

NEW JERSEY

COURT OF

ERRORS AND APPEALS

IN THE LAST RESORT IN ALL CAUSES.



IN CHANCERY OF NEW JERSEY.

Between

BENJAMIN F. LERCH, ANNA MARIA
his wife, and JEHIEL T. KERN, Ad-
ministrators of Emma Oberly, dec'd,
Appellants,

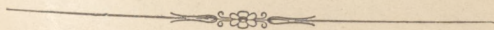
and

CHARLES OBERLY, JOHN S. OBER-
LY, ROBERT OBERLY, GEORGE
BAKER, and EMMA his wife, Ap-
pellees.

On Appeal.

J. G. SHIPMAN,
Solicitor for appellant.

E. T. GREEN,
Solicitor for appellees.



TRENTON :

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Chancery Building, State street.

1867.

COURT OF RECORDS AND APPEALS

THE COURT OF APPEALS

In Case of the Estate of [Name], deceased.

The Court of Appeals, in the case of the Estate of [Name], deceased, has heard the appeal from the decision of the Court of Record in the case of [Name] vs. [Name]. The Court of Record, in its decision, held that [Name] was entitled to the sum of [Amount] from the estate of [Name]. The Court of Appeals, in its decision, has affirmed the decision of the Court of Record. The Court of Appeals, in its decision, has also held that [Name] is entitled to the sum of [Amount] from the estate of [Name]. The Court of Appeals, in its decision, has also held that [Name] is entitled to the sum of [Amount] from the estate of [Name].

COURT OF ERRORS AND APPEALS.

Bill of Complaint.

[Filed December 2, 1865.]

IN CHANCERY OF NEW JERSEY.

To His Honor Henry W. Green, Chancellor of the State of New Jersey.

Humbly complaining, show unto your Honor, your orators, Charles Oberly, of the township of Greenwich, in the county of Warren, and state of New Jersey, and John S. Oberly, Robert Oberly, and George Baker and Emma his wife, of the counties of Lehigh and Northampton, in the state of Penn- 10
sylvania, that Owen Oberly, late of the township of Greenwich, in the said county of Warren, and state of New Jersey, departed this life on or about the twenty-first day of September, in the year eighteen hundred and fifty-two, intestate, seized in fee simple of a certain tract of land, situate in the said township of Greenwich, containing about one hundred and twenty-seven acres, on which he resided at the time of his death, a more particular description whereof is herein after set forth, and leaving his widow, Anna Maria Oberly, since intermarried with Benjamin F. Lerch, and one child, 20
Emma Oberly, his sole heir-at-law, surviving him, to whom the said lands descended in fee simple, subject to the right of dower therein of the said Anna Maria Oberly, and the rights of the creditors of the said Owen Oberly, deceased, to have the debts of the said deceased, which should remain unpaid after exhausting the personal estate of the said deceased, paid and satisfied thereout.

And your orators further show, that on or about the twenty-seventh day of October, eighteen hundred and fifty-two, 30
letters of administration on the estate of the said deceased were granted by Lewis C. Reese, esquire, surrogate of the

said county of Warren, to whom the granting of administration thereon belonged and appertained, to his widow, the said Anna Maria Oberly, who took upon herself the burthen of the administration of the said estate.

And your orators further show, that the said Emma Oberly, at the time of the death of her said father, was an infant of tender years, being then about three weeks old, and that, on the application of her mother, the said Anna Maria Oberly, letters of guardianship upon the person and property of the
 10 said Emma were granted to the said Anna Maria Oberly by Lewis C. Reese, esquire, surrogate of the county of Warren, on or about the eighteenth day of April, eighteen hundred and fifty-four.

And your orators further show, that the said Anna Maria Oberly, as administratrix as aforesaid, on the twenty-eighth day of March, eighteen hundred and fifty-four, presented to the Orphans Court of the county of Warren, an account of her administration of the said estate, which said account was duly allowed and passed by the said court at the Term of
 20 April, eighteen hundred and fifty-four, by which said account there appeared to be due the said administratrix the sum of three thousand seven hundred and eighteen dollars and eighty-seven and a half cents, after applying all the personal estate of the said deceased to the payment of debts of the said deceased.

And your orators further show, that the said Anna Maria Oberly, having intermarried with the said Benjamin F. Lerch, on application to the said Orphans Court alleging the said marriage, the said court, by a decree regularly made, did
 30 order that the said administration should be continued in the names of the said Anna Maria Lerch and her said husband, Benjamin F. Lerch, according to the form of the statutes in such cases made and provided; he, the said Benjamin F. Lerch, having first entered into bond, as required by law, as will appear by the said order and decree of the said court, bearing date on the tenth day of November, eighteen hundred and fifty-seven.

And your orators further show, that on the twentieth day of April, eighteen hundred and fifty-four, the said Anna
 40 Maria Lerch was removed by the said Orphans Court from

the guardianship of the person and property of the said Emma Oberly, and letters of guardianship upon the person and property of the said Emma Oberly were decreed by the said court to be granted to the said Charles Oberly, and letters of guardianship were thereupon, on the twenty-sixth day of June, eighteen hundred and fifty-five, granted by Philip H. Hann, esquire, surrogate of the county of Warren, to the said Charles Oberly.

And your orators further show, that the said Benjamin F. Lerch and Anna Maria his wife, as administrators of the said Owen Oberly, deceased, on the twenty-sixth day of December, eighteen hundred and fifty-seven, exhibited, under oath to the Orphans Court of the county of Warren, an account of the personal estate of the said deceased, and also of his debts, and presented a petition therewith to the said court, setting forth that the personal estate of the said deceased was insufficient to pay his debts, and requesting the aid of the court in the premises, which said account and petition are in words following, to wit:

To the judges of the Orphans Court of the county of Warren—
Your petitioners, administrators of Owen Oberly, deceased, 20 respectfully showeth, that they have discovered that the personal estate of said deceased is insufficient to pay his debts, and have made and exhibited, under oath, a just and true account of the said personal estate and debts, as far as they can discover the same, and your petitioners requests the aid of the court in the premises; and further showeth, that the said Owen Oberly died seized of the following tract of land, viz. a tract of land situate in the township of Greenwich, in said county of Warren, adjoining lands of Robert S. Kennedy, Charles Oberly, and others, containing about one hundred and twenty acres of land, on which the said deceased resided at the time of his death, valued at about ten thousand dollars, including the widow's right of dower therein.

Dated December 26th 1857.

(Signed)

BENJAMIN F. LERCH.
ANNA MARIA LERCH.

The account of Benjamin F. Lerch and Anna Maria his

wife, administrators of Owen Oberly, deceased, of the personal estate and debts of the said deceased, made to procure an order to sell land.

AMOUNT OF ESTATE

	To amount of personal estate, as per account of Anna Maria Oberly, administratrix of Owen Oberly, deceased, as stated and allowed by the Orphans Court, at April Term, 1854,	\$2633.30
	Deficiency,	3818.87
10		<hr/>
		\$6452.17

AMOUNT OF DEBTS.

	Amount of debts settled, as the account of Anna Maria Oberly, administratrix of Owen Oberly, deceased, will show,	\$2309.49
	Amount due Polly Hile, April 1st, 1854,	1827.00
	“ “ William Warman, “	100.00
	“ “ Charles Oberly, “	56.00
	“ “ Joseph Keller, “	1590.00
20	“ “ Anna Maria Oberly, on settlement of her account,	469.68
	Supposed commission and expenses of sale of real estate and settling,	100.00
		<hr/>
		\$6452.17

Warren county, ss.—Benjamin F. Lerch, one of the administrators above named, on his oath saith—that the above is a just and true account of the personal estate and debts of the said Owen Oberly, deceased, as far as he can discover the same.

30 (Signed) BENJAMIN F. LERCH.

Sworn and subscribed before me, December 26th, 1867.
P. H. HANN, *Surrogate*.

And the said court did thereupon, at the Term of December, eighteen hundred and fifty-seven, according to the form of the statute in such case made and provided, make an order directing all persons interested in the said lands and real estate,

to appear before the said court on Tuesday, the twentieth day of April, eighteen hundred and fifty-eight, to show cause why so much of the said lands and real estate whereof the said Owen Oberly died seized, as aforesaid, should not be sold, as would be sufficient to pay his debts; and at the time and place so as aforesaid named, the said court did proceed to make an order for the sale of the whole of the said lands in words and figures following, to wit:

WARREN ORPHANS COURT.

