | S. House                           | \$1000           |                 |
|    |               | 22 acres                           | 2100             |                 |
|    |               | 27 acres                           | 750              |                 |
|    |               |                                    | <u>3850</u>      |                 |
|    |               |                                    | 629.08           |                 |
|    |               |                                    | <u>3220.92</u>   |                 |
|    | Caleb Johnson |                                    |                  |                 |
|    | Decree        | 1                                  | \$3,678          |                 |
|    |               | 2                                  | 2,697.20         |                 |
|    |               | 3                                  | <u>2,166.35</u>  |                 |
| 30 |               |                                    | 8,541.55         |                 |
|    |               |                                    | <u>19.11</u>     |                 |
|    |               |                                    | 8,710.66         |                 |
|    |               | Interest from 7 Feb.               |                  |                 |
|    |               | 87.10                              | 1837 to 10 July, |                 |
|    |               | 6                                  | 5 mos. 3 days,   | 227.56          |
| 40 | 12            | <u>3)522.60</u>                    |                  | 8938.22         |
|    |               | 174.20                             |                  | 8840.47         |
|    | 9             | 43.55                              |                  | <u>160.70</u>   |
|    |               | <u>9.81</u>                        |                  | 9001.18         |
|    |               | 227.56                             |                  |                 |
|    |               | \$3850                             |                  |                 |
|    |               | 629.68                             |                  |                 |
|    |               | <u>3220.92</u>                     | Pd.              | \$10,200        |
| 50 |               | 198.83                             |                  | <u>9,001.17</u> |
|    |               |                                    |                  | 1,198.83        |
|    |               | 3419.75                            |                  |                 |
|    |               | Wm. Colton,                        | \$3187.82        |                 |
|    |               | Wm. Schenck,                       | 3187.82          |                 |
|    |               | Johnson, Cr.,                      | \$1,198.83       |                 |
|    |               | 1198.83                            |                  |                 |
|    |               | 1000                               |                  |                 |
|    |               | <u>198.83</u>                      |                  |                 |
| 60 |               | \$2,166.35                         |                  |                 |
|    |               | \$2,166.35 lien on 22 and 27 acres |                  |                 |
|    |               | Wm. Packer bid \$2850              |                  |                 |

|                  |                  |
|------------------|------------------|
| 3840.47          | 1198.83          |
| 1198.83          | 2220.92          |
| 629.08           |                  |
| 160.70           | 3417.75          |
|                  | 629.08           |
| <u>10,829.08</u> | <u>4048.83</u>   |
| 2,220.92         |                  |
| 13,050.00        | Johnson \$10,200 |
|                  | 2,850            |
|                  | <u>13,050</u>    |

10

|                |
|----------------|
| 4048.83        |
| <u>8840.47</u> |
| 12,889.30      |
| <u>160.70</u>  |
| 13,050.00      |

*Exhibit A 9.*—Stated account of Jno. C. Schenck, acting executor of Jos. Schenck, deceased, of monies left to Wm. and Margaret Schenck, Feb. 16th, 1833.

Amount of monies, &c., which I have let Mrs. Eliza Ann Schenck have from time to time for the support and maintenance of her 20 children.

Eliza Ann Schenck

To John C. Schenck, acting executor  
Joseph Schenck, dec'd, Dr.

|           |                                              |                                     |
|-----------|----------------------------------------------|-------------------------------------|
| 1826.     |                                              |                                     |
| Nov. 10,  | To cash,                                     | \$18 00                             |
| 1827.     |                                              |                                     |
| July 27,  | To cash,                                     | 1 00                                |
| 1828.     |                                              |                                     |
| Jan'y 31, | To cash by Mr. Halsey,                       | 35 00 30                            |
| Feb'y 2,  | To cash by Wm. Gulick,                       | 5 00                                |
| April 22, | To cash by Margaret Schenck,                 | 40 00                               |
| 1829.     |                                              |                                     |
| Jan'y 6,  | To cash paid their passage to New Brunswick, | \$1.50                              |
|           | Subscription to missionary society,          | .50-                                |
|           | 1 pair hose for daughter,                    | .56 $\frac{1}{4}$                   |
|           |                                              | <u>2 56<math>\frac{1}{4}</math></u> |
| Mar. 13,  | To check on State Bank New Brunswick,        | 40 00                               |
|           | To cash January 16, omitted in place,        | 20 00 40                            |
| April 23, | To cash,                                     | 20 00                               |

|             |                                                                |                 |
|-------------|----------------------------------------------------------------|-----------------|
| May 2,      | To cash paid April 30th,                                       | \$50 00         |
| " 12,       | To cash per William Packer,                                    | 4 00            |
| " 13,       | To cash by her sister Maria,                                   | 50 00           |
| " 27,       | Cash,                                                          | 20 00           |
| June 20,    | To cash paid No. 32 Encyclopedia,                              | 4 00            |
| July 21,    | To cash paid by Mr. Jas. Van Deventer,                         | 75 00           |
| Sept. 26,   | To check on State Bank New Brunswick,<br>dated Sept. 21, 1829, | 50 00           |
| Oct. 21,    | To check on do.,                                               | 50 00           |
| 10 Nov. 5,  | To cash had by her on 3d inst.,                                | 20 00           |
| Dec. 23,    | To check on State Bank New Brunswick,<br>1830.                 | 70 00           |
| Jan'y 2,    | To cash paid Dan'l Fenton, No. 33 of En-<br>cyclopedia,        | 4 00            |
| Feb'y 20,   | To check on State Bank New Brunswick,                          | 40 00           |
| March 9,    | To cash,                                                       | 100 00          |
| April 13,   | To cash paid her on 7th inst.,                                 | 30 00           |
| May 24,     | To cash paid to her in New Brunswick,                          | 25 00           |
| June 10,    | To cash,                                                       | 50 00           |
| 20 July 30, | To check on State Bank New Brunswick,                          | 50 00           |
| Sept. 17,   | To cash paid her in New Brunswick,                             | 50 00           |
| Oct. 27,    | To cash,<br>1831.                                              | 50 00           |
| Jan'y 13,   | To cash,                                                       | 100 00          |
| Mar. 10,    | To cash paid her in New Brunswick,                             | 30 00           |
| May 18,     | To \$100 sent by Wm. Packer,<br>Cash sent this day,            | 100 00<br>30 00 |
| July 25,    | To check on Bank New Brunswick,                                | 80 00           |
| Nov. 4,     | To cash paid No. 34 Encyclopedia,                              | 4 00            |
| 30 1832.    |                                                                |                 |
| Jan'y 10,   | To cash,                                                       | 100 00          |
| Feb'y 27,   | To cash paid Wm. Packer,                                       | 40 00           |
| Mar. 26,    | To my check on State Bank,                                     | 100 00          |
| June 1,     | To cash by Wm. Packer,                                         | 30 00           |
| " 22,       | To cash paid her on 20th inst.,                                | 30 00           |
| " 26,       | To cash D. Fenton No. 35 Encyclopedia,                         | 4 00            |
| Sept. 24,   | To cash,                                                       | 100 00          |
| Oct. 1,     | To cash paid in New Brunswick,                                 | 20 00           |
| Nov. 5,     | To cash paid 29th inst.,                                       | 50 00           |
| 40 Dec. 18, | To cash paid D. Fenton No. 36 Encyclopedia,                    | 4 00            |
| " 31,       | To cash,                                                       | 50 00           |

|                    |         |                         |
|--------------------|---------|-------------------------|
| 1833.              |         |                         |
| Jan'y 22, To cash, | \$50 00 |                         |
| Feb'y 8, To cash,  | 50 00   |                         |
|                    | <hr/>   | \$1945 56 $\frac{1}{4}$ |

Amount of monies received by John C. Schenck of Eliza Ann Schenck, and monies paid her at different times; making a statement of accounts between John C. Schenck and Eliza Ann Schenck for herself and children to the date.

|                                                                                                                                                                        |                      |                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-------------------------|
| John C. Schenck note to Eliza Ann Schenck, dated August 4, 1826,                                                                                                       | \$1591 37            | 10                      |
| Interest on do. from Aug. 4, 1826, to Jan'y 1, 1828, 1 year 4 mo. and 27 days,                                                                                         | 134 45               |                         |
| Received of Doc. Jacob Scudder, January 15, 1827, by request Jos. Scudder, adm'r of Wm. C. Schenck, deceased, which I am willing to pay if secured from future demand, | 408 91               |                         |
| Interest on do. to Jan'y 1, 1828, 11 mo. 15 days,                                                                                                                      | 23 52                |                         |
|                                                                                                                                                                        | <hr/>                | \$2158 26               |
| Deduct paid her previous to Jan'y 1, 1829, as statement No. 1—deduct,                                                                                                  | 99 00                | 20                      |
|                                                                                                                                                                        | <hr/>                | \$2059 26               |
| Add interest on balance to Jan'y 1, 1829, 1 yr.,                                                                                                                       | 123 55               |                         |
|                                                                                                                                                                        | <hr/>                | \$2182 81               |
| Deduct paid her previous to Jan'y 1, 1830, as per statement No. 1, 2d year,                                                                                            | 475 56 $\frac{1}{4}$ |                         |
|                                                                                                                                                                        | <hr/>                | \$1707 24 $\frac{3}{4}$ |
| Add interest to Jan'y 1, 1830, 1 year,                                                                                                                                 | 102 43               |                         |
|                                                                                                                                                                        | <hr/>                | \$1809 67 $\frac{3}{4}$ |
| Deduct paid her previous to Jan'y 1, 1831, as per statement No. 1, 3d year,                                                                                            | 399 00               | 30                      |
|                                                                                                                                                                        | <hr/>                | \$1410 67 $\frac{3}{4}$ |
| Add interest on do. to Jan'y 1, 1831, 1 yr.,                                                                                                                           | 84 63                |                         |
| Received of Garret D. Wall for Eliza Ann Schenck, as per order from Joseph Scudder in her favor, Mar. 9, 1830,                                                         | 200 00               |                         |

|                                                                              |                         |
|------------------------------------------------------------------------------|-------------------------|
| Interest on do. to Jan'y 1, 1831, say 9 mo. and 21 days,                     | \$9 70                  |
|                                                                              | <hr/>                   |
|                                                                              | \$1705 00 $\frac{3}{4}$ |
| Deduct paid her previous to Jan'y 1, 1832, as per statement No. 1, 4th year, | 344 50                  |
|                                                                              | <hr/>                   |
|                                                                              | \$1360 50 $\frac{3}{4}$ |
| Add interest on do. to Jan'y 1, 1832,                                        | 81 63                   |
| Received of Garret D. Wall previous to May 20, 1831,                         | 125 00                  |
| Interest on do. to Jan'y 1, 1832, say 9 mo.,                                 | 5 62                    |
|                                                                              | <hr/>                   |
|                                                                              | \$1572 75 $\frac{3}{4}$ |
| 10 Deduct paid previous to Jan'y 1, 1833, as per statement No. 1, 5 year,    | 528 00                  |
|                                                                              | <hr/>                   |
|                                                                              | \$1044 75 $\frac{3}{4}$ |
| Add interest on do. to Jan'y 1, 1833,                                        | 62 68                   |
| Received June 1, 1832, of Mrs. Schenck, by Packer,                           | 200 00                  |
| Received Sept. 12, 1831, of do.,                                             | 100 00                  |
| Interest on do. to Jan'y 1, 1833, 1 yr. 3 mo. and 18 days,                   | 7 80                    |
| Interest on the \$200 named above to Jan'y 1, 1833, 7 mo.,                   | 7 00                    |
| 20 Received August 28th, 1832,                                               | 100 00                  |
| Interest on do. to Jan'y 7, 1833, 4 mo.,                                     | 2 00                    |
|                                                                              | <hr/>                   |
|                                                                              | \$1524 23 $\frac{3}{4}$ |
| Deduct paid her previous Feb'y 16, 1833, as per statement No. 1, 6th year,   | 100 00                  |
|                                                                              | <hr/>                   |
|                                                                              | \$1424 23 $\frac{3}{4}$ |
| Due Feb'y 14, 1833,                                                          | 100 00                  |
| [Feb'y 21, 1833, John Bray's note,                                           | 7 25                    |
| 1 yr. 2 mo. and 15 days interest,                                            |                         |
|                                                                              | <hr/>                   |
|                                                                              | \$1531 48]              |

## STATEMENT NO. 3.

- 30 A statement of monies due from John C. Schenck, acting executor of Joseph Schenck, deceased, to Margaret Schenck and William Schenck, grandchildren of said testator, up to the sixteenth day of February, 1833, as by reference to said will and testament will appear;—this statement taken at simple interest.

|                                                                                                                                                                                                                                                        |           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| One legacy of \$3547.00, to be paid when the legatees arrive at twenty-one years of age,                                                                                                                                                               | \$3547 00 |
| Interest on do. 9 yrs. 3 mo. and 25 days,                                                                                                                                                                                                              | 1983 35   |
| Also, \$1953 to be paid, as per said will, to Feb. 16, 1833, by John C. Schenck, in three equal payments, first payment on the first day of May, 1823, and second first day May, 1824, and third on the first of May, 1825, without interest till due, | 1953 00   |
| Interest on first payment, 9 years 9 mo. and 16 days, to Feb'y 16, 1833,                                                                                                                                                                               | 382 56 10 |
| Interest on second payment to Feb'y 16, 1833, 8 years 9 mo. and 16 days,                                                                                                                                                                               | 343 50    |
| Interest on third payment to Feb'y 16, 1833, 7 years 9 mo. and 16 days,                                                                                                                                                                                | 304 44    |
|                                                                                                                                                                                                                                                        | <hr/>     |
|                                                                                                                                                                                                                                                        | \$8513 85 |
|                                                                                                                                                                                                                                                        | <hr/>     |
|                                                                                                                                                                                                                                                        | \$4256 92 |

Settled the above with John C. Schenck, acting executor of Jos. Schenck, deceased, and there is due to me four thousand two hundred fifty-six dollars and ninety-two cents on the legacies bequeathed to me in and by the last will of the said Joseph Schenck, 20 and secured to me in my marriage settlement, and I have also received the further sum of four hundred and twenty-seven .08 dollars, being an additional allowance for interest and a gift from the said John C. Schenck, and for which I have released my mother, Eliza A. Schenck, and the estate of William C. Schenck, deceased. Dated 18 Feb'y, 1833.