April Term, A. D. 1858. 10

Real estate of Owen }
Oberly, deceased. } *Order for sale of real estate to pay debts.*

Benjamin F. Lerch and Anna M. Lerch, administrators of Owen Oberly, deceased, having made and exhibited, under oath, to this court at the last December Term, a just and true account of the personal estate and debts of the said deceased, so far as they could discover the same, by which it appeared that the personal estate of the said deceased was insufficient to pay his debts; and also satisfactory evidence 20 that the said Owen Oberly died seized of real estate in the county of Warren, and praying the aid of this court in the premises. This court did order all persons interested in the lands, tenements, hereditaments, and real estate whereof the said Owen Oberly died seized in the county of Warren, to appear before this court on Tuesday, the twentieth day of April, in the present Term of April, to show cause, if any they had, why so much of the real estate whereof the said Owen Oberly died seized as aforesaid, should not be sold to pay his debts, or the residue thereof, as the case might re- 30 quire. And it now appearing to the court that the said order, signed by the clerk of this court, was immediately thereafter set up at three of the most public places in this county, for six weeks successively, and published in the Warren Journal, one of the newspapers printed in this state, for the same length of time. And the court having appointed this day the time for hearing the said matter, and now, upon hearing the allegations and proofs of the said Benjamin F. Lerch and Anna Maria Lerch, administrators as aforesaid, and by the testimony of Lawrence Dean, a dis- 40 interested witness, on full examination thereof, do find that

the personal estate of the said deceased hath been applied to the payments of his debts, and that the same is insufficient to pay the said debts, there still remaining the sum of three thousand eight hundred and eighteen dollars and eighty-seven cents to be paid, and also that the real estate which the said Owen Oberly died seized is so circumstanced that a part thereof cannot be sold without a manifest prejudice to the heirs; therefore, on this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-

10 eight, this court doth order and direct the said Benjamin F. Lerch and Anna Maria Lerch, administrators as aforesaid, (upon giving the necessary security required by law,) to sell all that tract of land or farm, situate in the township of Greenwich, in said county of Warren, adjoining lands of Robert S. Kennedy, Charles Oberly, and others, containing about one hundred and twenty acres of land, on which the said deceased resided at the time of his death, being the whole of the lands, tenements, hereditaments, and real estate of the

20 said Owen Oberly, deceased, for the payment of his debts; it being considered and adjudged by the court that if it is not necessary to sell the whole to pay the debts of deceased, that to sell a part and not the whole would be a manifest prejudice to the heirs, and after making such sale report the same to this court, agreeably to the statute in such case made and provided.

(Signed)

WM. R. SHARP,
JAS. DARISSER, *Judges.*

And your orators further show, that the said Benjamin F. Lerch and Anna Maria Lerch his wife, administrators as

30 aforesaid, in obedience to said order, did proceed to make sale of the said lands, and did sell the same to one John Lants for the sum of twelve thousand eight hundred and seventy-six dollars and forty-nine cents, according to law, and did report the said sale to the said Orphans Court in words following:

To the judges of the Orphans Court of the county of Warren—
Report of the sale of land made by Benjamin F. Lerch and Anna Maria Lerch, administrators of Owen Oberly, deceased, pursuant to an order of this court, made in the Term of April

40 last. The said administrators having advertised the sale of

the said land to be made on the premises on Saturday, the fourth day of September last, at the hour of two in the afternoon; in five of the most public places in the county, for the space of two months previous to the time appointed for the sale thereof, and having caused the time and place of said sale to be published in the "Belvidere Intelligencer," a newspaper printed and published in this state, and circulating in the neighborhood of said lands, for four weeks successively, once a week, next preceding the time and place of sale, and at the time and place so advertised sold the same 10 by public vendue to the highest bidder, on condition that one third of the purchase money be paid on the first of April next, one third in one year from that date, with interest, and one third secured by mortgage, during the lifetime of the widow, the interest paid her annually; and at her decease the principal to be paid to the heirs of Owen Oberly, deceased. When the homestead farm, situate near Stewartsville, in the township of Greenwich, containing about one hundred and twenty-two acres of land, adjoining Robert S. Kennedy and others, was cried off and sold to John Lants, the highest 20 bidder, for one hundred and one dollars per acre. All which is respectfully submitted, the twenty-first day of September, eighteen hundred and fifty-eight.

(Signed)

BENJAMIN F. LERCH,
ANNA MARIA LERCH,

Administrators of Owen Oberly, deceased.

And the said court, by an order made on the twenty-first day of September, eighteen hundred and fifty-eight, did confirm the said sale as valid and effectual in law, and by a rule of the said court did direct the said Benjamin F. Lerch and 30 Anna Maria Lerch, as such administrators, to execute good and sufficient conveyance in the law to the said purchaser; and the said Benjamin F. Lerch and Anna Maria Lerch, as such administrators, did, in obedience to the said order, on the first day of April, eighteen hundred and fifty-nine, make and execute a deed of conveyance for the said lands to the said John Lants, for the consideration of the said sum of twelve thousand eight hundred and seventy-six dollars and forty-nine cents, of which four thousand two hundred and ninety-two dollars and sixteen cents was secured by mort- 40

gage on said premises, to answer the dower of the said Anna Maria Lerch, as widow of the said Owen Oberly, deceased, in the said premises, she having consented to release her dower therein upon that condition, and the residue thereof, amounting to the sum of eight thousand five hundred and eighty-four dollars and thirty-three cents, was paid to said administrators as cash.

And your orators further show, that the said Charles Oberly, having been appointed guardian of the said Emma Oberly, as aforesaid, and application being made by said administrators for an order to sell lands to pay debts, he, the said Charles Oberly, as such guardian, made an application to the said Orphans Court, at the Term of April, eighteen hundred and fifty-eight, at the same time the order of sale was made, to have the said account of the said Anna Maria Oberly, as administratrix of the said Owen Oberly, deceased, opened for correction thereof, and the court did thereupon order that the said Anna Maria Oberly show cause, at the next September Term of said court, why the said account should not be opened and restated, and the hearing of the said matters coming on before said court at the said Term of September, the said account was, by consent of parties, opened and restated, and the balance due the said account-ant, Anna Maria Oberly, for the payment of which the personal estate of the said Owen Oberly, deceased, was insufficient, was ascertained to be the sum of two thousand one hundred and twenty-eight dollars and eighty-seven and a half cents, instead of three thousand seven hundred and eighteen dollars and eighty-seven cents, as shown in the said account.

And your orators further show, that after the said sale the said Benjamin F. Lerch and Anna Maria Lerch, as administrators of the said Owen Oberly, deceased, on the sixth day of April, eighteen hundred and fifty-nine, presented a final account of their administration to the said Orphans Court, in which they charged themselves with the said sum of twelve thousand eight hundred and seventy-six dollars and forty-nine cents, as proceeds of the sale of said lands, from which was deducted the sum of four thousand two hundred and ninety-two dollars and sixteen cents; the one third part thereof set apart to answer the dower of the said Anna Maria Lerch, as

widow of the said Owen Oberly, deceased, and claimed credits for certain disbursements as expenses and certain amounts paid in satisfaction of the debts of the said Owen Oberly, deceased, which the personal estate of the said deceased was insufficient to pay, which said debts and expenses, as set out in said account, amounted to the sum of two thousand seven hundred and eighty-nine dollars and ninety-two cents, leaving the balance for distribut on then in the hands of the said administrators, the sum of five thousand seven hundred and ninety-four dollars and forty-one cents, as by the said ac- 10
count allowed and passed by the said court at the Term of April, eighteen hundred and fifty-nine, or a duly certified copy thereof will more fully appear, and to which account your orators beg leave to refer, a copy of which account is hereto annexed.

And your orators further show, that the said Charles Oberly, as such guardian of Emma Oberly, objected to the making of the said order for the sale of said lands, on the ground that from the incomes thereof, and rents, issues, and profits in the course of a few years, a sufficient sum would 20
be realized to pay off and satisfy the debts of the said Owen Oberly, deceased, which still remained unpaid after exhausting the personal estate of the said deceased; and the said Charles Oberly, as such guardian, had, before said order of was applied for, actually paid off the debts of the said Owen Oberly, which still remained unpaid after exhausting the personal estate in the hands of the said administrator, the sum of eight hundred and seventeen dollars and twenty-six cents, out of the rents, issues, and profits of the said farm, with a view and for the purpose of rendering a sale of the said 30
lands unnecessary, but objections being stated by the said court to the guardians paying the debts of the said Owen Oberly, deceased, the said Benjamin F. Lerch and Anna Maria Lerch made application to the said court for the said order of sale, to which the said Charles Oberly, as guardian, objected as aforesaid, but the said order was nevertheless made and was followed up and executed as is above set out.