MARGARET SCHENCK.

Witness—JAS. S. GREEN.

STATEMENT NO. 4.

A statement of monies due from John C. Schenck, acting executor of Joseph Schenck, deceased, to Margaret Schenck and William Schenck, grandchildren of said testator, up to the sixteenth day of February, 1833, as by reference to said will and testament will appear. 30

This statement taken at compound interest.

|                                                                  |           |
|------------------------------------------------------------------|-----------|
| General legacy left to said grandchildren, as reference to will, | \$3547 00 |
|------------------------------------------------------------------|-----------|

|                                                                   |           |
|-------------------------------------------------------------------|-----------|
| Interest from one year from testator's death to Oct. 22,<br>1824, | \$212 82  |
|                                                                   | <hr/>     |
|                                                                   | \$3759 82 |
| Interest on do. to Oct. 22, 1825,                                 | 225 58    |
|                                                                   | <hr/>     |
|                                                                   | \$3985 40 |
| Interest on do. to Oct. 22, 1826,                                 | 239 12    |
|                                                                   | <hr/>     |
|                                                                   | \$4224 52 |
| Interest on do. to Oct. 22, 1827,                                 | 253 46    |
|                                                                   | <hr/>     |
|                                                                   | \$4477 98 |
| 10 Interest on do. to Oct. 22, 1828,                              | 268 66    |
|                                                                   | <hr/>     |
|                                                                   | \$4746 64 |
| Interest on do. to Oct. 22, 1829,                                 | 284 78    |
|                                                                   | <hr/>     |
|                                                                   | \$5031 42 |
| Interest on do. to Oct. 22, 1830,                                 | 301 88    |
|                                                                   | <hr/>     |
|                                                                   | \$5333 30 |
| Interest on do. to Oct. 22, 1831,                                 | 319 91    |
|                                                                   | <hr/>     |
|                                                                   | \$5653 28 |
| Interest on do. to Oct. 22, 1832,                                 | 359 18    |
|                                                                   | <hr/>     |
|                                                                   | \$5992 46 |
| 20 Interest on do. to Feb'y 16, 1833, 3 mo. and 25 days,          | 114 82    |
|                                                                   | <hr/>     |
|                                                                   | \$6107 28 |
| Special legacy, $\frac{1}{3}$ of 1953, due May 1, 1823,           | 651 00    |
| One year's interest on do. to May 1, 1824,                        | 39 06     |
| Special legacy, second payment due May 1, 1824,                   | 651 00    |
|                                                                   | <hr/>     |
|                                                                   | \$1341 06 |
| One year's interest to May 1, 1825,                               | 80 46     |
|                                                                   | <hr/>     |
|                                                                   | \$1421 52 |
| Special legacy, 3d payment due May 1, 1825,                       | 651 00    |
|                                                                   | <hr/>     |
|                                                                   | \$2072 52 |
| 30 One year's interest to May 1, 1826,                            | 124 34    |
|                                                                   | <hr/>     |
|                                                                   | \$2196 86 |

|                                                      |             |    |
|------------------------------------------------------|-------------|----|
| One year's interest to May 1, 1827,                  | \$131 80    |    |
|                                                      | \$2328 66   |    |
| Interest on do. to May 1, 1828,                      | 139 70      |    |
|                                                      | \$2468 36   |    |
| Interest on do. to May 1, 1829,                      | 148 10      |    |
|                                                      | \$2616 46   |    |
| Interest on do. to May 1, 1830,                      | 156 98      |    |
|                                                      | \$2773 44   |    |
| Interest on do. to May 1, 1831,                      | 166 40      |    |
|                                                      | \$2939 84   | 10 |
| Interest on do. to May 1, 1832,                      | 176 38      |    |
|                                                      | \$3116 22   |    |
| Interest on do to Feb'y 16, 1833, 9 mo. and 16 days, | 148 52      |    |
|                                                      | \$3264 74   |    |
| General legacy brought over from last page,          | 6107 28     |    |
|                                                      | \$9372 02   |    |
| In pencil mark,                                      | 1424 23     |    |
| In pencil mark,                                      | \$10,796 25 |    |

*Exhibit A 11.*—Sealed bill by John C. Schenck to Eliza Ann Schenck on demand, dated Feb. 14, 1833, for \$1424.23 $\frac{3}{4}$ , with interest.

For value received, I promise to pay, or cause to be paid, to Eliza Ann Schenck, her order or assigns, the sum of fourteen hundred and twenty-four dollars and twenty-three and three-quarter cents, lawful money of the United States, upon demand, with interest from the date hereof. Witness my hand and seal, this fourteenth day of February, in the year of our Lord one thousand eight hundred and thirty-three.

JOHN C. SCHENCK, [SEAL.]

## COMPLAINANTS' EXHIBITS.

## IN CHANCERY OF NEW JERSEY.

CALEB JOHNSON AND ENOCH JOHNSON,  
complainants,

*and*

JOHN C. SCHENCK, ISAAC STORY, execu-  
tor of James Stoddard, deceased, ASA S. COL-  
TON AND MARGARET HIS WIFE, AND  
WILLIAM SCHENCK, defendants,

*On bill and answer.*

CALEB JOHNSON, complainant,

*and*

JOHN C. SCHENCK AND MARY ANN HIS  
WIFE, ASA S. COLTON AND MARGARET  
HIS WIFE AND WILLIAM SCHENCK, de-  
fendants,

*On bill and answer.*

Whereas bills have been filed in the above causes to foreclose certain mortgages, given by John C. Schenck to the complainants, and for a sale of the mortgaged premises; and whereas it is alleged by John C. Schenck, in his answers, that certain legacies, bequeathed to Margaret, wife of Asa S. Colton, and William Schenck, by their grandfather, Joseph Schenck, deceased, are a lien upon the mortgaged premises, and entitled to priority in payment over the said mortgages, which allegations are not, however, admitted by the said complainants; but inasmuch as it is hoped and believed  
10 that the said premises, when sold, will be sufficient for the payment, as well of the legacies as the mortgages, and as all parties are desirous of avoiding the vexation, expense, and delay of a controversy in the Court of Chancery, it is hereby agreed, by and between the solicitor of the complainants in both the above mentioned causes and the respective solicitors of the several defendants, that the reports made by Stacy G. Potts, one of the masters of this court, dated February 6th, 1837, be confirmed, and that a decree be signed by the Chancellor, in pursuance thereof, in each of the above causes, and that executions issue upon such decree to the  
20 sheriff of the county of Middlesex; and if it should turn out that the moneys arising from the sale of the mortgaged premises are not sufficient for the payment of both legacies and mortgages, that then and in that case the said moneys shall be first applied to the

payment of the several mortgages of the complainants and the costs of both suits, to be taxed, and that the residue of said moneys shall go towards the payment of the legacies, and, if not sufficient for that purpose, that the dividends which the said legatees and the said mortgagees may receive from the assignee of the said John Schenck upon the said legacies, and upon the bonds accompanying the said mortgages, shall be applied to making good the deficiency.

RICHARD S. FIELD,

*Solicitor of the complainants in the above mentioned cause.* 10

SAM'L R. HAMILTON,

*Solicitor of John C. Schenck, one of the defendants.*

JAS. S. GREEN,

*Solicitor of Asa S. Colton and Margaret his wife and William Schenck.*

Dated February 6th, 1837.

EXHIBIT B.

Amount of moneys in the hands of John C. Schenck, acting as executor of Joseph Schenck, deceased, and due to Margaret Colton, one of the children of the said Wm. C. Schenck, deceased, with interest to August 16, 1836.

|                                                                                                                                                 |           |         |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------|---------|
| General legacy, as by reference to the will of Joseph Schenck, deceased, one half which is due to William Schenck, \$3547, one half of which is | \$1773 50 |         |
| Interest on do. from Oct. 22, 1823, one year after testator's death, to August 16th, 1836, 12 years and 9 months and 24 days,                   |           | 1363 81 |
| Also \$1953, in 3 equal payments, one half to William Schenck, viz. \$976.50, one-third to be paid May 1, 1823, is                              | \$325.50  | 30      |
| Interest on do. from May 1, 1823, to August 16, 1836, is 13 years 3 months, 16 days,                                                            | 259.63    |         |
|                                                                                                                                                 | <hr/>     | 585 13  |
| One-third to be paid May 1, 1824,                                                                                                               | \$325.50  |         |
| Interest on do. from May 1, 1824, to August 16, 1836, 12 years, 3 months, 16 days,                                                              | 240.10    |         |
|                                                                                                                                                 | <hr/>     | 565 60  |

|                                                                                          |          |           |
|------------------------------------------------------------------------------------------|----------|-----------|
| One-third to be paid May 1, 1825,                                                        | \$325.50 |           |
| Interest on do. from May 1, 1825, to August<br>16, 1836, is 11 years, 3 months, 16 days, | 229.57   |           |
|                                                                                          | <hr/>    | \$555 07  |
|                                                                                          |          | <hr/>     |
|                                                                                          |          | \$4843 11 |

State of New Jersey, Middlesex county, *ss.*—Be it known, that on this sixteenth day of August, eighteen hundred and thirty-six, before me, one of the judges of the Court of Common Pleas in and for the county of Middlesex, personally appeared John C. Schenck, trustee of Margaret Colton, wife of Asa S. Colton, who being duly sworn saith, that the foregoing statement is true and correct, as he believes, and that the sum of four thousand eight hundred forty-three dollars and eleven cents is due to him, as said trustee, and for the exclusive benefit of the said Margaret Colton, according to the provisions of a deed of trust bearing date the eighteenth day of February, eighteen hundred and thirty-three, and executed by the said Asa S. Colton, Margaret Colton, and myself, John C. Schenck.

JOHN C. SCHENCK, *Trustee.*

20 Sworn and subscribed, this 16th August, 1836.

JARED I. DUNN,

*One of the judges of the Court of Common Pleas.*

New Jersey, Middlesex county, *ss.*—Asa S. Colton and Margaret Colton, being duly sworn, say, that they believe the foregoing statement is correct, and that the said sum of four thousand eight hundred forty-three dollars and eleven cents is due from John C. Schenck.

ASA S. COLTON,

MARGARET COLTON.

30 Sworn and subscribed this 16th August, 1836.

JARED I. DUNN,

*One of the judges of the Court of Common Pleas.*

---

EXHIBIT C.

1837. November 1st. Received from Isaac Story, assignee of John C. Schenck, four hundred eighty-six dollars and seventy-three

cents, being the first dividend on the claim of Asa S. Colton and wife, which I receive as their trustee.

\$486.73.

JOHN C. SCHENCK.

---

EXHIBIT D.

1841. August 31st. Rec'd of Isaac Story, assignee of John C. Schenck, six hundred eighty-five dollars thirty cents, in full of the second and last dividend of said Schenck's estate upon final settlement and allowance with the Orphans Court of Middlesex county, and now hereby discharge said assignee from all further demands. 10  
\$685.30.

JOHN C. SCHENCK,

*Trustee of Asa S. Colton and wife.*

---

EXHIBIT E.

Middlesex Pleas, June term, 1839, in the matter of the estate of John C. Schenck, who made an assignment for the benefit of his creditors under the act passed February 23d, 1820.

It appearing, to the satisfaction of this court, that Isaac Story, assignee of the said John C. Schenck had filed with the clerk of this court a true list, under oath, of all such creditors of the said John C. Schenck as claimed to be such, with a true statement of their respective claims, having first advertised for six weeks then next preceding in two of the newspapers printed in this state, and by putting up advertisements in five of the most public places in the neighborhood wherein a majority of the creditors of the said John C. Schenck resided, making known thereby that all claims against the estate of the said John C. Schenck be made on or before the nineteenth day of September, 1836, under oath or affirmation, or be forever barred from coming in for a dividend of said estate; and it appearing, also, to the satisfaction of this court that 30 Peter T. Smith, one of the creditors, appeared at the December term, eighteen hundred and thirty-six, of this court, and filed exceptions to the following claims and demands, because, in each instance, the amount reported is more than what is due, the said several creditors having not allowed what was due from them to the said John C. Schenck, viz: Mrs. Duyckinck, George Phillips,

Isaac Silvers, James Connolly, John S. Wilson, John Lowry, esq., administrator of John S. Wilson, Benjamin Rossell, Elizabeth Conover, Farmers and Mechanics Bank of New Brunswick, Charles Steadman, Jacob Van Dyke Bergen, John Hicks, John Andrews, Michael Hendrickson, Abraham Skillman, Abraham Boorham, John Patterson, Margaret Skillman, George Salter, Elizabeth Johnson, New Hope Delaware Bridge Company, P. V. Pool, Charles M. Campbell, Joseph Scott, Henry Dye, Davison Applegate, J. Van Dyke Joline, John Simpson, Sarah Burke, Anthony Simmons, Andrew M. Burke, John Lowry, Lowry and Powell, John Lowry, administrator of David Maple, John Lowry, executor of William Oakham, Abraham H. Voorhees, Abraham C. Stout, James C. Burke, Elias Conover, Isaac Van Doren, Robert F. Stockton, esq., Robert E. Hornor, John Murphy, S. and A. Law, William Murphy, Elias T. Schenck, Timothy Hulis, Thomas Young, Francis Hoff.

And it further appearing that due and legal notice had been served upon each of the said creditors, and that the said Peter T. Smith had, from time to time, applied to this court for further time to settle and arrange the said exceptions, and now, at this present term of June, 1839, the said Isaac Story, assignee, having produced before this court satisfactory proof that Isaac Silvers had not allowed to the said John C. Schenck the sum of \$26, the court order that the said sum be deducted from his claim, leaving a balance of \$7.55½ due to him; and also, that John S. Wilson had not allowed to the said John C. Schenck the sum of \$327.82, the court order that the said sum be deducted from his claim, leaving a balance of \$184.18 due to him; also, that Benjamin Rossell had not allowed to the said John C. Schenck the sum of \$21, the court order that the said sum be deducted from his claim, leaving a balance of \$29 due to him; also, that Elizabeth Conover had not allowed to the said John C. Schenck the sum of \$7.24½, the court order that the said sum be deducted from her claim, leaving a balance of \$5.08 due to her; also, that the Farmers and Mechanics Bank of New Brunswick had not allowed to the said John C. Schenck the sum of \$150, the court order that the said sum be deducted from their claim, leaving no balance due to them; also, that J. V. D. Bergen had not allowed to the said John C. Schenck the sum of \$18.90, the court order that the said sum be deducted from his claim, leaving a balance of \$72.51 due to him; also, that Elias T. Schenck had not allowed to the said John C. Schenck the sum of \$11.45, the court order that the said sum be deducted from his claim, leaving a balance of \$1133.96 due to him; also, that John

Andrews had not allowed to the said John C. Schenck the sum of \$103.94, the court order that the said sum be deducted from his claim, leaving a balance of \$353.09 due to him; also, that George Salter had not allowed to the said John C. Schenck the sum of \$4.94, the court order that the said sum be deducted from his claim, leaving a balance of \$134.98 due to him; also, that the New Hope Delaware Bridge Company had not allowed to the said John C. Schenck the net proceeds of the sale of 62 shares of Trenton Delaware Falls Company, being \$767.25, the court order the said sum to be deducted from their claim, leaving a balance of \$3151.75 due 10 to them; also, that C. M. Campbell had not allowed to the said John C. Schenck the sum of \$68.31, the court direct that the said sum of                    be deducted from his claim, leaving a balance of \$392.56 due to him; also, that Joseph Scott had not allowed to the said John C. Schenck the sum of \$27.72, the court order that the said sum be deducted from his claim, leaving a balance of \$94.61 due to him; also, that Davison Applegate had not allowed the sum of one dollar, the court order that the said sum be deducted from his claim, leaving a balance of \$25.82 due to him; also, that John Simpson had not allowed to the said John C. Schenck the sum of 20 \$30.64, the court order that the said sum be deducted from his claim, leaving a balance of \$309.48 due to him; also, that Sarah Burke had not allowed to the said John C. Schenck the sum of \$5.09, the court order that the said sum be deducted from her claim, leaving a balance of \$505.04 due to her; also, that John Lowry and James Powell had not allowed to the said John C. Schenck the sum of \$46.93, the court order that the said sum be deducted from their claim, leaving a balance of \$387.07 due to them; also, that John Lowry, executor of William Oakham, had not allowed to the said John C. Schenck the sum of \$10.10, the 30 court order that the said sum be deducted from his claim, leaving a balance of \$30.64 due to him; also, that James C. Burke had not allowed to the said John C. Schenck the sum of one dollar, the court order that the said sum be deducted from his claim, leaving a balance of \$55.90 due to him; also, that Elias Conover had not allowed to the said John C. Schenck the sum of \$5, the court direct that the said sum be deducted from his claim, leaving a balance of \$2.50 due to him; also, that R. F. Stockton had not allowed to the said John C. Schenck the sum of \$76.46, the court direct that the said sum be deducted from his claim, leaving a balance of \$62.19 40 due to him; also, that John Murphy had not allowed to the said John C. Schenck the sum of \$28.74, the court order that the said

sum be deducted from his claim, leaving a balance of \$15.68 due to him; also, that Thomas Young had not allowed to the said John C. Schenck the sum of \$18.90, the court order that the said sum be deducted from his claim, leaving a balance of \$148.31 due to him; also, that Henry Dye's, collector of West Windsor, claim of \$53.03, Anthony Simmons' claim of \$12.27, Abraham H. Voorhees' claim of \$44.68, and Isaac Van Doren's claim of \$68.06, were not due and owing to the said claimants, the court order that the same be not allowed; also, that the claim of William Gulick of  
 10 \$3646.50, the claim of John C. Schenck, as executor of Joseph Schenck, for the legacy of William C. Schenck of \$4843.11, the claim of Enoch Johnson of \$2646.23, the claim of Caleb Johnson of \$15,583.88, the claim of Isaac Story, executor of James Stoddard, deceased, of \$2566.32, having been satisfied out of the real estate, the court order that the same be not allowed, and that no dividend be paid on the same by the assignee; and as to the other claims excepted to as above, the court order and direct that the said exceptions be overruled, and that the assignee pay to the said claimants such dividends as they would have been entitled to if no  
 20 such exceptions had been filed.

PETER P. RUNYON,  
 ICHABOD POTTER,  
 PETER P. MEASUROLL,  
 JOS. FORD,  
 PETER DUNCAN.

Middlesex county, ss.—I, Nicholas Booraem, clerk of the Court of Common Pleas for said county, do hereby certify that the foregoing is a correct copy of the order on file in my office.—In witness whereof I have hereunto set my hand and affixed the seal of  
 30 said court, this 29th day of October, A. D. eighteen hundred and fifty.

N. BOORAEM, *Clk.*

EXHIBIT F.

|                                                                              |           |
|------------------------------------------------------------------------------|-----------|
| John C. Schenck to Wm. C. Schenck.—Bond and mortgage dated August 7th, 1837, | \$3283 40 |
| Interest from August 7th, 1837, to March 7, 1839, 13 years 7 months,         | 311 83    |
|                                                                              | \$3595 23 |

|                                                                                                         |                   |
|---------------------------------------------------------------------------------------------------------|-------------------|
| Paid amount purchase money of house as endorsement on bond,                                             | \$1800 00         |
|                                                                                                         | <u>\$1795 23</u>  |
| Deduct expenses and sundry payments made by me to him, as per account rendered this day, March 9, 1839, | 607 43½           |
|                                                                                                         | <u>\$1187 79½</u> |
| Interest on balance from March 7th, 1839, to April, 1, 1839, 24 days,                                   | 4 45              |
| Amount of passage from New York and returning, to arrange this business,                                | 4 00 10           |
|                                                                                                         | <u>\$1196 24½</u> |
| Amount of new bond and mortgage, with interest from April 1, 1839,                                      | 1100 00           |
|                                                                                                         | <u>\$96 24½</u>   |
| Balance paid by note given for the balance, and due April 15th, 1839,                                   | 96 24             |

## EXHIBIT L.

The account of John C. Schenck, acting executor of Joseph Schenck, late of the county of Middlesex, deceased, as well for such and so much of the goods and chattels and personal estate of the said deceased as have come to his hands to be administered, for his payments and disbursements out of the same.

| DR.                                                                  |                                                                         | CR.       |
|----------------------------------------------------------------------|-------------------------------------------------------------------------|-----------|
| 1822.                                                                | 1822.                                                                   |           |
| Dec. 2, To the amount of inventory of the personal estate, \$6548 58 | Dec. 2, By the appraised value of the articles left to John C. Schenck, | \$690 67  |
| " interest money not appraised, 783 04                               | " " " the appraised value of articles left to J. C. Schenck,            | 219 77 30 |
| <u>\$7331 62</u>                                                     | " 4, " cash paid surrogate proving the will,                            | 11 00     |
|                                                                      | " " " Wm. P. Deare, account,                                            | 1 50      |
|                                                                      | " " " Expenses while at office of surrogate,                            | 2 00      |

|    |                         |           |                                                                         |         |
|----|-------------------------|-----------|-------------------------------------------------------------------------|---------|
|    | Amount brought forward, | \$7331 62 | Dec. 10, By cash for advertising, &c.,                                  | \$1 25  |
|    |                         |           | " 11, " Wm. Longstreet, constable,                                      | 5 00    |
|    |                         |           | " " " F. S. Vanarsdalen, for deed,                                      | 2 00    |
|    |                         |           | 1823.                                                                   |         |
|    |                         |           | Jan. 10, " R. Voorhees, for fees, rent,                                 | 6 60    |
| 10 |                         |           | April 3, " Joseph Staats, for account,                                  | 14 24   |
|    |                         |           | " " " Geo. Sherman, account,                                            | 1 37½   |
|    |                         |           | " " " Dr. Israel Clark, account,                                        | 22 00   |
|    |                         |           | " " " Robert Voorhees, account,                                         | 11 18½  |
|    |                         |           | " 9, " Hart Olden, acc't,                                               | 28      |
|    |                         |           | " " " K. Jewell (coffin),                                               | 16 00   |
| 20 |                         |           | " 14, " Benj'n Rossell, account,                                        | 3 75    |
|    |                         |           | May 13, " Isaac Hornor, (appraised),                                    | 2 00    |
|    |                         |           | June 3, " W. K. Schenck, digging grave,                                 | 2 00    |
|    |                         |           | " 7, " Dr. John Van-cleve, account,                                     | 58 00   |
|    |                         |           | " 12, " Elijah Blackwell, account,                                      | 4 40    |
| 30 |                         |           | Aug. 8, " Joseph Scudder,                                               | 2 12½   |
|    |                         |           | " 23, " Treasury of Princeton Library,                                  | 1 00    |
|    |                         |           | " 27, " Elias T. Schenck, specific legacy, \$1500 and interest now due, | 1535 00 |
|    |                         |           | Sept. 1, " Elias T. Schenck, (sealed bill),                             | 106 91  |
| 40 |                         |           | 1824.                                                                   |         |
|    |                         |           | June 4, " James S. Green, collecting fee,                               | 2 20    |
|    |                         |           | " " " Andrew Allison, grave stones,                                     | 10 62½  |
|    |                         |           | " " " James S. Green, counsel fee,                                      | 15 00   |
|    |                         |           | " " " F. W. Morford, account,                                           | 26      |
|    |                         |           | " " " Joseph Hendrickson, account,                                      | 1 39    |
| 50 |                         |           | " " " S. Gulick, esq., costs,                                           | 87      |

|                         |           |                                                                                                           |           |
|-------------------------|-----------|-----------------------------------------------------------------------------------------------------------|-----------|
| Amount brought forward, | \$7331 62 | By amount of account of executor,                                                                         | \$163 93  |
|                         |           | “ account against Randle Stout, desperate,                                                                | 5 00      |
|                         |           | “ over appraisal on H. Voorhees' note,                                                                    | 1 08      |
|                         |           | “ deduction and loss on note of R. Sansbury to Joseph Grover (supposed desperate),                        | 125 32 10 |
|                         |           | “ sales of grain less than appraisal,                                                                     | 116 50    |
|                         |           | “ specific legacy left to Margaret Schenck and William Schenck, children of W. C. Schenck, deceased, &c., | 3547 00   |
|                         |           | “ commission on \$7331.62, at 2 per cent,                                                                 | 146 63    |
|                         |           | “ cash paid at the other office for stating and settling these accounts, copies thereof,                  | 6 30      |
|                         |           | “ balance in the hands of the executor,                                                                   | 468 46    |
|                         |           |                                                                                                           | <hr/>     |
|                         |           |                                                                                                           | \$7331 62 |

## EXHIBIT L.

This indenture triparte, made this eighteenth day of February, in the year of our Lord eighteen hundred and thirty-three, between Asa S. Colton, of the first part, Margaret Schenck, single woman and daughter of William C. Schenck, deceased, of the second part, and John C. Schenck, of the township of West Windsor, in the county of Middlesex, and state of New Jersey, of the third part. 30

Whereas Joseph Schenck, late of the township of West Windsor aforesaid, deceased, by his last will and testament, bearing date the nineteenth day of February, in the year of our Lord eighteen hundred and twenty-two, did, among other things, order and direct that his son, the said John C. Schenck, for and in consideration of the devises and bequests in the said will named, should also pay to Margaret Schenck and William Schenck, children and heirs at law of his beloved son William C. Schenck, deceased, the sum of one 40 thousand nine hundred and fifty-three dollars, to be paid as therein after directed; and the said Joseph Schenck did in and by his said last will and testament further give and bequeath to the said Mar-

garet Schenck and William Schenck, children and heirs at law of the said William C. Schenck, deceased, the sum of three thousand five hundred and forty-seven dollars, out of his estate, in addition to the sum of one thousand nine hundred and fifty-three dollars, directed to be paid to them by the said John C. Schenck, both sums to be divided between them, the said Margaret Schenck and William Schenck, share and share alike; and John C. Schenck and Elias Theodore Schenck were nominated and appointed executors of the said last will and testament, and the said Joseph Schenck

10 died without revoking or altering his said last will and testament; and since his decease the said John C. Schenck and Elias Theodore Schenck have duly proved the said last will and testament, and have taken upon themselves the execution thereof; and whereas the said Margaret Schenck, one of the children of the said William C. Schenck, deceased, hath attained her age of twenty-one years, and hath had a full settlement with the said John C. Schenck, acting executor of the said Joseph Schenck, deceased, on which settlement there appears due to the said Margaret Schenck the

20 sum of four thousand two hundred and fifty-six dollars and ninety-two cents from the said John C. Schenck, executor as aforesaid; and whereas a marriage is agreed upon and intended to be shortly had and solemnized by and between the said Asa S. Colton, of the first part, and the said Margaret Schenck, of the second part, and upon the treaty of the said intended marriage it was agreed upon by and between the said Asa S. Colton and the said Margaret Schenck, that previous to the solemnization of the said marriage, that the said Margaret Schenck should assign, transfer, or otherwise convey, the fortune to which she is entitled under and by virtue of the