And your orators further show unto your Honor, that the said Charles Oberly, as guardian of the said Emma Oberly, received from the said administrators the said sum of five 40

thousand seven hundred and ninety-four dollars and forty-one cents, being the balance still remaining of the proceeds of the sale of the said lands after the payment of the debts of the said Owen Oberly, deceased, and deducting the sum of four thousand two hundred and ninety-two dollars and sixteen cents, secured by mortgage on said premises, to answer the dower of the said Anna Maria in said lands.

And your orators further show unto your Honor, that the said Emma Oberly departed this life on the second day of
 10 April, eighteen hundred and sixty-five, being still a minor, in the twelfth year of her age, leaving no lineal heirs, having never been married; and that the next heirs-at-law of the said Emma Oberly are the said Charles Oberly, John S. Oberly, Robert Oberly, her paternal uncles, and the said Emma Baker, who is the daughter and sole and only child and heir-at-law of Maria Odenerelder, a paternal aunt of the said Emma Oberly, deceased, who died before the said Emma Oberly, to whom any lands and real estate of which the said Emma Oberly died seized would by law descend, subject to
 20 such estate therein as the said Anna Maria Lerch, as mother of the said Emma, might have therein.

And your orators further show unto your Honor, that from time to time, during the lifetime of the said Emma Oberly, the said Charles Oberly has presented accounts of his said guardianship to the Orphans Court of the said county of Warren, and that since the death of the said ward, to wit, on the day of 1865, the said Charles Oberly has, as such guardian, presented to said court his final account as such guardian, by which account a balance
 30 still remains in the hands of the said guardian, amounting to the sum of nine thousand four hundred and sixty-four dollars and seventy-four cents, as will appear by the said accounts now on file in the surrogate's office in the said county of Warren, copies whereof are hereto annexed.

And your orators further show, that the moneys which came to the hands of the said Charles Oberly, as guardian of the said Emma Oberly, were derived originally from the following sources, *viz.* the said sum of five thousand seven hundred and ninety-four dollars and forty-one cents, which was
 40 the balance of the proceeds of the sale of the said lands which

remained in the hands of the said administrators after payment of the debts of the said Owen Oberly, deceased, as is above set out; a further sum of three hundred and eighty-eight dollars and fifty-nine cents, the amount which was paid by the said Charles Oberly on the first day of April, eighteen hundred and sixty-one, being amount then due the said ward of so much of the proceeds of the sale of lands of the said ward's grandfather, John Oberly, deceased, situate in the said county of Warren, made by commissioners on the first day of May, eighteen hundred and thirty-four, as 10 was left therein to secure the dower of the said ward's grandmother, Catharine Oberly, as widow of the said John Oberly, deceased; and the further sum of three hundred and fifty-eight dollars and twenty-nine cents, being the said ward's share of so much of the proceeds of lands of the said John Oberly, deceased, the said ward's grandfather, situate in the county of Lehigh, in the state of Pennsylvania, as was left to answer the dower of the said Catharine therein, which sum of three hundred and fifty-eight dollars and twenty-nine cents was paid to the said Charles Oberly, as guardian of the 20 said Emma Oberly, on the first of April, eighteen hundred and sixty-one, by Robert Oberly, who, as one of the heirs-at-law of the said John Oberly, succeeded to certain of the lands whereof the said John Oberly died seized, under the laws of Pennsylvania regulating the appraisal and distribution of lands of deceased persons, leaving several persons as heirs-at-law; and the further sum of five hundred and ninety-six dollars and fifteen cents, being the said ward's share of so much of the proceeds of lands of the said John Oberly, 30 deceased, situate in the county of Northampton, and the state of Pennsylvania, as was left to answer the dower of the said Catharine therein, which said sum of five hundred and ninety-six dollars and fifteen cents, was paid to the said Charles Oberly, as guardian of the said Emma Oberly, on the twenty-first of December, eighteen hundred and sixty-one, by John S. Oberly, who, as one of the heirs-at-law of the said John Oberly, deceased, succeeded to certain other of the lands whereof the said John Oberly died seized, under the laws of the state of Pennsylvania regulating the appraisal and disposition of lands of deceased persons, hav- 40

ing several persons as heirs-at-law ; and also the further sum of seventy-one dollars and seventy-four cents, which was received by the said Charles Oberly, as guardian of the said Emma Oberly, on the twenty-first of December, eighteen hundred and sixty-one, of the administrators of the said John Oberly, deceased, being the share of the said ward in the proceeds of lands of the said John Oberly, sold by his administrators, and to which the said Emma Oberly succeeded as one of the heirs-at-law of her said grandfather ; and also

10 the further sums of seventeen dollars and sixty-two cents, and eleven dollars and sixty-six cents, which were received by the said Charles Oberly, as such guardian, on the twentieth day of May, eighteen hundred and sixty-one, and the thirteenth day of February, eighteen hundred and sixty-two, respectively, from the administrators of Catharine Oberly, the grandmother of the said ward, who died in the month of April, eighteen hundred and sixty, being the distributive share of the said ward in the personal estate of her said grandmother ; which said several items of assets are set forth

20 in the fifth annual account of the said Charles Oberly, as guardian as aforesaid.

And your orators further show, that the said several sums of money herein last above set forth, constituted the entire estate of the said ward which originally came to the hands of the said guardian, and that the residue of the assets in his hands was derived from the rents, issues, and profits of the said real estate, received by the said guardian before the sale of the same, as aforesaid, and interest on the said moneys in his hand.

30 And your orators respectfully submit to your Honor, that by the sale of the said lands by the administrators of Owen Oberly, deceased, for the payment of debts, the same were not converted into personal estate, but that the proceeds thereof which remained in the hands of the said administrators after the payment of the debts of the said Owen Oberly, deceased, were real estate, to be distributed as such ; and that the said Emma Oberly being a minor under the age of twenty-one years at the time of the sale thereof, and being still

40 not convert the same into personal estate so as to defeat the

right of her heirs therein, but that the same still remained as real assets in the hands of the said guardian; and that with the exception of the two aforementioned sums of seventeen dollars and sixty-two cents and eleven dollars and sixty-six cents, which were received by the said guardian of the administrators of the said Catharine Oberly, deceased, the other principal sums which came to the hands of the said Charles Oberly, as such guardian, were also proceeds of lands and remained and continued real assets; and that the several sums received by the said guardian as interest on the said 10 moneys, partake of the nature of the principal moneys from which they were respectively realized; and that the said principal sums of money so received by the said Charles Oberly from proceeds of real estate, being real assets in the hands of the said Charles Oberly, as such guardian at the death of the said Emma Oberly, together with the interest received by him thereon, descended to her heirs-at-law; and that the personal representatives of the said Emma Oberly are not entitled to succeed to the same or any part thereof.

And your orators further show, that the said guardian, 20 during his said guardianship, disbursed, in the payment of debts of the said Owen Oberly, deceased, and for the support and maintenance of said ward, and for expenses and other disbursements connected with the said guardianship, a sum greater than the several sums received by him from the income of said lands before the sale of the same; and the said sums of personal estate received by him as aforesaid, from the administrators of the said Catharine Oberly, deceased; and your orators respectfully submit, that the whole (or if not the whole at least a part equal to the said principal sums 30 received from lands) of the assets in the hands of the said guardian are real assets, which are distributable among the heirs-at-law of the said Emma Oberly, deceased, subject to such rights therein as the said Anna M. Lerch, as mother of the said Emma Oberly, would have in case the same were lands, and that by the laws of New Jersey, where the said estate is situate, and the said assets are to be distributed, the same descended to the said Charles Oberly, John S. Oberly, Robert Oberly, and Emma Baker, as the heirs-at-law of the said Emma Oberly, in equal shares, subject to the life estate 40

therein of the said Anna Maria Lerch, as the mother of the said Emma Oberly, deceased.

And your orators further show, that all the debts of the said Emma Oberly have been paid by said guardian, and that her funeral expenses have also, since her death, been paid by the said Charles Oberly, and that there are no creditors of the said Emma Oberly whose rights require that the said assets should be administered upon as personal estate.