30 last will and testament of Joseph Schenck, deceased, her grandfather, or from any other source whatever, unto the said John C. Schenck, upon the trusts and for the intents and purposes herein after expressed and declared of and concerning the same. Now this indenture witnesseth, that in consideration of the said intended marriage, and in pursuance and performance of the said herein before mentioned agreement on the part of the said Margaret Schenck in this behalf, and in consideration of the sum of one dollar to the said Margaret Schenck in hand paid by the said John C. Schenck, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for divers other good causes

40 and valuable considerations, the said Margaret Schenck hereunto moving, she, the said Margaret Schenck, with the consent and approbation of the said Asa S. Colton, testified by his being a party

to and sealing and delivery of these presents, hath bargained, sold, assigned, transferred and set over, and by these presents doth bargain, sell, assign, transfer, and set over unto the said John C. Schenck all and every sum and sums of money which she, the said Margaret Schenck, is, or which she or the said Asa S. Colton shall or may, in her right or otherwise, might be entitled to, under, or by virtue of the said last will and testament of the said Joseph Schenck, deceased, and all the right, title, interest, property, claim, and demand whatever, both at law and in equity, of her, the said Margaret Schenck, of, in, and to the same, and every part thereof, 10 to have, hold, receive, and take the said sum and sums of money, and all and every other sum or sums of money hereby assigned and conveyed aforesaid, or intended so to be, and every part thereof, respectively, unto the said John C. Schenck. But nevertheless, upon the trusts and for the intents and purposes herein after expressed and declared of and concerning the same, that is to say, *in trust* for the said Margaret Schenck, her executors and administrators, until the said intended marriage shall be had, and from and immediately after the solemnization thereof, to place out the same at interest on bond and mortgage or otherwise, as the said John C. 20 Schenck may think best, and to change and alter, from time to time, the investment of the said sum and sums of money at his discretion, and as the safety and advantage of the trust fund may require; and upon this further trust, to receive and take the interest, dividends, and annual produce thereof to and for the sole and exclusive use and benefit of the said Margaret Schenck, and to pay the same, on the first day of May, in each and every year, to the said Margaret upon her separate receipt, notwithstanding her coverture, and to be no way liable to the control or for the debts of the said Asa S. Colton, his executors, administrators, or assigns; 30 and upon this further trust, that in case the said Margaret Schenck shall happen to survive the said Asa S. Colton, to pay the whole of the said fortune to the said Margaret Schenck, for her own use and benefit; and upon this further trust, that in case the said Asa S. Colton should survive the said Margaret, and there shall be one or more child or children of the said Asa S. Colton and the said Margaret, then to pay the said interest, dividends, and annual produce towards the maintenance and education of the said child or children till the youngest shall attain the age of twenty-one years, and then to pay the whole of the principal and such interest as 40 may be in arrear to and among such child or children equally, share and share alike. And in case the said Margaret should de-

part this life before the said Asa S. Colton, and without a child, then, upon this further trust, to pay the said sum or sums of money, and the interest due thereon, to such person or persons as may be designated in writing by the said Margaret, under her hand and seal, in the nature of a last will and testament, attested by one or more subscribing witnesses. And it is understood that in the case of the death of the said John C. Schenck before the execution of this trust, that then the said Margaret shall have the power to name and appoint another trustee to execute and fulfil  
 10 the same, and so, as often as the trustee named and appointed by the said Margaret may die, till this trust is finally fulfilled and completed.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and first above written.

|                   |           |
|-------------------|-----------|
| ASA S. COLTON,    | [ L. S. ] |
| MARGARET SCHENCK, | [ L. S. ] |
| JOHN C. SCHENCK,  | [ L. S. ] |

Signed, sealed, and delivered in the presence of

ELIZA A. SCHENCK,  
 JAS. S. GREEN,

20

*As to Margaret and John C. Schenck.*

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EXHIBIT B 1.

Morristown, March 30, 1836.

Dear sir,—You must be, to some extent, acquainted with the rights of Mrs. Eliza A. Schenck, her son Wm. C. Schenck, and her daughter Margaret, in the estate of Mr. Jno. C. Schenck. Will you be so good as to inform us what steps, if any, should be taken on their part, or in relation to my wife, what ought to be done by myself, to secure a due adjustment of the interests involved.

30 Mr. Schenck will call your attention to their claim, and no doubt furnish the requisite means of ascertaining it. If you can give this an early answer, it will much oblige us. An immediate answer will reach us in this place. In the course of two weeks, I may possibly visit Princeton.

Very respectfully yours,

ASA S. COLTON.

To James S. Green.

## EXHIBIT B 2.

Morristown, May 10, 1836.

My dear sir,—We are desirous to know what steps, if any, except those demanded of creditors generally, we ought to take to secure our rights in the estate of Mr. J. C. Schenck. I suppose you know how the claims of Mrs. S., of Wm. and Margaret stand, at least so far as Mr. S. has the means of showing. As we are not certain what course we ought to pursue that our rights may be duly ascertained and secured, you will greatly oblige us by any advice that may be necessary in the case. I have been in Princeton since my former note, but had not the pleasure of finding you at home.

Respectfully,

ASA S. COLTON.

To James S. Green.

## EXHIBIT B 3.

Morristown, March 29, 1836.

It is my request that Mr. James S. Green will defend my right in the estate of Mr. John C. Schenck in the Court of Chancery, at the suit of Caleb Johnson. 20

MARGARET COLTON.

It is my request that Mr. James S. Green will defend my right in the estate of Mr. John C. Schenck in the Court of Chancery, at the suit of Caleb Johnson.

WILLIAM C. SCHENCK.

## IN CHANCERY OF NEW JERSEY.

BETWEEN

HENRY S. TERHUNE, complainant,

and

ASA S. COLTON and WIFE, and OTHERS,  
defendants,

} On interlocutory decree.

10 *Exceptions taken by the complainant in this cause to the report made therein on the eleventh day of December, eighteen hundred and fifty-four, by James Wilson, esq., one of the masters of this court, to whom this cause stands referred by the decretal order made in the said cause, bearing date the eighth day of February last, touching the matters therein referred to him.*

*First exception.* For that the said master, in taking and stating an account of the amount due to the said defendant, William C. Schenck, on the decree of this court, bearing date the eleventh day of February, eighteen hundred and thirty-seven, in the suit between Caleb Johnson and Enoch Johnson, complainants, and John C. Schenck, Asa S. Colton and wife, William C. Schenck, and Isaac Story, executor of James Stoddard, deceased, defendants, has  
20 not deducted from the amount due to the said William C. Schenck, upon the said decree, the sum of six hundred and seven dollars and forty-three cents, charged upon the books of John C. Schenck against William C. Schenck prior to the first day of April, eighteen hundred and thirty-nine; nor has he deducted the sum of nine hundred and four dollars and eighty-two cents, charged upon the books of John C. Schenck against William C. Schenck, subsequent  
30 to the said first day of April, eighteen hundred and thirty-nine; whereas, by the terms of the said decretal order and the principles of equity, the said two sums of money, together with interest thereon from the time when the said charges were made, ought to have been deducted by the said master from the amount due to the said William C. Schenck upon the said decree.

*Second exception.* For that the said master, in taking and stating an account of the amount due to the said Asa S. Colton and Margaret his wife upon the before mentioned decree, has not deducted therefrom the sum of four hundred and eighty-six dollars and twenty-three cents, received by the said John C. Schenck, trustee of said Margaret, from Isaac Story, assignee of said John C.

Schenck, on the first day of November, eighteen hundred and thirty-seven; nor the further sum of six hundred and eighty-five dollars and thirty cents, received by the said John C. Schenck, trustee of said Margaret, from the said Isaac Story, assignee as aforesaid, on the twenty-first day of August, eighteen hundred and forty-one, as dividends upon claims presented by the said John C. Schenck, trustee as aforesaid, to the said assignee; whereas, by the terms of the said decretal order and the principles of equity, both of the said last mentioned sums of money ought to have been deducted from the amount due to Asa S. Colton and wife upon the said 10 decree.

*Third exception.* For that the said master ought to have deducted from the amount due to the said Asa S. Colton and wife, upon the said decree, the whole of the account charged upon the books of the said John C. Schenck against the said Asa S. Colton and wife, amounting to the sum of twelve hundred and sixty-two dollars and fifty cents; whereas he has deducted only a part of the said account, to wit, the sum of four hundred and thirty-four dollars and forty-one cents; nor has the said master made any allowance for interest on this sum of four hundred and thirty-four dollars and 20 forty-one cents from the time when the same ought to have been credited, although he has charged interest on the whole amount of the said decree from the time when the same was rendered up to the date of his report; whereas, admitting the said master to be right as to the proportion of the said account which ought to be deducted from the amount of the said decree, interest ought to have been allowed thereon from the time when such account accrued.

*Fourth exception.* For that the said master, in taking and stating an account of the amounts respectively due to the said William C. 30 Schenck and to the said Asa S. Colton and wife on the said decree, ought to have deducted therefrom the several sums proved to have been paid by the said John C. Schenck to or for the use of the said William C. Schenck and the said Margaret Colton prior to the said decree, on account of the homestead legacy, referred to in the pleadings and in the report of the said master.

In which said several matters and respects this exceptant excepts to the said report, and humbly conceives that the said master has erred, and that the said report is wrong, unjust, and inequitable, and therefore prays that the said report, so far as regards the seve- 40 ral particulars above specified, may be disallowed, rejected, and set aside, and a new report be ordered to be taken, or that the said

report may be corrected in the said several particulars, and prays the judgment of this court thereupon.

R. S. FIELD,  
*Solicitor and of counsel with exceptant.*

IN CHANCERY OF NEW JERSEY.

BETWEEN

HENRY S. TERHUNE, complainant,

and

10 ASA S. COLTON and MARGARET HIS WIFE,  
and ELIZA ANN SCHENCK, executors of Wm.  
C. Schenck, deceased, and ABRAHAM W.  
BROWN, defendants,

}  
} *On bill, &c.*  
} *Final decrec.*

This cause coming on to be heard on exceptions to the master's report, in presence of Richard S. Field and William L. Dayton, of counsel with the complainant, and Cortlandt Parker and Abraham O. Zabriskie, of counsel with the defendants, and the report in this cause, made in pursuance of the interlocutory decree of this court by James Wilson, esquire, one of the masters of this court, bearing date on the eleventh day of December, one thousand eight hundred and fifty-four, and the exceptions taken thereto  
20 by the complainant being produced and read, and the matters debated by the counsel of the parties respectively, and it appearing to the court that there ought to be credited in the account reported to be due to said Asa S. Colton and Margaret his wife, upon the decree mentioned and referred to in said report, a sum equal to the proportion of the two dividends received by John C. Schenck, deceased, trustee for said Margaret, from Isaac Story, his assignee, upon the two legacies due to said Colton and his said wife, which  
30 belonged to the legacy for which said decree mentioned in said master's report was rendered, and it also appearing that when the first of said two dividends was paid, interest on said decree was not in arrear to an amount equal to said dividend, but that when the second of said two dividends was paid, more than the amount thereof was in arrear by way of interest, and that the said master had not allowed in his said report anything by reason of the said dividends being paid as aforesaid, to which omission complainant

hath excepted, and it appearing to the Chancellor to be just and right (although the report of the said master, by the terms of the order of reference, is not incorrect) that the sum of three thousand one hundred and thirty-five dollars, reported by the said master to be due to said Asa S. Colton and Margaret his wife on said decree therein referred to, should be reduced, by reason of the premises, to the sum of two thousand six hundred and fourteen dollars ninety-four cents, (by deducting therefrom the proportion of said two dividends paid as aforesaid, with proper allowance of interest thereon,) in favor of the complainant, as assignee of a mortgage given by said John C. Schenck to James Bishop upon the premises decreed to be liable for said legacy for which such decree was rendered, it is thereupon, on this fifth day of February, one thousand eight hundred and fifty-six, on motion of Cortlandt Parker, solicitor of the defendants, ordered, adjudged, and decreed, that the said report of said master and Schedule No. 2, thereto annexed, be corrected by allowing said proportion of said dividends and legal interest, and so as that there shall be declared to remain due to said Asa S. Colton and Margaret his wife, at the date of said report, the said sum of two thousand six hundred and fourteen dollars ninety-five cents, which sum is hereby decreed to remain due to them upon said decree.

And it further appearing to the satisfaction of the Chancellor, that all other exceptions taken by the said complainant to said report are erroneous and without foundation, it is ordered that the same be and they are hereby severally overruled and disallowed, and that the said report of the said master, so corrected as aforesaid, and all the matters and things therein contained, do stand ratified and confirmed by the order and decree of this court.

And it is further ordered and decreed by the court, that the order for injunction made in this cause be dissolved, and that the bill of complaint of the said complainant be dismissed, with costs of the several defendants to be taxed, and that the said Abraham W. Brown, one of the said defendants, be at liberty to proceed and raise, by the sale of the premises described in the writ of *fieri facias* to him directed, and referred to in the bill of complaint, sufficient money to pay and satisfy to the said other defendants the sums of money due to them, to wit, to said Asa S. Colton and Margaret his wife the sum of two thousand six hundred and fourteen dollars ninety-four cents aforesaid, and to said Eliza Ann Schenck, executrix of said William C. Schenck, the sum of three thousand five hundred and sixty-nine dollars forty-one cents, hereby adjudged to be due to her in ac-

cordance with said report, with interest from the said date of said master's report, and the costs of said writ, unless the complainant shall, previous to such sale, pay the same.

B. WILLIAMSON, C.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

HENRY S. TERHUNE, appellant,

and

ASA S. COLTON and WIFE and OTHERS,

} *On bill, &c.*  
} *Petition of Appeal.*

10 *To the Honorable the Court of Errors and Appeals in the last resort  
in all causes.*

The humble petition of Henry S. Terhune, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery, by his Honor Benjamin Williamson, Chancellor, bearing date the fifth day of February, in the year of our Lord one thousand eight hundred and fifty-six, in a certain cause wherein the said Henry S. Terhune was complainant, and the said Asa S. Colton and Margaret his wife, Eliza Ann Schenck, executrix of William  
20 C. Schenck, deceased, and Abraham W. Brown were defendants, in these respects, to wit, that the said decree adjudges that the exceptions taken to the master's report be overruled, and that the order for injunction made in this cause be dissolved, and that the bill of complaint of said complainant be dismissed. And your petitioner humbly appeals from that part of the said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, and that the exceptions taken to the said master's report ought to have been sustained, and the said injunction made perpetual, and the relief prayed for by the said bill of  
30 complaint granted. Your petitioner therefore prays that the said decree of the Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

R. S. FIELD,

*Solicitor for and of counsel with appellant.*

## CHANCELLOR'S OPINION.

The bill charges, that John C. Schenck, deceased, being indebted to James Bishop in the sum of \$6000 for money lent, executed to James Bishop a bond and mortgage, to secure the same, on a tract containing 157 acres of land, in the township of West Windsor, in the county of Middlesex; that J. B. assigned the said bond and mortgage to the complainant; that complainant filed his bill in this court on the said mortgage, and, on the 15th of December, 1846, obtained a decree to sell the mortgaged premises, issued an execution thereon, and caused the same to be sold, and, on the 10th day of May, 1847, himself became the purchaser at the sheriff's sale, for the sum of \$8000, and received a deed from the the sheriff; that, under the deed, he went into the possession, and still possesses the same; that at the time he purchased, he had not the slightest intimation of any prior lien or encumbrance, and supposed there was none, until he was surprised to find the property advertised for sale under an execution out of this court, issued on the 21st of February, 1837, in a cause in which Caleb Johnson and Enoch Johnson were complainants, and John C. Schenck, Asa S. Colton and Margaret his wife, William Schenck, and Isaac Story, 20 executor of James Stoddard, deceased, were defendants, directed to the sheriff of Middlesex, commanding him to make sale of the same tract of 157 acres, and out of the proceeds of sale to pay—*first*, to Asa S. Colton and wife \$1724.38, and to William Schenck the like sum, being the amount due on their legacies secured on the said premises; *second*, to pay complainant Caleb Johnson \$4904, and to the complainant Enoch Johnson \$2697.20, being the sums secured by their mortgages; *third*, to pay unto Caleb Johnson \$2441, due on his mortgage; *fourth*, to Isaac Story, executor, \$2642.06, on his mortgage. 30

That the said sale was advertised by A. W. Brown, late sheriff of the county of Middlesex, under the direction of Asa S. Colton and William Schenck, two of the defendants in the suit mentioned.

That the legacies referred to were legacies bequeathed to the said Margaret and William, by the will of their grandfather, Joseph Schenck, bearing date 19th of February, 1822. Joseph Schenck devised to his son, the said John C., his homestead place, containing about 256 acres, including the premises in question, and several lots of land. He also made some bequests of personal property, and, in consideration of the said devises and bequests, he directed 40

him to pay to Margaret and William the sum of \$1953, equally between them, in three equal annual payments. Other legacies were given to William and Margaret, and the executors were directed to place out at interest the amount of all the legacies given them, and apply the interest to their support and education, until they arrived at the age of twenty-one years, when the principal was to be paid them. John C. Schenck and his brother E. T. S. were appointed executors, but J. C. S. alone acted. Joseph Schenck, testator, died 9th November, 1822.

- 10 The bill further charges, that the complainant does not know what payments on account of said legacies of \$1953 were made between the time when the same became payable and the year 1833, but that the interest was applied as directed; that, in 1833, a marriage took place between the said Margaret and the said Asa S. Colton, and, before it was solemnized, a marriage settlement was entered into between the said A. S. C. and M. S. and J. C. S., bearing date on the 18th day of February, 1833; that the complainant has no copy of the instrument, but believes that, by the said deed of trust, the whole amount of principal and interest due at
- 20 that time to the said Margaret on account of said legacy was by her, with the consent of her intended husband, transferred to the said J. C. S., as her trustee, and to be held by him for her sole and separate use. At this time, the said trustee was a man of large property and undoubted credit.

The bill insists that, admitting the legacy to Margaret to have been originally a lien on the premises in question, yet that it ceased to be so from the time of the execution of the said deed of trust; that the whole of said legacy was\* in fact paid by J. C. S. to the said Margaret, and received by him as trustee, and from thence-

30 forth was no longer a lien; that the money was borrowed of Caleb and Enoch Johnson after this, and the mortgage executed to them on the land as free from encumbrance; that the said C. J. and E. J., relying upon the assurances of the said J. C. Schenck, that it was so free, loaned him the sum of \$6200, of which C. J. furnished \$4000, and E. J. \$2200, and took said mortgage to secure the payment upon the said 157 acres of land, being the same property now advertised for sale by sheriff Brown; and on the 4th day of June, 1833, the said J. C. Schenck made another mortgage to the said Caleb Johnson to secure \$2000 on the same land.

- 40 That a bill was filed, on the 7th day of March, 1836, by the Johnsons on their mortgages; that A. S. Colton and wife and William Schenck were made parties defendants, but, entering no ap-

pearance, or filing no answer, a decree *pro confesso* was taken against them ; that an answer was put in by the said J. C. Schenck, insisting that the said legacy of \$1950 was a charge upon the said mortgaged premises, and entitled to priority of payment over the mortgages of Caleb and Enoch Johnson. The answer was filed October 14, 1836. On the 19th March preceding, the said J. C. S. made an assignment for the benefit of his creditors ; that before any evidence was taken in the cause, and while the said C. J. and E. J. were preparing to resist the claim of the said legacies, an agreement was entered into between the said C. J. and E. J., on the one hand, and the said J. C. Schenck, A. S. C. and wife, and William Schenck, on the other, by which it was agreed that a decree should be made in the same cause declaring the said legacy to be a lien upon the said mortgaged premises, and entitled to be first paid out of the same, and that an execution should issue in conformity with the said decree, but that the moneys arising from the sale of the mortgaged premises should be applied, in the first place, to the payment of the several mortgages of the said C. and E. J. and the costs of the said suit, and the residue to the payment of the said legacy. Said agreement was in writing, and bears date the 6th of February, 1837, and was signed by R. S. Field, solicitor of the complainant, Samuel R. Hamilton, solicitor of J. C. Schenck, and James S. Green, solicitor of said A. S. Colton and wife, and William Schenck.

That, on the 7th February, 1837, in pursuance of said agreement, a decree was made, and an execution issued to the sheriff of the county of Middlesex, being the same execution under which the premises in question are now advertised for sale. Upon receiving said execution, the sheriff advertised the premises for sale on the 12th of May, 1837, and the bill charges that, on the 30th day of March, 1837, the said execution was settled by the parties, and a new arrangement made between them ; that, in the mean time, Isaac Story, the assignee of J. C. S., had advertised for sale the homestead farm of the said J. C. S., containing 256 acres, and including the premises in question, and, on the said 30th day of March, the same was purchased by John Gulick, for the sum of \$67, subject to encumbrances ; that this purchase was made by John Gulick for the benefit of J. C. S., and with the intention of subsequently conveying the property to him ; that, on the same day, a mortgage was executed by the said Gulick to James Bishop on 40 157 acres of land, being part of the said homestead farm, to secure the payment of \$5969.46 ; that the said mortgage was made con-

temporarily with the settlement of the said execution ; that the arrangement was this : the said Bishop was willing to take a mortgage on the said 157 acres, provided it could be cleared of all existing encumbrances, which could only be effected by a satisfaction of the execution issued out of Chancery aforesaid ; that with the money advanced by Bishop, together with other moneys raised by the said John Gulick, the whole amount due the Johnsons, and their costs, was paid, and the sheriff's execution fees.

The bill further states, that in what way the legacy due Margaret  
 10 and William was satisfied and arranged, the complainant, at this distance of time, and in consequence of the death of J. C. S., has not been able to ascertain ; that in reference to the said William Schenck, the complainant believes that the amount due him was secured by certain bonds and mortgages executed to him by the said J. C. S., which were afterwards paid up, with the exception of a small balance of \$96.24, for which he received in payment a note of the said J. C. S. ; that, prior to the settlement, the said W. S. had presented to the assignee his claim ; that exceptions were  
 20 filed in the Court of Common Pleas, upon the ground that it had already been paid ; and the exceptions were sustained, and the claim disallowed.

The bill charges that, in 1839, the said John Gulick conveyed to the said J. C. S. the said farm of 256 acres, including the premises in question, and that thereupon the said James Bishop agreed that the bond and mortgage of the said J. C. S. should be substituted in place of the bond and mortgage previously executed to him by the said John Gulick as aforesaid, and accordingly, on the 28th June, 1839, the said John C. Schenck executed to the said James  
 30 Bishop his bond and mortgage for \$6000, which was afterwards assigned to the complainant, the said J. C. S. assuring the said James Bishop that there was no encumbrance whatever upon the said premises prior to the said mortgage ; that the execution out of Chancery had been settled, and that the said legacy was no longer a lien upon the said property.

The prayer of the bill is, that this court, by its order and decree, may perpetually restrain the said Asa S. Colton and Margaret his wife, and William Schenck, from proceeding to enforce the said execution by a sale, &c. ; that they may be decreed to have no right or interest in the said premises by virtue of the said decree and  
 40 execution ; and that the sheriff may be restrained from selling ; and that the complainant may have such other and further relief in the premises as the nature of the case may require, &c., &c.

The bill was answered by Asa S. Colton and wife and William C. Schenck. They deny that there was any arrangement made, with their consent, as to settling the decree or execution, and even that if any such settlement was made, it was without their knowledge or consent. They declare that the whole amount is due them on the decree. They deny the authority of their solicitor to make for them the agreement alleged to have been made respecting the entry of the decree.

I do not see anything in this case to justify me in going behind the decree of this court of the 7th February, 1837. No one can 10 question it, except a party to that decree or some one whose rights are impaired by it. If its object was to defeat creditors who then had existing claims, or to protect the property of the mortgagor from future creditors, such creditors would be at liberty to impeach. The complainant does not claim under any party to the decree; his lien upon the mortgaged premises was acquired subsequent to it. He does not impeach it for fraud, mistake, or accident; on the contrary, the bill admits that the decree was entered in good faith between the parties. Nor is there anything connected with the suit, or the manner in which the decree was entered, or in the claims 20 upon which it was founded, to justify the court in refusing to protect and enforce the rights of the respective parties under the decree. The rights of the complainants under it are not controverted; but it is the claim of Asa S. Colton and his wife and of William C. Schenck that is questioned.

But as this is a case of great interest and importance to the complainant, and as he must be an innocent sufferer, and remediless if he cannot obtain relief in this suit, it may afford him some satisfaction to know that the court has not neglected to give due consideration to every feature of the case presented by his counsel, with an 30 ability which in a doubtful case would have commanded success.

What, then, was the claim upon which that part of the decree in favor of the Coltons and of William Schenck founded? Joseph Schenck, the grandfather of Margaret Colton and William Schenck, bequeathed to them by his will *two legacies, one, of three thousand five hundred and forty-seven dollars, and another, of one thousand nine hundred and fifty-three dollars.* The testator made this last legacy a lien upon his homestead farm, which he had devised to his son, John C. Schenck. The will directed the legacy to be paid in three annual instalments, without interest, and the executors, 40 John C. Schenck and Elias T. Schenck, to invest the same, and ap-

ply the interest to the support and education of the legatees, until they should, respectively, arrive at the age of twenty-one years, at which periods their respective proportions of the principal was to be paid them. John C. Schenck mortgaged one hundred and fifty-three acres of the homestead farm (the whole farm embracing 253 acres) to Caleb and Enoch Johnson, for about \$8200. The Johnsons filed their bill to foreclose their mortgages, and made the Coltons and William Schenck parties defendants in the suit, alleging that they claimed some lien, by virtue of their legacy of 10 \$1953, under the will of their grandfather.

John C. Schenck, only, answered the bill, and he set up the legacy as a subsisting lien, alleging that no part of it had been paid. The complainants filed a replication. The parties then, by their respective solicitors, entered into the agreement in writing, and, in conformity to this agreement, the decree was made. It is now said that the legacy was not, at that time, a lien on the mortgaged premises, and that no decree should have been entered for it. That this legacy had not at that time been actually paid, is beyond dispute. How, then, had the land been released from the 20 encumbrance?

*First*, it is said that the settlement of John C. Schenck, as executor, in the Orphans Court operated to release the land; that, in the final settlement of his accounts, John C. Schenck prayed allowance for this legacy, and it was charged to him as executor; and it is insisted that by this settlement the land was released. In the account which I have before me, this legacy is not allowed. If there is an exhibit showing this allowance, it has escaped me. But, admitting that such settlement was made, how does it operate to release the land from this legacy? The will directed that the 30 legacy should be invested, and the interest appropriated for the benefit of the legatees; and it secured the payment of the legacy, by making it a lien upon the land. Could John C. Schenck discharge the land by simply charging the legacy to himself as executor? If he could, the land was no security for the legacy, and the legatees had nothing better than the mere personal security of the testator. The will makes the legacy a lien upon the land, until it is actually paid. Suppose the executor had prayed allowance for payment of a debt owing by the testator at the time of his 40 decease, could he plead, or set up in any way, such an account as payment or settlement in a suit brought against him for that debt? Much less could he, when he was the debtor by any such act, change the character of the debt or its security. But, besides, Margaret

and William Schenck were then infants. Under such circumstances, whatever the accounts of the executors before the Orphans Court may show, they cannot be permitted to operate in the slightest degree to the prejudice of these defendants.