- And your orators further show, that the said Benjamin F. 10
Lerch and Anna Maria Lerch, since the death of the said Emma Oberly, have endeavored to obtain the possession of the said estate at the hands of the said Charles Oberly, as such guardian, with a view to and for the purpose of diverting the same from the proper course of distribution, and defeating the rights of the heirs-at-law of the said Emma Oberly therein, and that they, in the execution of their said purpose, on the thirty-first day of July, eighteen hundred and sixty-five, made application to William L. Hoagland, surrogate of the county of Warren, for letters of administration on the estate of the said Emma Oberly, deceased, and 20
that the said surrogate did thereupon make and order that cause should be shown before him on the eleventh day of September, eighteen hundred and sixty-five, why letters of administration should not be granted on the estate of the said Emma Oberly, deceased; and that on the said eleventh day of September, eighteen hundred and sixty-five, the said Charles Oberly, in behalf of himself and the others of your orators, as heirs-at-law of the said deceased, presented to and filed before the said surrogate, a caveat against granting such 30
administration, in words and figures following:

In matter of an application for letters of administration on the estate of Emma Oberly, deceased.

To the surrogate of the county of Warren.—Charles Oberly, guardian of the estate of Emma Oberly, deceased, would respectfully protest and remonstrate against the appointment of an administrator or administrators of deceased, for the following reasons:

1st. Because the personal estate of the deceased which has come to the hands of the guardian, and of which he has any

knowledge, amounted to the trifling sum of twenty-nine dollars and twenty-eight cents, of which sum at this day nothing remains; the said amount having been expended and paid out by said guardian in the necessary support and education of the said deceased.

2d. Because the subscriber, as guardian of the said Emma Oberly, deceased, is authorized by law to pay her lawful debts, if any remain unpaid, and hereby agree to pay the same when presented.

3d. Because the estate of deceased in his hands, as guardian, is the proceeds of real estate, with which an administrator has nothing to do; whereas the guardian is authorized by law to pay out to legal claimants the amounts due them, respectively, of all proceeds of real estate which remains in his hands.

Dated September 11th, 1865.

(Signed)

CHARLES OBERLY,

Guardian of Emma Oberly, deceased, and in behalf of the heirs-at-law of said deceased.

And your orators further show, that the said Benjamin F. 20
Lerch and Anna Maria Lerch, and the said surrogate, disregarded the said notice, and on the said eleventh day of September, eighteen hundred and sixty-five, letters of administration were granted by the said William L. Hoagland, as surrogate of the county of Warren, on the estate of the said Emma Oberly, deceased, to Benjamin F. Lerch, Anna Maria Lerch, and one Jehiel T. Kern, who have taken upon themselves the administration of the estate of the said Emma Oberly, deceased, and demanded of the said Charles Oberly the whole sum of moneys which remained in his hands as 30
such guardian. And your orators charge, that the said administration was taken out solely for the purpose of obtaining the said assets in the hands of the said guardian, in order to defeat the rights of the heirs of the said Emma Oberly therein.

And your orators further show, that the said Benjamin F. Lerch, Anna Maria Lerch, and Jehiel T. Kern, as administrators of the said Emma Oberly, deceased, immediately upon obtaining the said administration, made demand of the

said Charles Oberly of such assets and required him to pay the same over to them as such administrators, and that on the said Charles Oberly declining to do so, the said Benjamin F. Lerch, Anna Maria Lerch, and Jehiel T. Kern, as administrators as aforesaid, on the thirtieth day of September, eighteen hundred and sixty-five, commenced a suit in the Supreme Court of New Jersey against the said Charles Oberly for the recovery of the same, by writ of summons, issued on the said thirtieth day of September, eighteen hundred and sixty-five, returnable to the twentieth day of October, eighteen hundred and sixty-five, and that they have filed their declaration therein, claiming to recover of the said Charles Oberly the whole of the said assets still remaining in his hands as guardian as aforesaid, and that they threaten to proceed with their said suit to judgment unless restrained by process of injunction issued out of this court.

And your orators further show, that the said Anna Maria Lerch is now about thirty years old, and since her intermarriage with the said Benjamin F. Lerch, has resided in the state of Pennsylvania, and that she still continues to reside there, and is the mother of three children by the said Benjamin Lerch, who still survive; and that if, under the pretence of a present interest in the said assets, she is allowed to take the said funds in which she is entitled to life estate into her possession, she will remove the same out of the state of New Jersey and beyond the jurisdiction of this court, and that the rights of your orators therein will be greatly endangered.

And your orators expressly charge, that the said Benjamin F. Lerch and Anna Maria Lerch are endeavoring to obtain the said funds in the hands of the said Charles Oberly, as such guardian, with intent to remove the same beyond the jurisdiction of this court, and thereby to defraud, hinder, or embarrass your orators in obtaining their rights therein.

To the end that she, the said Anna Maria Lerch, may convert and dispose of the same to her own use, and that the said action at law is being prosecuted by the said Benjamin F. Lerch, Anna Maria Lerch, and Jehiel T. Kern, as such administrators, as a means to carry the said purpose into effect. All which actings and doings of the said defendants are contrary to equity and good conscience, and that to the manifest wrong and injury of your orators.

In tender consideration whereof, and forasmuch as your orators are without adequate remedy in the premises by the strict rules of the common law, to the aid, therefore, that the said Benjamin F. Lerch, Anna Maria Lerch, and Jehiel T. Kern, and their confederates, when discovered, may, upon their several and respective oaths or affirmations, fall, true, perfect, and distinct answers make to all and every the matters aforesaid, and that as fully as if the same were here again repeated and they particularly interrogated thereto, paragraph by paragraph, and that an account of the said 10 assets in the hands of the said Charles Oberly, as such guardian, may be taken under the direction of this court, and and that the same be marshalled. And that so much thereof as may be real assets be ascertained and set apart, and be invested under the directions of this court, in such a manner that the said Anna Maria Lerch may receive such interest therein as by law she may be entitled to, and that the rights of your orators, as heirs-at-law of the said Emma Oberly, deceased, therein, may be protected and secured, and that your orators may have such further and other relief in the 20 premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant to your orators' not only the state's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said Benjamin F. Lerch, Anna Maria Lerch, and Jehiel T. Kern, restraining them and each of them from further prosecuting their said action at law in the Supreme Court of New Jersey against the said Charles 30 Oberly, to recover the said assets in his hands, as such guardian as aforesaid, but also the state's writ of subpoena, to be directed to the said Benjamin F. Lerch, Anna Maria Lerch, and Jehiel T. Kern, therein and thereby commanding them and each of them, at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this honorable court, then and there to answer the premises, and to stand to, abide, and perform such decree as to your Honor shall seem meet. And your orators, as in duty bound, will ever pray, &c.

DAVID A. DEPUE, 40

Solicitor of and of counsel with complainants.

The following is a copy of the final account of Benjamin F. Lerch and Anna Maria Lerch, administrators of Owen Oberly, deceased, referred to in above bill.

The account of Benjamin F. Lerch and Anna Maria Lerch, administrators of Owen Oberly, late of the county of Warren, deceased, as well of and for the estate of which has come to their hands to be administered, as for their payments and disbursements out of the same.

Dr. These accountants charge themselves—		
10	1858. April 1. To the proceeds of sale of a farm of 127 $\frac{49}{100}$ acres of land, situated in the township of Greenwich, in the county of Warren, New Jersey, made by an order of the Orphans Court of said county,	\$12,876.49
	Deduct one third of said proceeds for the dower of Anna Maria Lerch, widow of said deceased, secured for her benefit during life, she having released her dower therein,	4,292.16
		<hr/>
		\$8,584.33

20 These accountants pray allowance—		
	1859. April 1. For cash paid Charles Oberly, guardian of Emma Oberly, a minor, for the following account of moneys paid by him on the debts of said deceased, viz.	
	May 10, 1855. C. Oberly, int. on note,	\$3.00
	Nov. 19, 1855. William Warman, note and interest,	100.60
	Interest from date, April 1, 1859,	21.44
	May 11, 1856. Polly Hiel, interest,	90.42
	Interest on do. to April 1, 1859,	16.51
	May 10, 1856. C. Oberly, interest on	
30	note,	3.00
	January 6, 1857. Polly Hiel, interest unpaid, 1855,	51.24
	Interest to April 1, 1859,	6.89
	March 24, 1857. Polly Hiel, interest,	90.42
	Interest to April 1, 1859,	10.93