Again, it is insisted that the marriage settlement between Margaret Schenck, Asa S. Colton, and John C. Schenck operated as a legal release and discharge of the mortgaged premises from the said legacy. The object of that settlement was to make John C. Schenck a trustee, in order to secure to Margaret her separate estate from the control and liability of her intended husband. The 10 question is, whether there is anything in the settlement to show that it was the intention of the parties, by that deed, to release the land, and to take the personal security of John C. Schenck for the legacy, or whether the legal construction of the deed must necessarily produce that effect. The deed, after reciting particularly the character of the legacies, then recites further, as follows :

“ And whereas the said Margaret Schenck, one of the children of the said William C. Schenck, deceased, hath attained the age of twenty-one years, and hath had a full settlement with the said John C. Schenck, acting executor of the said Joseph Schenck, de- 20 ceased, on which settlement there appears due to the said Margaret Schenck the sum of \$4256.92 from the said John C. Schenck, executor as aforesaid; and whereas a marriage is agreed upon, and intended to be shortly solemnized, by and between the said Asa S. Colton, of the first part, and the said Margaret Schenck, of the second part, and upon the treaty of the said intended marriage it was agreed upon and \* \* \* \* \* that the said Margaret Schenck should assign, transfer, or otherwise convey, the fortune to which she is entitled under and by virtue of the last will and testament of Joseph Schenck, deceased, her grandfather, or from any other 30 source whatever, unto the said John C. Schenck, upon the trusts herein after expressed and declared of and concerning the same.”

Margaret then formally assigns to John C. Schenck all and every sum and sums of money which she was entitled to under the will of Joseph Schenck, deceased, and all the property which, at law or in equity, she was entitled to, to have, hold, take, and receive the same in trust for the said Margaret, until her intended marriage, and, immediately after the solemnization thereof, to place out the same at interest on bond and mortgage, or otherwise, as the said John C. Schenck might think best, and to change and alter, &c. 40

I have referred to all the parts of this deed upon which the complainant relies to show the intention of the parties, and the legal

effect of the deed upon the question in controversy. I do not see anything in the deed to show that it was the intention of the parties that its mere execution should deprive Margaret Schenck of the then existing lien upon the land for her legacy; nor do I consider that such is the legal construction or effect of the deed. The deed recites that there had been a settlement between the parties, and that a certain sum was found due from John C. Schenck to Margaret Schenck. There was no payment of the amount due, but it was merely ascertained by the settlement what that amount

10 was. All her claim, both at law or in equity, she assigns to John C. Schenck, as her trustee. She assigned the legacy, and the security for that legacy. Because the trustee was the owner of the fund which was the security for the debt, did the assignment of the debt and security to him, as trustee, release the security? Unquestionably, if another person had been created the trustee, the assignment to him of the debt would not have released the lien, until the debt was actually paid. If it can be shown that John C. Schenck, in pursuance of his trust, did invest the trust fund on bond and mortgage in good faith, in pursuance of the trust deed,

20 then the land provided by the will would have ceased to be a lien for the legacy, because such investments would have been a payment of the legacy to Margaret Schenck or to her trustee, which is the same thing. It is apparent that the money was never raised to pay that legacy; that it existed in no other way than as a debt due to Margaret Schenck from John C. Schenck, secured upon his lands, and that while that debt and security were assigned to John C. Schenck, as trustee, with power to change the security, it never was in fact changed. In equity, John C. Schenck would never be permitted to interpose that trust deed as a defence against a claim

30 of the legacy as a lien upon the land. The fact, that this lien was subsequently transferred into a decree in chancery, by the consent of all the parties to this deed, was notice to any subsequent creditor of John C. Schenck, as to the intention of the parties to the deed, and places such creditor in a situation no better than that of John C. Schenck himself, as to all the rights involved in that instrument.

These were all the questions that appear to have been in controversy between the parties in the suit upon which the decree was founded. They were considered as fair matters of controversy.

40 The claims of the mortgagees and of the legatees were both meritorious. All who had any interest in the questions involved were represented, and the controversy was compromised. The decree is

final and conclusive between all the parties to it, as well as all persons claiming under them, unless it is impeached for fraud, or can be shown that there was some mistake which a court of equity ought to rectify.

The next position taken on behalf of the complainant is, that the decree has been satisfied. Before examining this part of the case, however, it is proper that I should not overlook a matter of much controversy between counsel on the agreement, the validity and effect of the agreement upon which the decree was entered. On behalf of the complainant, it was contended that the decree must 10 be enforced according to the terms of the agreement. On behalf of the defendants, counsel insisted that the agreement is not binding on their clients, because their solicitor had no authority from them to make it, and that it was not within the scope of his retainer, their solicitor, to enter into such an agreement on their behalf. I think the solicitor had not the power to enter into an agreement, by which the lien of his clients upon the mortgaged premises was postponed in payment to a subsequent encumbrance. He had no right to do it for a pecuniary consideration, nor in consideration that it prevented further controversy in the suit. An attorney has 20 no right to give up the security of his client, unless he receives actual payment, or is specially authorized to do so. *Tankersley v. Anderson*, 4 Dess. 44. The authorities are numerous, and very uniform, against the authority of an attorney, without special authority, to enter into an agreement of this kind. But I think there is evidence enough of the acquiescence of the defendants in the agreement to infer that the solicitor had special authority to make it, and to make it binding on the defendants. The defendants deny all knowledge of the agreement; but many years have transpired since it was made, and it may have escaped their recollection. They settled 30 another important suit under it, involving a much larger amount of money; and it is difficult to conclude, under all the circumstances, that in the subsequent transactions the agreement was studiously concealed from them: if so, it was a fraud upon them. But certainly their conduct shows that their willing acquiescence in the wishes of their uncle, John C. Schenck, that there could have been no object in concealing from them this agreement; but I cannot perceive that this is a question of any moment in the case. The defendants do not seek to enforce the decree in any manner which is a violation of, or inconsistent with that agreement. The 40 complainants in that suit have been paid their debt: they have no further interest in the agreement. The complainant in this suit

has not, as I can see, any rights which can be protected under it. If the property was sold under the decree, the complainants were to be first paid: they have been paid without a sale of the mortgaged premises. If the property is now sold under the decree, the complainants in that suit have no debt to be satisfied out of the proceeds, nor does the complainant contend that he is to be subrogated to their rights.

Has this decree been satisfied? If it has, it must have been by actual payments, or by the receipt of some specific thing given and  
 10 received in satisfaction, or by release. A release is not alleged, nor is there any evidence of the defendants having received any specific thing in satisfaction of their claim. As to payment, the bill states, in what way the legacy due Margaret and William was satisfied. The complainant, at this distance of time, and in consequence of the death of John C. Schenck, has not been able to ascertain but that it was considered settled between the parties, and that, with that understanding, a loan was made on the encumbered premises which the present mortgage of the complainant represents.

20 The testimony of Mr. Green and Mr. Field is, that they understood that the decree was settled by the parties, and that John C. Schenck represented it to be settled. But no one says that either Colton or his wife, or William Schenck, was a party to that understanding. No one says either of them was present when any such understanding was had, or that they assented to it. Was there any one authorized by them to bind them by such an understanding? Mr. Green was their solicitor, and he says he had no communication with either of them upon the subject. He was not authorized  
 30 to bind them in such an agreement; nor could John C. Schenck bind Colton and his wife, although he was trustee. Situated as he was, the common debtor of all the parties to the decree, for him to have executed an actual release, without receiving payment or satisfaction, would have been a fraud, and such release would have been void. How, then, can this court, upon the allegation of the most respectable witnesses, that they understood the decree was settled, and that such was the general understanding of the parties, declare this decree satisfied, when it appears that these defendants were not present at such an arrangement, and in the absence of all proof that they were cognizant of such an understanding? But it  
 40 is said, that their future conduct showed an acquiescence in this understanding, and that they had relinquished their rights under the decree.

It is not pretended that any memorandum in writing was made as to any arrangement or understanding; nor can any witness tell the terms of any arrangement, either verbal or written, upon which such an understanding was founded. The declaration of Colton and wife, that the decree was satisfied, would not bind them: a debt of record cannot be released by parol. How far such a declaration may bind a party against one who, upon the faith of it, has advanced his money, is another question.

The docket of the sheriff is appealed to as evidence of the settlement. On the 30th March, 1837, Mr. Field, as the solicitor of 10 the complainants in that suit, gave to the sheriff a receipt for \$10,203.99, in full of the principal and interest due the complainants. On the 22d of September following, Mr. Green made the following entry, at the request of the sheriff: "1837, Sept. 22d. Stay further proceedings on the above decree, as respects Asa S. Colton and William Schenck, till further orders. Jas. S. Green, their solicitor." Mr. Green says he considered the decree as settled, and that is the reason why the entry was made. But the receipt itself will not bear the construction: he does not say he was authorized by his clients to enter satisfaction. His general autho- 20 rity, as solicitor, did not authorize him to settle that execution in any way, except by receiving the money. The receipt he gave involved him in no such responsibility as a receipt for the satisfaction of the decree would have imposed upon him. The solicitor having no authority to enter satisfaction, if the entry he did make could be construed to have that effect, he would be responsible to his clients for the amount due them on the execution. Such a construction cannot be put upon it, and it could not have been so intended by the solicitor. That entry is evidence that at that time the execution was not settled, and that the solicitor was not willing 30 to give the sheriff a receipt to that effect.

There is another matter in connection with the receipt in the docket. On the 30th March, 1837, the date of Mr. Field's receipt, the homestead farm of John C. Schenck was sold by his assignee, under the general assignment made by Schenck for the benefit of his creditors. The sale was made subject to this decree and execution, and the property was purchased by William Gulick, for \$67. On the same day, the mortgage was executed to Bishop, on the 157 acres of the homestead, for \$5969.46. The bill alleges that the mortgage was made coterminously\* with the settlement of 40 the execution. Mr. Green, in connection with this subject of the sale, says, "The arrangement, as I recollect, was that the assignee

should sell, and John Gulick become the purchaser; that money enough should be raised to discharge the decree, so that a clear title might be given to the man who should loan the money, and that idea was carried out. Was this done on that day? Was this arrangement carried out? Was there money enough raised or borrowed to discharge that decree? Such, undoubtedly, was the intention of the parties. And this accounts why it was Colton and William Schenck were not there, and were not consulted about the arrangement. If the settlement had been completed, as contemplated, and money enough raised to discharge the decree, their assent was not necessary. Only part of the arrangement was carried out; money enough was raised on that day to discharge a part of the decree, and it was discharged. It appears to me that this evidence shows conclusively that the decree was not settled on that day; that it was understood it should be, but that the understanding was not carried out. It was the disappointment of this expectation that led to all the embarrassments and misunderstanding that followed. John C. Schenck undoubtedly intended to pay off the decree, and subsequently made every effort to do so. If he did not succeed, the defendants are not to have their liens postponed to a subsequent encumbrancer, unless it can be shown that by some act of theirs that he has been induced to loan his money upon a false security.

But, for the complainant, it is further argued, that by the subsequent conduct of the Coltons and William Schenck, they abandoned their rights under the decree. It is asked, why was this decree allowed to sleep for eleven years? John C. Schenck was dead. No mere respect or kind feelings for their uncle could have induced the defendants to permit this delay. The only answer given is, that they did not know what their rights were. I can only say, that the evidence and the character of the whole transaction satisfy me that this fact should not prejudice the defendants. Let us examine the specific acts of the defendants, relied upon as evidences of the abandonment of the decree.

*First*, as to William Schenck. It is said he presented his claim to the assignee of John C. Schenck, and that it was passed upon by the court, and rejected by the court. The only evidence respecting this, is an exhibit showing an order made by the court upon exceptions filed to the claims of certain creditors. The order declares the claim of John C. Schenck, as executor of Joseph Schenck, for the legacy of William Schenck, of \$4843.11, the claim of Enoch Johnson, of \$2646.23, the claim of Caleb Johnson,

of \$15,583.88, the claim of Isaac Story, executor of James Stoddard, deceased, of \$2566.32, having been paid out of the real estate, the court order that the same be not allowed. This order shows that William Schenck was no party to the proceeding; that he did not himself present the claim, but that it was presented by John C. Schenck, as the executor. William Schenck, then, is neither bound by the adjudications of the court upon his claim, nor can he be prejudiced by the fact, that his claim was presented. But if he had presented the claim himself, that circumstance would not have prejudiced his rights under the decree. The court might 10 properly have turned him over to his lien upon the land, unless he could consent to release it for the benefit of the creditors at large.

As to Asa Colton and wife's acts under the assignment of John C. Schenck. In August, 1836, six months prior to the decree, John C. Schenck, as trustee, presented a claim to his assignee for the amount of \$4843.11. This amount included the legacy in question, and also the other legacy given to Margaret by the will of Joseph Schenck. To the claim presented, John C. Schenck annexed his affidavit, and, on the same paper Asa Colton and wife made their affidavit that the sum claimed was due, as stated in the account. On the 1st of November, 1837, John C. Schenck received a dividend on the claim, as presented, of \$486.73, and, in the receipt he gave for it, calls it "the first dividend on the claim of Asa S. Colton and wife, which I received, as their trustee, August 31, 1841." John C. Schenck, as trustee, received from the assignee \$685.30, and gave a receipt for it "in full of the second and last dividend of said Schenck's estate upon final settlement." The receipt of these dividends did not operate in law as a release of the lien upon the land. It was not contended that the lien was at all affected by the statute under which the assignment was made. 20 But it was said that these proceedings show that the decree had been abandoned. Such was not the legal effect of those acts of the parties: if such was their intention, they have a right to repent of it, and no one can question them, unless they can show some other legal or equitable discharge of the debts than can be inferred merely from these acts. 30

But the argument was presented in a more forcible manner as to the abandonment of the decree. Admit, it is said, that no one of these acts referred to amount to a legal or equitable discharge of the decree, it is proved that there was an understanding that the decree should be considered satisfied, and all these acts together show that Asa Colton and wife and William Schenck acquiesced 40

in that understanding. These acts all show one thing incontestably, and it is this, that if any one ever understood the decree was satisfied, no one understood or supposed that the debt secured by it was paid or settled. All these acts, which are now brought up in judgment against the defendants as evidences against them, were nothing more than honest efforts on their part to secure their debt.