April 1, 1857. C. Oberly, note and interest,	\$52.67	
Interest to April 1, 1859,	6.16	
	<hr/>	\$458.68
1859. April 1. For cash paid Charles Oberly, guardian of Emma Oberly, for cash he paid Anna M. Oberly, April, 1856, for balance due her for commission on settlement of her account of said deceased estate, April Term, 1854, balance \$145.87, interest on do. to April, 1856, \$17.50,		10 163.37
1859. April 1. Paid Polly Hiel, per Levi Hiel, balance of her claim and interest,		1687.84
1857. Dec. 15. Paid P. H. Hann, fees, per receipt,		5.77
1858. April 24. " Daniel Hulshizer,		2.00
" " " " Lawrence Dean,		2.00
" July 5. " N. H. Senseman,		2.00
" Sep. 4. " Lawrence Dean,		5.00
" " " " Rob't S. Kennedy,		2.00
" " " " Peter Houser,		7.00
1859. April 1. " Robert S. Kennedy,		5.00
" " 6. " J. M. Sherrerd,		8.00
" " " " P. H. Hann, taxed costs on trial,		53.50
" " " " P. H. Hann, rule to show cause, order of sale, confirmation, &c.,		17.23
" " 7 " Lewis Gordon, publishing sale,		3.00
" " 1 " Peter Houser,		1.00
Court and surrogate's fees for advertising, auditing, and stating, &c., this account,		13.00
Commissions on \$1000, at 7 per cent.,	\$70.00	
" " \$4000, at 4 "	160.00	
" " \$3584.33 at 3 "	107.53	
	<hr/>	337.53
Actual and necessary traveling expenses of accountants in settling estate, fare, &c.,		16 00
		<hr/>
		\$2789.92

Balance in accountants hands	\$5794.41
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	\$8584.33

The following are the several accounts of Charles Oberly, guardian of Emma Oberly.

FIRST ACCOUNT.

This accountant charges himself—

	1855. October 2. To cash received of Peter Houser, for 56 bushels 40 lbs. wheat, at \$1.85,	109.16
10	Oct. 11. Cash of the same for 96 bushels and 1 lb. oats, at 47 cents per bushel,	45.13
	Nov. 14. Cash received of do. for 80 bushels and 30 lbs. of corn, at 80 cents,	64.40
	Dec. 4. Cash received of do. for 87 bushels of corn, at 75 cents,	65.27
	1856. January 2. Cash received of do. for 43 bushels and 45 lbs. of rye,	58.81
	Jan. 14. Cash received of do. for rye,	13.28
20	Jan. 15. Cash received of do. for 1880 lbs. of oats, at 1½ cents per lb.,	28.20
	Feb. 9. Cash received of do. for 22 bushels and 24 lbs. of rye, at \$1.20,	27.08
	May 3. Cash received of Thompson & Hulshizer for oats, at 40 cents per bushel,	29.30
	May 20. Cash received of Jno. Howell for 272 and 56 lbs. of corn, at 80 cents,	218.34
	May 20. Cash received of John Green for 38 bushels and 34 lbs. of wheat, at \$1.55,	60.01
30	May 26. Cash received of Peter Houser for 36 bushels and 45 lbs. of wheat,	57.16
	May 27. Cash received of Peter Houser for 3 bushels of wheat, at \$1.55,	4.65
	May 29. Cash received of Peter Houser for 9 bushels and 35 lbs. of corn,	7.66
		<hr/>
		\$788.45
	Balance due accountant,	162.30
		<hr/>
		\$950.75

This accountant prays allowance—

1855. June 26. For cash paid J. G. Shipman,	\$10.00	
June 26. " " " P. H. Hann,	3.69	
July 24. " " " Isaac Tiller,	1.12	
August " " " Robert S. Kennedy,	3.60	
Aug 18. " " " Peter Houser,	12.50	
October 2. Due accountant interest on money advanced,		64
Oct. 2. Due accountant for interest on note he holds against Owen Oberly, deceased,	3.00	10
Oct. 15 Cash paid Thompson & Hulshizer,	17.15	
Nov. 19. " " William Warman,	106.00	
1856. Feb. 28. " Anna Maria Oberly,	50.00	
March 11. " Polly Hiel,	90.42	
April 1. " Polly Hiel,	303.89	
April 1. " Polly Hiel,	80.00	
April 14. " N. D. Fulmer,	1.63	
Commissions to accountant,	47.30	
Court and surrogate's fees,	7.00	
	<hr/>	20
Sworn to April 15th, 1856.	950.75	

SECOND ACCOUNT.

Dr. C. Oberly, guardian, account. This accountant chargeth himself—

1856. July 22. To cash of P. Houser for wheat,	\$14.04	
Oct. 7. To cash of P. Houser for wheat,	69.66	
Nov. 12. " " " " wheat and corn,	4.03	
Dec. 9. " " " " corn,	26.29	
" " " " " rye,	38.93	
1857. Jan. 15. To cash " " wheat	3.17	30
" " 29. " " " " rye,	8.34	
" " " " " wheat,	23.10	
" " 18. " " " " rye,	10.03	
" " 23. " " " " oats,	41.33	
" May 2. " " " " wheat,	32.56	
" " 19. " " " " corn,	125.74	
" " 21. " " " " rye,	7.30	
" Aug. 18. " " " " oats,	30.72	
" " 19. " " " " wheat,	6.88	

	1857. Nov. 7.	Cash of P. Houser for corn,	\$55.80
	" " 21.	" " " " wheat,	55.66
	" Dec. 1.	" " " " rye,	32.98
	1858. Jan. 21.	" " " " oats,	40.00
	" Feb. 3.	" " " " rye,	10.91
	" " 10.	" " " " wheat,	28.04
	" March 15.	Cash of Peter Houser for corn,	105.09
	" Sept. 7.	" " " " rye,	18.85
	" " 29.	" " " " wheat,	16.62
10	" Oct. 2.	" " " " wheat,	9.28
	" " 9.	" " " " corn,	96.90
	" " 9.	" " " " rye,	8.84
	" Dec. 4.	" " " " rye,	24.49
	" " 24.	" " " " oats,	42.49
	1859. Jan. 27.	" " " " rye,	15.81
	" Feb. 8.	" " " " corn,	116.26
	" " 12.	" " " " wheat,	43.82
	" " 28.	" " " " wheat,	35.90
	" Mar. 31.	" " " " L. Dean for interest,	5.14
20	" April 1.	" received of Benjamin F. Lerch, one of the administrators of Owen Oberly, deceased, for the following account of moneys paid on the debts of Owen Oberly, deceased, by this accountant out of the said minor's estate—	
	1855. May 10.	Cash paid C. Oberly, interest on note,	\$3.00
	Nov. 19.	Cash paid Wm. Warman, note and interest,	106.00
30	Interest on the same from date to April 1st, 1859,		21.44
	1856. Nov. 11.	Paid Polly Hiel, interest,	90.42
	Interest on do. to April 1st, 1859,		16.51
	April 1.	Cash paid Anna M. Oberly for commission,	303.89
	Interest to April 1st, 1859,		54.69
	May 10.	Paid C. Oberly interest on note,	3.00
40	1857. Jan. 6.	Cash paid Polly Hiel, interest from 1855,	51.24

80	Interest on do. to April 1st, 1859,	\$6.89	
66	March 24. Cash paid Polly Hiel,		
98	interest,	90.42	
00	Interest on do. to April 1st, 1859,	10.93	
91	April 1. Paid C. Oberly, note and in-		
04	terest,	52.67	
09	Interest to April 1st, 1859,	6.16	
85		<hr/>	\$817.26
62	To cash received of Benjamin F. Lerch,		
28	administrator of Owen Oberly, deceased,		10
90	ward's share of the proceeds of sale of		
84	real estate of said deceased,	5794.41	
49		<hr/>	
49		\$7816.67	
81			
26	Cr. This accountant prays allowance—		
82	1856. April 15. Cash due accountant, balance on		
90	settlement of first account,	\$162.30	
14	" Aug. 4. Paid Anna M. Oberly, for main-		
	tenance of ward,	25.00	
	" Nov. 10. " Peter Houser for plank,	3.33	
	1857. March 14. " C. Thomson for stone coal,	15.44	20
	" " 21. " Anna M. Lerch, maintenance		
	of ward,	79.00	
	" " 25. " Jacob H. Rush, for rails,	16.50	
	" April 14. " one year's interest on bal. of		
	settlement,	9.73	
	" April 15. Paid P. H. Hann, for fees,	6.00	
	" " " " " "	1.65	
	" Oct. 12. R. S. Kennedy, for surveying,	1.00	
	" Nov. 10. P. B. Kennedy, for fee,	5.00	
	1858. Jan. 23. Thompson & Hulshizer, for coal,	14.00	30
	Theodore Warman, for rails,	8.25	
	" Mar. 26. Anna M. Lerch, for maintenance,	104.00	
	" April 1. C. Oberly, one year's interest on		
	balance of settlement,	8.88	
	" June 26. R. S. Kennedy, agent for insu-		
	rance company,	3.60	
	" Aug. 6. R. S. Kennedy, writing agreement,	50	

1858. April 1. Anna M. Lerch, for keeping ward one year,	\$104.00
Jehiel T. Kern, recording mortgage,	50
Court and surrogate's fees for auditing, stating, filing, passing, recording, &c., this account,	9.00
Commissions on \$577.93 at 7 per cent.,	40.45
	<hr/>
	\$618.38
Balance in accountant's hands,	7198.29
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	\$7816.67

10 Sworn to, April 15th, 1859.

THIRD ACCOUNT.

Charles Oberly, guardian, account. This accountant charges himself—

1860. April 1. To amount of balance from April 1st, 1859,	\$7198.29
“ Jan. 25. “ Peter Houser, for wheat,	68.72
“ Feb. 20. “ “ “ rye,	16.40
“ “ “ “ “ wheat,	61.50
“ Mar. 17. “ “ “ wheat,	80.12
20 “ April 2. “ “ “ interest,	150.36
“ “ “ “ Lawrence Dean, interest,	24.00
“ “ “ “ John Lantz, interest,	257.52
	<hr/>
	\$7856.91

This accountant prays allowance—

1859. April 15. Paid Joseph Miller, for acknow- ledgment,	.50
“ “ “ “ P. H. Hann, for recording,	.25
“ “ “ “ Jacob Vought, tax,	\$28.07
30 1860. March 27. Paid Anna Maria Lerch for sup- port of minor,	104.00
“ “ “ “ court and surrogate's fees for stating, auditing, filing, and passing account,	8.00
“ “ “ “ commissions to accountant,	9.85

1860. March, 27. Paid balance in accountant's hands, \$7706.24

Sworn to, April 18th, 1860.

FOURTH ACCOUNT.

Charles Oberly, guardian, account. This accountant charges himself—

1861.	April 1.	To amount of balance from April 1st, 1860,	\$7706.24
"	"	" " John Lantz, interest,	6.00 10
"	"	" " Joseph F. Young, interest,	18.00
"	"	" " C. S. Mellick, "	14.94
"	"	" " Mathias Pickle, "	22.50
"	"	" " Robert S. Kennedy, "	48.00
"	"	" " John Thatcher, "	10.50
"	"	" " Joseph A. Holdren, "	54.00
"	"	" " Lawrence Dean, "	39.90
"	"	" " John S. Hynashar, "	41.55
"	"	" " William Fulmer, "	72.00
"	"	" " Jacob Hawk, "	30.00 20
"	"	" " Charles Oberly, "	101.71
			\$8165.34

This accountant prays allowance—

1860.	Dec. 11.	Paid tax,	\$30.80
1861.	April 18.	Paid Anna Maria Lerch for maintenance for ward 1 year,	104.00
"	"	" " court and surrogate's fees for stating, auditing, filing, and passing account.	7.00
"	"	" " commission to accountant on disbursements on \$140.-80, at 7 per cent.,	9.92
			\$151.72

Balance in accountant's hands,	\$8013.62
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\$8165.34

Sworn to, 19th of April, 1861.

FIFTH ACCOUNT.

Charles Oberly, guardian, account. This accountant chargeth himself—

	1861.	To amount of balance from April 1st, 1861,	\$8013.62
	April 23.	To received on bond of Robert Oberly,	358.29
	“ “	“ received on bond of Charles Oberly,	388.59
10	May 20.	“ distributive share of C. Oberly's estate,	17.62
	Dec. 21.	“ John S. Oberly, principal and interest,	596.15
	“ “	“ of the estate of J. Oberly, deceased, distributive share,	71.74
	1862. Feb. 13.	Of Catharine Oberly, decd,	11.66
	March 5.	Of Jacob Oberly, interest,	48.00
	“ “	“ Robert Oberly, “	25.47
	April 1.	“ Charles Oberly, “	139.57
	“ “	“ Jacob Stone, “	4.50
	“ “	“ Joseph Young, “	14.00
20	“ “	“ Joseph H. Holdren, “	54.00
	“ “	“ John S. Hyndshaw, “	65.88
	“ “	“ Mathias Pickle, “	22.50
	“ “	“ Robert S. Kennedy, “	12.00
	“ “	“ Lawrence Dean, “	60.11
	“ “	“ William Fulmer, “	72.00
			\$9975.70

This accountant prays allowance—

	1861. Sep. 17.	Paid Charles Oberly eight weeks beard for minor,	\$16.00
30	“ “ 21.	“ A. J. Fulmer, clothing,	2.48
	“ “ 30.	“ Eleanor Loutz, for making clothing,	1.42
	“ Dec. 14.	“ Jacob Vought, tax,	46.30
	“ “ “	“ G. V. Wallace, clerk,	25
	1862. March 9.	“ Anna Maria Lerch, for <i>men</i> .	88.00
	“ “ “	“ court and surrogate's fees for	

	stating, auditing, filing, and passing accounts, &c.,	\$5.00
1862. March 9.	Paid commissions to accountant on \$159.45 at 10,	15.94
		<hr/>
		\$175.39
Balance in accountant's hands,		9800.31
		<hr/>
		\$9975.70

Sworn to, April 15th, 1862.

SIXTH ACCOUNT.

Charles Oberly, guardian, account. This accountant 10
charges himself—

1863. April 14.	To amount of balance from April 1st, 1862,	\$9800.31
March 10.	To interest on note of Robert Oberly,	27.51
" " "	" " " " Jacob Oberly,	48.00
" 26. "	" " " " Jacob Stone,	4.50
" 31. "	" " " " David Cole,	1.32
" " "	" " " " Joseph S. Young,	9.00
" " "	" " " " Levi Hiles,	90.00
April 1.	" " " " Charles Oberly,	115.04 20
" " "	" " " " mortgage, M. Pickle,	22.50
" " "	" " " " note, Lawrence Dean,	60.11
" " "	" " " " John S. Hyndshaw,	65.88
" " "	" " " " Michael Lehn,	1.15
" " "	" " " " mortgage, Jos. H. Holdren,	54.00
" " "	" " " " note, R. S. Kennedy,	12.00
" 3. "	" " " " William Fulmer,	72.00
		<hr/>
		\$10383.32

This accountant prays allowance—

1862. Dec. 8.	Paid Jacob Vought, tax,	\$83.30 30
1863. April 9.	Anna Maria Lerch, board, &c.,	104.00
" " "	William F. Wire, for record- ing mortgage, assignment of mortgage, search, &c.,	4.90
1863. April 9.	Court's and surrogate's fees for stating, auditing, filing, and passing ac- count, &c.,	5.00

1863. April 9. Commissions to accountant on \$197.20,	\$19.72
Expenses while on business,	3.00
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	\$219.92
Balance in accountant's hands,	10163.40
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	\$10383.32
Sworn to, April 14th, 1863.	

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SEVENTH ACCOUNT.

Charles Oberly, guardian, account. This accountant
chargeth himself—

1864. April 7. To amount of balance from April 1st, 1863,	\$10163.40
1863. June 8. To interest received of Henry Kinney,	1.00
1864. Feb'y 29. Interest received of David Cole,	1.11
March 9. " " Jacob Oberly,	48.00
" " " " Robert Oberly,	27.51
20 " 19. " " J. A. Holdren,	54.00
April 1. " " Matthias Pickel,	22.50
" " " " J. S. Hyndshaw,	65.88
" " " " L. Dean,	60.11
" " " " Jacob Stone,	4.50
" " " " Henry Konkle,	30.00
" " " " John S. Oberly,	12.00
" " " " Michael Lehn	4.50
" " " " George Burch,	180.00
" 4. " " Wm. Fulmer,	72.00
" 5. " " R. S. Kennedy,	12.00
	<hr/>
	\$10758.51

30

This accountant prays allowance—	
1863. Dec. 14. Paid Robert H. Abernethy, tax,	\$43.70
1864. April 6. " Anna Maria Lerch, for board, clothing, &c.,	104.00
1864. April 7. Paid William F. Wire, for re- cording, mortgage,	60.
Court's and surrogate's fees for stating, au-	

ditig, passing, and reserving account, &c., expenses while on business,	\$4.00
Commissions on \$157.30, disbursements at 5 per cent.,	7.86
	<hr/>
	\$165.16
Balance in accountant's hands,	10593.38
	<hr/>
	\$10758.51

Sworn to, April 7th, 1864.

EIGHTH ACCOUNT.