They are all consistent with the fact, that the debt was acknowledged due, and was secured by that decree. They do not prove that these defendants, without any consideration, released the only  
 10 security which they had for their debt, and that, too, without taking any evidence that the debt itself was still in existence. Had this been a question in which Colton and wife, William Schenck, and John C. Schenck only were interested, I cannot think a controversy could have arisen upon the evidence in this case as to the rights of the defendants to enforce the decree. It is the hardship of the complainant's situation that has excited a sympathy, which has given a shape and importance to these various circumstances that they would not otherwise have possessed.

It is said, however, that the complainant stands in a very different  
 20 position from that of John C. Schenck. True, he does. But let us see whether his equities, as against these defendants, are superior to those of John C. Schenck.

I shall examine this part of the case in the most favorable light it can be received for the complainant. I shall consider him as standing in the place and stead of James Bishop, and entitled to all the equity which Bishop could have claimed under his mortgage.

On the 30th of March, 1837, the amount of the lien on the decree first to be satisfied was \$10,203.99. On that day, this amount was paid off, and, on the same day, James Bishop advanced to  
 30 John Gulick, who had purchased, and then held the equity of redemption in the premises embraced in the decree, \$5969.46. It is alleged that this money was appropriated to pay, in part, the first lien on the decree. This was not proved, but may, I think, be admitted without affecting the controverted question. John Gulick gave to Bishop his bond to secure the money he had advanced and a mortgage upon the premises. The bill charges, that on the same day the execution on the decree was settled between the parties, and a new arrangement made between them; that the mortgage from Gulick to Bishop was made contemporaneously  
 40 with the settlement of the executions.

Then the bill states, "the arrangement that was made, as your orator is informed and believes, was this: the said James Bishop

was willing to take a mortgage upon the said 157 acres of land, provided it could be cleared of all existing encumbrances. This could only be effected by a satisfaction of the execution issued out of the Court of Chancery, and then in the hands of the sheriff. With the money thus obtained from the said James Bishop, together with other moneys raised by the said John Gulick, the whole amount of principal and interest due to the said Caleb and Enoch Johnson was paid, together with the costs of the said suit and the sheriff's execution fees. In what way precisely the legacy of the said Margaret Colton and William Schenck, and the amount due 10 to them under the execution, was satisfied and arranged, your orator, at this distance of time and in consequence of the death of the said John C. Schenck, has not been able to ascertain. It was an arrangement, however, to which the solicitor of the said Asa S. Colton and Margaret his wife, and William Schenck, and also John C. Schenck, the trustee of the said Margaret Colton, were parties, and with which they were entirely satisfied."

It thus appears that Bishop advanced his money under the belief and with the understanding that the Chancery execution was satisfied and arranged, and the property free from encumbrances. 20 It turns out, however, that the execution was not satisfied, and that although the parties supposed it was, there was a misunderstanding upon that subject. The question is, are the defendants responsible for the misunderstanding? Was anything done by them to mislead Bishop, and which makes it inequitable that they should be permitted to enforce their execution? The bill does not allege that the defendants took any part in the proceedings, or that they, or either of them, ever held out to Bishop, or any one else, that the execution was satisfied or arranged. It charges the arrangement was satisfactory to the defendants' solicitor. He had no power to 30 enter into any arrangement to satisfy the decree, except upon a receipt of the money due upon it. He completed all the arrangement he was authorized to make, and that was, not to enter satisfaction, but to give a stay of the execution. When Bishop advanced his money, that decree was before his eyes open and unsatisfied; he had actual notice of it, and of the large amount due upon it; he chose to advance his money upon a vague understanding that the execution was satisfied. If he relied upon the mortgaged premises for security, he was guilty of a negligence which meets with no favor in this court. He had not the promise, even of a reliable 40 person, that the encumbrance should be satisfied; and so vague was the understanding upon which he relied, that neither himself,

or the three other individuals who participated in the arrangement, can tell what the terms of the arrangement were. The result of it was, that the decree and executions were considered satisfied. There is no principle of equity which will justify the court in saying to these defendants, as between them and Bishop, your conduct was such, in permitting Bishop to advance this money, that you must be postponed to a future encumbrancer.

Have the defendants, since Bishop advanced his money, done anything to prejudice his security, or the rights of any person claiming under it? The mere delay has not prejudiced any rights. If they delayed to enforce their rights under the decree, they have been vigilant in their endeavors to secure their debt. The subsequent acts of the defendants, so far from prejudicing, have benefited the complainant. The substitution of the bond and mortgage of John C. Schenck for those of John Gulick was an act for which the complainant is alone responsible.

My conclusion is, that the complainant has not made out a case to justify me in enjoining the defendants from proceeding to enforce their execution. There must be a reference to a master to take an account of the amount due the complainant upon the decree and execution, after crediting upon the same such payments as have been made thereon.

There are one or two observations which it appears to me proper that I should make in reference to taking the account, in order that both parties may be fully apprized of the views of the court upon the whole case.

The bill alleges that William Schenck's interest was satisfied by certain bonds and mortgages, which were afterwards paid up, with the exception of a small balance of \$96.24, for which he received in payment a note of John C. Schenck. The evidence is clear that the bond and mortgage given by John C. to William Schenck, of the 7th of August, 1837, for the sum of \$3283.40, was in payment of what is called the Slayback legacy, and has no connection with the legacy in question. This is proved by Mr. Green's docket, and the correspondence of the amount of the bond and mortgage with that due on the legacy, with the correspondence of dates, place this matter beyond dispute. As to the appropriation of payments made by John C. Schenck to William Schenck, and of which no special appropriation has been made between the parties, whether they are to be applied upon the decree or upon other claims of William against John C. Schenck, is left an open question for the

master, the parties being at liberty to take such additional evidence as they may see proper.

In reference to the payments to be allowed on the amount decreed in favor of Asa S. Colton and wife, there is more difficulty. It appears, from the evidence now in the case, that if all the payments made were credited upon the decree, it would be satisfied. Colton and wife allege that they had another claim against John C. Schenck for the Slayback legacy, and that the payments made, or a part of them, have been appropriated upon that claim.

For the Slayback legacy there was a decree in favor of Asa S. Colton and wife for \$3187.82, and in favor of William Schenck for \$3187.82. The prior encumbrance amounted, on the 21st July, 1837, to \$8840.47. The property was sold under and by virtue of the decree, and the net proceeds of sales amounted to \$12,889.50. William Schenck's interest in that decree was liquidated by the bond and mortgage before referred to. This left in the hands of the sheriff more than money enough to satisfy the Coltons' claim, with a surplus of upwards of five hundred dollars in his hands. On the 2d of August, 1837, the sheriff paid to the solicitor of the Coltons and William Schenck \$3419.75, and the solicitor gave him a receipt, as having received that amount in part of claim of Asa S. Colton and William Schenck. On the same day, the sheriff paid to John C. Schenck \$629.08, surplus money in his hands. William Schenck's claim being satisfied by the the bond and mortgage, Colton and wife were entitled to receive the amount paid to the solicitor, which was sufficient to satisfy their claim. The Slayback legacy was paid and extinguished, and Colton and wife could have no further demand for it upon any one, except upon their solicitor. If John C. Schenck afterwards became indebted to them, they must show such indebtedness: if they cannot, any payments afterwards made must be appropriated to the payment of their claim upon the decree in question. I have not overlooked the fact, that John C. Schenck afterwards received the dividends from the assignee for claims presented on behalf of Colton and wife. But there is nothing in the receipt which John C. Schenck gave for the dividends, nor in any other exhibit, to show that these dividends were upon anything except the homestead legacy. The claim filed did, it is true, embrace both legacies; but that claim was presented in 1836, a year before the Slayback legacy was paid by the sale under the decree. It is very certain, if Schenck did receive a dividend on that legacy, it was a fraud upon the other creditors; for that legacy had been paid, and could not be revived again in any shape.

It was suggested that the solicitor paid over the money he received to John C. Schenck. There is no evidence of this. If he did, it did not revive the debt due upon that decree. If he paid it with the consent of Colton and wife, it created a new debt from John C. Schenck to them. How he could get a dividend on it, I cannot conceive. This whole matter is open to further investigation before the master.

B. WILLIAMSON, C.

CHANCELLOR'S OPINION ON EXCEPTIONS TO MASTER'S REPORT.

Four exceptions have been taken to the master's report, which I will notice in their order.

*First exception.* This exception is not well taken. I think the master was right in not deducting from the amount due to the said William C. Schenck upon the said decree the sum of \$607.43, charged upon the books of John C. Schenck against William C. Schenck prior to the 1st day of April, 1839; and that he was correct, also, in not deducting the sum of \$904.82, charged upon the books of John C. Schenck subsequent to the said 1st day of April, 1839.

In determining the rights of these parties, it is very important that we should ascertain the precise position which Henry S. Terhune, the complainant, occupies in relation to the decree which has given rise to the controversy. The decree bears date the 11th of February, 1837, by which it was decreed there was due to Asa S. Colton the sum of \$1724.38, to William Schenck \$1724.38, to Caleb Johnson \$4904, to Enoch Johnson \$2697.20, to Caleb Johnson \$2441, and to Isaac Story, executor, \$2642.06.

By an agreement made between the parties to this decree, it was agreed that the moneys so decreed to be due to the Johnsons should have priority of payment, and be first satisfied out of the mortgaged premises. The mortgaged premises were not, however, sold under the decree.

Isaac Story, the assignee of John C. Schenck, to whom Schenck had made a general assignment for the benefit of his creditors, advertised and sold the mortgaged premises under the assignment to one John Gulick, for the sum of \$67, subject to encumbrances. Gulick purchased for the benefit of Schenck, who hoped to make

such an arrangement of his debts as would enable him to take a conveyance of his property. On the same day that Gulick purchased, which was the 30th of March, 1837, a mortgage was executed, by John Gulick to James Bishop, on the premises now in dispute, and which was the same land covered by the decree to secure the payment of five thousand nine hundred and sixty-nine dollars and forty-six cents. With the money obtained on the Bishop mortgage, which money was advanced by Bishop, together with other moneys raised by Gulick, the whole amount of principal and interest due to the Johnsons on the decree was paid, together with the costs of the suit and the execution fees. The solicitor of the Johnsons gave to the sheriff a receipt for \$10,203.99, the amount due them; and, on the 22d September, 1837, the solicitor of Colton and wife and William Schenck entered in the sheriff's docket an order for a stay of further proceedings on the decree until further orders. The allegation in the bill of the complainant is, that at that time the decree was understood, by all parties to it, to be satisfied, and that James Bishop advanced his money with that understanding. No doubt it is true that Bishop did advance his money with that understanding, and that he supposed the mortgage he took was the first encumbrance upon the mortgaged premises. It was, however, decided by this court, and the report of the master is the result of the reference upon that decision, that the decree was not satisfied, so far as the Coltons and William Schenck's claim were concerned, and that they were entitled to have amounts due them, respectively, raised upon that decree, after deducting such payment as had been made upon their claims since the date of the decree. The reference was made to the master to ascertain such payments, and the amount of those payments is the only matter now in dispute between the parties. We are now endeavoring to ascertain the particular position occupied by the complainant in reference to the decree, that his equities, whatever they are in reference to these payments, may be protected. We will see, by looking one step further in the case, that the complainant is entitled to the equities which would have enured to the James Bishop mortgage, if that were now in existence.

In 1839, John Gulick, then holding the equity of redemption in the mortgaged premises, conveyed it to John C. Schenck, and thereupon Bishop agreed that the bond and mortgage of John C. Schenck should be substituted in place of the bond and mortgage executed to him by John Gulick, as before mentioned, and accordingly, on the 28th of June, 1839, John C. Schenck substituted his

bond and mortgage for \$6000 for the bond and mortgage of Gulick to Schenck. The complainant holds under the \$6000 mortgage. It will thus be seen that Terhune, the complainant, holding under the \$6000 mortgage, which was substituted for the John Gulick mortgage, is entitled, upon taking an account of the payments upon that decree, to the same equities that he might claim if he now held in his hands the John Gulick mortgage, or, in other words, in taking the account, the equities to be adjusted between the Coltons and William Schenck, on one side, and the complainant on the other, 10 viewing the complainant in the light of a second encumbrancer upon the premises from the 30th of March, 1837. The equities existing between two encumbrances upon the same premises are very different from those between an encumbrancer and a stranger, who, acquiring an encumbrance, claims some equity arising out of transactions occurring before he acquired his lien. So the equities existing between John C. Schenck, on one side, and the Coltons and William Schenck on the other, are subject to very different rules and regulations from those which are to govern in adjusting the equities arising out of the same facts and 20 transactions between the complainant and the defendants. This will be seen in the further examination of the first exception.

On the 7th of August, 1837, John C. Schenck was indebted to William Schenck—first, in the amount secured by this decree, which, on the 6th of February, 1837, (the date of the decree) was \$1724.38; second, on a bond secured by a mortgage on other property than that embraced in the decree, in the sum of \$3283.40. From that time up to the first day of April, 1839, John C. Schenck advanced to William Schenck cash from time to time, paid sundry expenses for him, and furnished him with board and lodging. They 30 were made subjects of regular charges in the book of account of John C. Schenck, and, on the first of April, 1839, amounted to \$607.43. This sum the master refused to appropriate to the debt secured by the decree, but applied it to the mortgage debt of \$3283.40.