Dr. Charles Oberly, guardian, account. This account- 10
ant chargeth himself—

1865. To amount in hand of guardian from April 1st, 1864,	\$10593.35
1864. Aug 1. To interest received of George Wheeler,	7.50
“ Dec 31. “ “ of the township of Greenwich,	9.86
1865. Feb. 27. “ “ “ Jacob Oberly,	48.00
“ “ “ “ “ John S. Oberly,	12.00
“ Mar. 28. “ “ “ Lawrence Dean,	120.11 20
“ “ 29. “ “ “ Anna C. Norton,	180.00
“ “ “ “ “ Dumont,	18.00
“ “ 31. “ “ “ Robert K. Shimer,	120.00
“ April 1. “ “ “ Joseph A. Holdren,	36.13
“ “ 3. “ “ “ William Fulmer,	72.00
	<hr/>
	\$11216.95

Cr. This accountant prays allowance—	
1864. Dec. 12. By tax paid Robert H. Abernethy, collector of Greenwich township,	\$161.70
1865. Jan. 13. Cash paid Francis Wolle, of Bethlehem, teacher,	36.50 30
March 29. Cash paid Dr. Lachenour (medical attendance),	125.00
April 5. Cash paid Rev. Mr. Rant, for funeral services,	10.00

	April 3.	Rev. Mr. Shelly, for funeral services,	5.00
	"	" Mr. Heller, chorister,	3.00
	"	" Boarding and horse feed for funeral of ward,	14.00
	"	7. Dr. Lachenor, for medical attendance,	20.50
	"	" P. B. Kennedy, counsel fee,	5.00
	"	13. Benjamin F. Lerch, maintenance and clothing for said minor, for one year,	147.43
10	"	" For funeral expenses,	54.43
	"	" B. F. Ruch, undertaker, for coffin, hearse, and shroud,	83.37
	"	14. For brick-walling up grave,	2.72
	"	17. William M. Ferran, digging grave and attending funeral,	5.75
	"	20. Dr. Field, consultation fee,	20.00
		By three days at different times, at Bethlehem, Pa., to engage schooling, taking ward to school, and settling school bill, and expenses each day,	9.00
20		By three days attending ward during sickness, arranging funeral matters and expenses of guardian,	9.00
		Three days coming and attending at Belvidere, and expenses attending to business of ward,	9.00
		Cash to P. B. Kennedy, for stating account, Court and surrogate's fees for auditing, paying, and recording account, &c.,	5.00
30		Commissions on \$731.40, disbursements at 4 per cent.,	29.25
			<hr/>
			\$760.65
		Balance in accountant's hands,	10456.30
			<hr/>
			\$11216.95

Sworn to, April 21st, 1865.

NINTH AND FINAL ACCOUNT.

Final account of Charles Oberly, guardian of Emma Oberly, of the produce of the estate of said minor, and of the disbursements of the said guardian of the same.

This accountant charges himself with the following items :

Balance in accountant's hands at last account,	\$10456.30
Interest on \$9956.30, from April 1st, 1865, to October 1st, 1865, on notes and bonds of ward's estate, invested by guardian,	298.69
	<hr/>
	\$10754.99 10

This accountant claims credit for the following disbursements, viz.

1865. April 25. By amount paid David A. Depue, counsel fee,	\$10.00
May 15. By hauling stone and cement and fixing grave of said ward,	5.00
“ “ “ amount paid D. J. Howell, for monument for said ward,	225.00
Aug. 24. “ amount paid Young & Schough, for fence around burial plot,	72.20 20
Sep. 1. “ amount paid Isaac Teller, for painting fence around burial plot,	4.84
“ “ For services getting fence and hauling and putting up same,	12 00
“ 30. By amount paid P. B. Kennedy, counsel fee,	20.00
“ “ “ amount David A. Depue, do.,	20.00
Amount paid Jesse Stewart, collector, tax on ward's estate, 1865,	186.00
Actual and necessary expenses,	12.50
Commissions on \$10754.99, as follows :	30
\$1000, 10 per cent,	\$100.00
\$4000, 7 per cent,	280.00
\$5000, 6 per cent,	300.00
\$754.99,	37.74
	<hr/>
	717.74
Court and surrogate's fees,	5.00
Balance in accountant's hands,	9464.71
	<hr/>
	\$10754.99

SCHEDULE.

The following schedule shows what description of assets the said several sums which have come to the hands of this accountant, and the said balance in his hands are made up, viz.

	1. Proceeds of land descended to said ward from her father, Owen Oberly, deceased, sold by his administratrix by his virtue of an order of the Orphans Court of the county of Warren, for	
10	the payment of debts of said deceased, being balance remaining of proceeds of such sale after payments of debts,	\$5794.41
	2. Proceeds of real estate of John Oberly, deceased, (ward's grandfather) which descended to said ward as one of his heirs-at-law, being her share, in amount invested to answer the dower of his widow, Catherine, in his land, and paid over after her death, as follows:	
	1. April 23, 1861. Robert Oberly,	\$358.29
20	2. " " " Charles Oberly,	388.59
	3. Dec. 21, " John S. Oberly,	596.15
	4. " " " Peter Hay,	71.44
		<hr/>
		1414.47
		<hr/>
		\$7208.88

The residue of said assets consists of proceeds received from annual income of ward's lands, which descended to her from her father, sold by his administratrix as aforesaid, and of interest received from investments of assets aforesaid, except the two sums of eleven dollars and sixty-six cents and seventeen dollars and sixty-two cents, which was ward's share of the personal estate of her grandmother.

Warren county, ss.—Charles Oberly, the guardian above named, on his oath saith—that the above account is in all things just and true, according to the best of his memory and belief.

CHARLES OBERLY.

Sworn and subscribed, October, 3d, A. D. 1865, before me.

WM. L. HOAGLAND, *Surrogate.*

State of New Jersey, Warren county, ss.—Charles Oberly, John S. Oberly, Robert Oberly, George Baker, and Emma his wife, the above named complainants, being duly sworn according to law, on their several and respective oaths say—that the matters and things set out in the foregoing bill, so far as they relate to their own acts are true, and so far as they relate to the acts and deeds of other persons, they believe them to be true.

And the deponents further say, that the said Owen Oberly died at the time stated in the foregoing bill, seized in fee of 10 the said lands therein mentioned, leaving his widow, the said Anna Maria Oberly, and one child, the said Emma Oberly, his sole heir-at-law, surviving him, as in said bill set forth; and that the statements therein contained in relation to the granting of letters of administration upon his estate, and the proceedings had by his said administrators for the sale of the said lands, and the sale thereof for the sum and to the person, and in the manner set out in said bill, are true; and that the several papers set out in said bill, as copies of papers connected therewith, are correctly copied from the 20 original papers now on file in the surrogate's office of the county of Warren; that the said Anna Maria Lerch was appointed guardian of the said Emma Oberly, and subsequently removed therefrom, and that the said Charles Oberly appointed in her place, as is set forth in said bill, at the dates therein set forth, and that the copies to the said bill annexed of accounts of the said Benjamin F. Lerch and Anna Maria Lerch, as administrators of Owen Oberly, deceased, and of the said Charles Oberly, as guardian of the said Emma Oberly, deceased, are true copies of the said accounts, now 30 on file in the surrogate's office of the county of Warren.

That the said Anna Maria Lerch, since the death of the said Owen Oberly, intermarried with the said Benjamin F. Lerch, in the year eighteen hundred and fifty-six, and that since her intermarriage she has resided with her said husband in the county of Northampton, and state of Pennsylvania, where she now resides; and that she has three children by her said husband, the said Benjamin F. Lerch, who are still living; and that the said Emma Oberly died on the second day of April, eighteen hundred and sixty-five, in the 40

twelfth year of her age; and that the said Charles Oberly, John S. Oberly, Robert Oberly, and Emma Baker, are her next heirs-at-law, to whom any lands of which she died seized did, upon her death, descend, subject to such rights therein as the said Anna M. Lerch, as her mother, might have.

And the said Charles Oberly further saith, that the statements in the said bill contained in relation to his acts and doings as guardian of the said Emma Oberly, are true, and
 10 that the accounts annexed to the said bill, purporting to be copies of his accounts as such guardian, are true copies of his accounts, now on file in the surrogate's office of the county of Warren; and that the allegations in said bill in relation to the estate of the said Emma Oberly, which came to his hands as her guardian, are true, and that the said moneys were derived from the sources stated in the said bill.