It appears from a paper made an exhibit in the cause, which is in the handwriting of John C. Schenck, that on that day there was a settlement between him and William Schenck, in which settlement they appropriated and applied the \$607.43 to the mortgage security. It is insisted, on behalf of the defendants, that they had 40 a right so to apply this money, even if there had been a previous application of it to the debt due upon the decree. This certainly is not correct. As between John C. Schenck and William Schenck,

this might be done, but it could not be when the rights of a party, standing in the relation that this complainant does to that decree, are involved without his consent. When these payments were made, the Bishop mortgage, to whose equities the complainant is subrogated, was then an encumbrance upon the premises embraced in the decree, subject to that decree. All payments, then, which John C. Schenck made upon that decree, or which were made by him under circumstances which the law or equity would so apply, were for the benefit of the Bishop mortgage, and no agreement made between John C. and William Schenck subsequently could 10 deprive the holder of that mortgage of the benefit of such payments.

We must look, then, at the payments, and see if when they were made, the parties, or if not the parties, the law, applied to them.

The general rule of law is, in reference to the appropriation of payments, that a debtor owing several debts to the same creditor, has a right to apply his payment, at the time of making it, to which debt he pleases. If he makes a general payment without appropriating it the creditor may apply it as he pleases. And where neither party appropriates it, the law will apply it according to its 20 own view of the intrinsic justice and equity of the case. 2 *Greenleaf*, § 529.

*First.* Were these payments appropriated by the debtor? This may be shown, not only by the express declaration of the debtor, but by any circumstances from which his intention can be inferred. (Note 1, 2 *Greenleaf*, § 530.) But the circumstances from which the intention is to be presumed must be known to the creditor at the time; the intention must be signified to the creditors in some way. Thus it has been held, that an entry made by the debtor in his own books of account is insufficient to determine the application of the 30 payment. (*Manning v. Western*, 1 *Vern.* 606.) There is nothing in this case to show any appropriation made by the debtor. In the books the charges are general, without anything in their mode of entry to indicate any intention of the debtor, at the time they were made, to appropriate them to any particular debt; there is no evidence independent of the books to show any application by the debtor.

*Second.* Was there any appropriation by the creditor, William Schenck? There is no evidence of any kind that there was any, nor are there any circumstances in the case from which it may be 40 inferred that at the time the payments were made William Schenck made any appropriation of them. The probability is, from the

dealings of the parties, that the payments were made by the debtor, and received by the creditor, without a thought at the time of their appropriation to any particular debt.

These payments not having been appropriated by either party at the the time they were made, and a third party being interested in their appropriation, if any equities attached on behalf of the third party, it was not in the power of the debtor and creditor, at a subsequent period, to make an appropriation affecting the equities of such third party. We must look, then, at the intrinsic justice and equity of the case to ascertain whether the Bishop mortgage can claim the benefit of the payments.

Where a general payment is made without application by either party, and there are divers claims, some of which are but imperfectly secured, the court will apply it to those debts for which the security is most precarious. (2 *Greenleaf's Ev.* § 533, note 3.)

William Schenck had two securities, the decree and a mortgage security: the former was safe and ample to secure the debt, the mortgage security was precarious. It has eventually turned out that, even with the benefit of these payments to reduce the latter debt, the creditor is a loser. If, by the the court's applying these payments to the decree, both securities of William Schenck could be satisfied, then it would be just and equitable so to apply them, for such appropriation would be no injury to William Schenck, and would secure to the Bishop mortgage the benefit of the debtor's property, which otherwise it must lose. But that is not this case; if these payments are appropriated to the decree, William Schenck must inevitably be a loser to that amount. Such an appropriation by the court will be taking money out of the pocket of William Schenck, and placing it in that of the complainant. William Schenck has done nothing to prejudice the security under which the complainant claims, and I cannot see any principle of equity upon which the court can give to the latter the benefit of these payments at the expense of the former. The master was right in appropriating the \$607.43 as he did.

As to the sum of \$934.82, the same principles control the application of the payments which constitute this amount. The money is in the hands of William Schenck. To appropriate it to this decree is taking the money from him, and giving it to the defendant. The court cannot do this, unless the complainant can show that he has a better right to have the benefit of that money than William Schenck. This he has not done.

The *second exception* is, that the master, in taking and stating an

account of the amount due to Asa S. Colton and wife, has not deducted therefrom the several sums of \$486.23 and of \$685.30, received by John C. Schenck, trustee, &c., from Isaac Story, the assignee of John C. Schenck, as dividends upon claims presented by the said trustee to the said assignee. Before the master, the complainant claimed that the sum of \$412 of the above amounts of dividends received should be appropriated as a payment upon the decree. I think the complainant is right in this exception, and that the sum of \$412 should have been applied by the master as a payment upon the decree. I am inclined to think, upon re- 10  
viewing my opinion upon which the decree of reference was made, that the master was misled by the unguarded manner in which I expressed myself in reference to this part of the case. If I had any doubt, when that opinion was prepared, as to the proper appropriation of these dividends, I am now perfectly satisfied that they should be appropriated to the decree.

On the 19th of March, 1836, John C. Schenck made an assignment for the benefit of his creditors. He was then trustee for Margaret Colton. He owed her, as executor and devisee under his father's will, two legacies, one of which was a lien on the Slayback 20  
farm, as it was called, and the other on the homestead farm, which latter was devised to John C. Schenck subject to the legacy, and part of which is the subject of this controversy. On the 16th of August, 1836, John C. Schenck, as trustee of Maria Colton, presented a claim to James Story, his assignee, for \$4843.11, which included the amounts of principal and interest then due on the Slayback and homestead farm legacies, \$3137.31 being due of Slayback legacy, and \$1705.80 on the homestead legacy.

Foreclosure suits were commenced on both these farms by the Johnsons, as mortgagees, to whom John C. Schenck had mortgaged 30  
them. On the 6th of February, 1837, the agreement was made between the parties to the suit in reference to the terms of the decree to be entered. Besides the stipulation in the agreement, that the mortgages were to have priority in payment over the legacies, was this, that in case the residue of the moneys raised out of the mortgaged premises, after payment of the mortgages, should not be sufficient to pay the legacies, then the dividends which the said legatees and the said mortgagees should receive from the assignee of John C. Schenck upon the said legacies, and upon the lands accompanying the said mortgages, should be applied to making good 40  
the deficiency.

All the parties to this agreement presented their claims to the

assignee. On the 6th of February, 1836, two decrees were entered, by one of which the Slayback legacies were secured, and by the other the homestead legacies: On the second of August, 1837, the decree by which the Slayback legacies were secured was settled. They amounted on that day to the sum of \$6702.15. The sheriff paid to the solicitor of the legatees \$3419.75, and John C. Schenck gave to William Schenck, one of the legatees, a bond and mortgage for \$3283.40, which two sums made the amount due them. As to the other decree, the claims of the mortgagees were satisfied, 10 but not of the legatees. As matters now stood, it is evident that none of these claims were entitled to any dividend from the assignee of John C. Schenck, except the claims of the legatees on the homestead decree.

The other decree was satisfied, both as to the mortgages and legacies; and in this decree (the homestead decree) all the other claims but that of the legatees were satisfied.

And yet, on the 1st of November, 1837, John C. Schenck, as trustee of Mrs. Colton, received a dividend of \$486.73 on the claims which he had presented on the 16th of August, 1836, to wit, 20 on \$3037.31 the amount due when the claim was presented on the Slayback legacy, and on \$1705.80, the amount due on the homestead legacy. And on the 31st of August, 1841, John C. Schenck, as trustee, received a further dividend of \$685.30 on the same claim. Of this sum \$412 was the proportion of the homestead farm legacy; the balance was wrongfully received, because the claim itself had been satisfied by the land upon which it was a lien. But the only question in which we are now interested is this, why should not the \$412 be appropriated to the homestead legacy upon which it was specifically paid? At the time it was received by 30 John C. Schenck, as trustee of Margaret Colton, he was the owner of the land upon which the homestead legacy was secured by the outstanding decree, and this is the reason given by the master why the credit should not be given on that decree. The master, in his report, says, "I am of opinion that this claim for credit should not be allowed. At the time that the said first dividend was paid to said John C. Schenck, he was really the owner of the land charged with the said homestead legacy. It is true that the legal title to it was then vested in John Gulick, who had bought it at the assignee's sale. But he had bought it for the benefit of John C. 40 Schenck, as appears by the pleading and proofs in this cause, and afterwards conveyed it to him. He bought it for the benefit of Schenck, and held it for him. Schenck was, therefore, the party

beneficially interested therein, and in equity the owner of the land. Before the time when the second of said dividends was paid to said John C. Schenck, the said farm had been conveyed to him in due form, and he was vested with the legal title. He being, therefore, at the time when he received the said dividends, the owner of the land on which the said homestead legacy was charged, the land could not be considered as discharged to the extent of said payments, or of so much thereof as was applicable to the homestead legacy, unless he paid the same to Mrs. Colton, or duly invested it for her use. He did not do either. He could not, therefore, claim 10 that the land was discharged, and the complainant in this suit cannot in this respect claim more than John C. Schenck could do, if he were now before the court."

The master is correct in the principles he lays down. His conclusion is erroneous, in consequence of his assumption that the complainant does not stand in a more favorable position before the court in reference to the applications of payments on the decree than John C. Schenck himself would if he were here. I repeat that I am responsible for this error, and not the master. But that it is an error, I am perfectly satisfied. 20

As between Margaret Colton and John C. Schenck, it is very clear that a court of equity would preserve the lien until the money was actually paid; for how could John C. Schenck ask a court of equity to discharge his land of the encumbrances when he had not paid it? John C. Schenck received the money with the consent of, and as the trustee of Margaret Colton. If he did not pay over the money, it is but sheer justice, as between them, that Margaret Colton should hold the lien until she receives her money. But this money was not received by John C. Schenck for the benefit of Margaret Colton alone. It was paid for the benefit of 30 the James Bishop mortgage, as well as for Margaret Colton's benefit. John C. Schenck was the common debtor of Margaret Colton and James Bishop. The debts of both of them were secured on the same land of the debtor. Margaret Colton's had the priority; of course every payment made on her debt was for the benefit of the second security. The assignee of the common debtor had in his hands the sum of \$412 of the debtor's property, a fund created by the debtor himself and placed in the custody of the law for the very purpose of paying off the first encumbrance on his land, and thereby enhancing the value of the second security. 40 James Bishop had as much right to have that money paid on Margaret Colton's claim as she herself had. But the money was in

the hands of a third person, and no one could obtain it, except Margaret Colton herself or her authorized agent. The moment she received it, it enured to the benefit of James Bishop. She authorized John C. Schenck to receive the money. He acted as her agent. When he received it, James Bishop was entitled to the benefit of it. Neither law or equity held him responsible for the proper appropriation of the money. The principal must suffer for the default of his agent, but the consequence of such default cannot be visited upon an innocent third person. Suppose, instead of 10 its being \$412; it had been the full amount of the legacy, can it be doubted that James Bishop's mortgage would have been relieved of the former encumbrance, and ought to have been, upon the plainest principles of law and equity?

Take this instance. A. and B., each, hold a mortgage on the property of C. B. holds the second encumbrance; C., the mortgagor, creates a fund to pay off the first mortgage held by A., and it is placed in the hands of D., a third party. A. gives C., the mortgagor, a power of attorney to receive the money. When he receives it, is not the second mortgage relieved from the prior encumbrance? 20 If C. does not pay over the money, it is true a court of equity will retain the lien for the benefit of A., but not against B., the second mortgagee. *Qui facit per aliam facit per se*, and the receipt of the money by C. was the same as its receipt by A., as far as it affected B., a third party. It is very plain that the position of B. and C. are not the same. They differ in the same respect precisely as the difference between John C. Schenck and James Bishop or Terhune, the complainant, who holds under Bishop. If John C. Schenck did not pay the money in question to Margaret Colton, she alone must suffer for the misconduct of her agent.

30 It is not right that the default of her agent should be visited upon an innocent party. She may protect herself against her agent by holding on to her security, but she cannot hold it against James Bishop.

*Third exception.* It is shown very clearly that the debt due from John C. Schenck to Asa S. Colton and wife amounted to the sum of \$5000. The payments made from time to time were the interest upon this sum.

They were appropriated when paid by the debtor, and were received by the creditor for this purpose. There is no just ground 40 upon which the court can interfere with the appropriation thus made by the creditor and debtor mutually. In the \$5000 was included the amount due on the homestead legacy. The amount so

due at the time the payments commenced was \$1724.38. The whole amount of payments was \$1262.50. The proportion of this amount to which the legacy is entitled is \$434.41, and this amount the master has credited upon the decree. The master was correct in not allowing interest on this sum. At no time when the payments were made did they exceed the amount of interest due upon the legacy. At the date of the master's report, there was upwards of \$1300 interest due on the amount of the legacy. There could be no propriety, therefore, in the master allowing interest on the payments. 10

*Fourth exception.* The master was right in not allowing any payments prior to the decree made in the cause between Caleb Johnson and Enoch Johnson, complainants, and John C. Schenck and others, defendants. The order of reference confined him to stating the accounts subsequent to the decree.

It is now insisted, on behalf of the complainant, that the evidence before the master, in addition to that which was before the court at the time the order of reference was made, shows the propriety of going back of the original decree referred to, and stating an account of the payments made previous to that time. I have care- 20 fully examined all the evidence before the master, and I do not think it affords any additional aid to the court in determining the rights of the parties to that which was furnished when the opinion was delivered, which resulted in the order of reference to the master.

The first, third, and fourth exceptions are overruled. The second exception is sustained. There is no necessity of referring this matter back to the master. He reports the amount due the Coltons at \$3135. From this must be deducted \$412, the amount claimed by the complainants under the second exception. This 30 leaves the amount due the Coltons \$2723. The report will be corrected in that particular, and in other respects stand confirmed. The final decree will conform to this correction. Upon the complainants paying to William Schenck and the Coltons the amounts thus found due them, respectively, the decree will be cancelled, otherwise the sheriff will be ordered to sell, and raise these amounts.

B. WILLIAMSON, C.

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