And these deponents further say, that the allegations in the said bill, in relation to the institution and prosecution of the said suit by the said Benjamin F. Lerch, Anna Maria Lerch,
 20 and Jehiel T. Kern, as administrators of the said Emma Oberly, deceased, against the said Charles Oberly, are true, and that the said suit is still pending.

CHARLES OBERLY.
 ROBERT OBERLY.
 GEORGE E. BAKER.
 EMMA BAKER.
 JOHN S. OBERLY.

Sworn and subscribed, this first day of December, A. D.
 1865, before me, one of the masters of the Court of Chancery
 30 in and for said state.

J. M. SHERRERD, M. C.

Answer.

[Filed July 13, 1866.]

IN CHANCERY OF NEW JERSEY.

The joint and several answers of Benjamin F. Lerch, Anna Maria his wife, and Jehiel T. Kern, defendants to the bill of complaint of Charles F. Oberly, Robert Oberly, George E. Baker, Emma Baker, and John S. Oberly, complainants.

These defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of benefits or advantage of exception or otherwise, that can or may be had 10 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 unto, answering say—they admit that Owen Oberly, late of the township of Greenwich, in the said county of Warren, and state of New Jersey, departed this life on or about the twenty-first day of September, in the year of our Lord eighteen hundred and fifty-two, intestate, seized in fee of a certain tract of land, situate in the said township of Greenwich, containing about one hundred 20 and twenty-seven acres, on which he resided at the time of his death, and that the said land is correctly described in the said bill of complaint; and that the said Owen Oberly left, at the time of his death, his widow, Anna Maria Oberly, since intermarried with the said Benjamin F. Lerch, and one child, Emma Oberly, his sole heir-at-law him surviving, to whom the said lands descended, subject to the right of dower therein of this defendant, Anna Maria Lerch, and the rights of the creditors of the said Owen Oberly, deceased, to have the debts of the said deceased, which should remain unpaid 30 after exhausting the personal estate of the said deceased, paid and satisfied thereout. And these defendants further admit, that on or about the twenty-seventh day of October, eighteen hundred and fifty-two, letters of administration on the estate of the said Owen Oberly, were granted by Lewis C. Reese, the then surrogate of Warren county, unto this

defendant, Anna Maria Lerch, then Anna Maria Oberly, who took upon herself the burthen of the administration of the said estate.

And these defendants further admit, that the said Emma Oberly, at the time of the death of her father, Owen Oberly, was an infant of tender years, being then about three weeks old; and that on the application of her mother, the said Anna Maria Oberly, letters of guardianship upon the person and property of the said Emma were granted to this defendant, Anna Maria Lerch, then Anna Maria Oberly, by the said Lewis C. Reese, esquire, surrogate of the county of Warren, on or about the eighteenth day of April, eighteen hundred and fifty-four.

And these defendants do further admit, that this defendant, the said Anna Maria Lerch, then Oberly, as administratrix as aforesaid, on the twenty-eighth day of March, eighteen hundred and fifty-four, presented to the Orphans Court of the said county of Warren, an account of her administration of the estate aforesaid; which said account was duly allowed and passed by the said court at the Term of April, eighteen hundred and fifty-four, by which said account there appeared to be due to the said administratrix the sum of three thousand seven hundred and eighteen dollars and eighty-seven and a half cents, after applying all the personal estate of the said Owen Oberly, deceased, to the payment of his debts.

And these defendants further admit, that this defendant, Anna Maria, being the widow of the said Owen Oberly, having intermarried with this defendant, Benjamin F. Lerch, on application to the said Orphans Court, alleging the said marriage, the said court ordered the said administration to be continued in the names of these defendants, Anna Maria and Benjamin F. Lerch; the said Benjamin F. Lerch having given bond according to law.

And these defendants, Anna Maria Lerch and Benjamin F. Lerch, answering for themselves, admit, and the other defendant believes the admission to be true, that at or about the time mentioned in the complainants' bill, this defendant was removed by the said Orphans Court from the guardianship of the person and property of the said Emma Oberly, and letters of guardianship were decreed by the said court to

be granted to the said Charles Oberly, one of the said complainants, and such letters were issued to him at or about the time set forth in the complainants bill, by Philip H. Hann, the then surrogate of the county of Warren.

But these defendants, Anna Maria Lerch and Benjamin F. Lerch, deny, and the other defendant believes the denial to be true, that it was, for any improper conduct this defendant, Anna Maria, was removed, but only by her own consent, because she had removed to the state of Pennsylvania and was living with her sister; and the said Charles Oberly became importunate for fear that she would not take proper care of the property of said ward, and that he might lose something in case of the said ward's death, and that in order to get rid of his importunity she consented that the said said court might remove her and appoint the said Charles Oberly in her place. 10

And these defendants in further answering admit, that these defendants, Benjamin F. Lerch and Anna Maria Lerch, did present to the said Orphans Court, at or about the time set forth in the said bill of complaint, an account of the personal estate of the said Owen Oberly, deceased, and also of his debts, and presented a petition therewith to the said court, setting forth that the personal estate of the said deceased was insufficient to pay his debts, and requesting the aid of the court in the premises; and they further admit that a substantial copy of said petition and account is set forth in the said bill of complaint. 20

And these defendants further admit, that the said court granted a rule to show cause why so much of the said lands as would be sufficient to pay the debts of the said Owen Oberly, deceased, as in the said bill is set forth, should not be sold. 30

And these defendants further admit, that the said Orphans Court did, at the time set forth in the said bill of complaint, make the said decree for the sale of the said lands, and that a substantial copy of the said decree is set forth in the said bill of complaint.

And these defendants further admit, that the said Benjamin F. Lerch and Anna Maria Lerch, did, in obedience to the said order, sell the said lands to one John Lants, for the 40

sum of twelve thousand eight hundred and seventy-six dollars and forty-nine cents, according to law, and did report the said sale to the said Orphans Court, and that a substantial copy of said report of sale is set forth in the said bill of complaint.

And these defendants further admit, that the said court did make an order confirming the said sale, as in and by the said bill is made known, and did direct the said Benjamin F. Lerch and Anna Maria Lerch, to make a conveyance to the
 10 said John Lants, and these defendants, Benjamin F. Lerch and Anna Maria Lerch, did make a conveyance to the said John Lants, for the consideration of the said sum of twelve thousand and eight hundred and seventy-six dollars and forty-nine cents, of which four thousand two hundred and ninety-two dollars and sixteen cents was secured by mortgage on said premises, to answer the dower of the said Anna Maria Lerch, as widow of the said Owen Oberly, deceased, in the said premises; and that this defendant, Anna Maria Oberly, now Lerch, had consented to release her dower there-
 20 in upon that condition, and that the residue of the said consideration money, amounting to the sum of eight thousand five hundred and eighty-four dollars and thirty-three cents, was paid to these defendants, Benjamin F. Lerch and Anna Maria Lerch, as cash.

And these defendants further admit, that the said Charles Oberly did, at or about the time he has set forth in the said bill of complaint, make application to the said court, to have the said account of the said Anna Maria Oberly, as administratrix of the said Owen Oberly, restated, and that said ac-
 30 count was opened by consent and restated; and these defendants, Benjamin F. Lerch and Anna Maria Lerch, did, by a written agreement, which was filed in the said court, consent that the item in her account filed on the 26th day of December, eighteen hundred and fifty-seven, and which is set forth in the complainants bill, which claimed "amount due Joseph Keller, do. \$1590.00," should be stricken from the said account, and the said Charles Oberly did consent, also in writing, that the said item should be stricken out and
 40 that no other item should be objected to. And these defendants, Benjamin F. Lerch and Anna Maria Lerch, au-

swearing for themselves say, and the other defendant believes it to be true, that of the said sum of fifteen hundred and ninety dollars, fifteen hundred dollars had been given to the defendant, Anna Maria Lerch, by her father, the said Joseph Keller, and this defendant had let the said Owen Oberly have the said fifteen hundred dollars to use in purchasing the said farm of which the said Owen Oberly died seized, and it was understood that the said Owen Oberly would give his said father a bond for the said money, and the said Joseph Keller supposed that he had done so, and the said account was filed accordingly, but upon examination it was ascertained that the said Owen Oberly never had given the said bond, and it was supposed and these defendants were advised at the time that the said sum of fifteen hundred dollars having been delivered to the said Owen Oberly by this defendant, Anna Maria, then being his wife, and the said Owen Oberly having signed no obligation to repay the same, it could not be recovered of his estate, and therefore all claim therefor was abandoned, and the said sum of fifteen hundred dollars, with the interest therein for one year, being the sum of ninety dollars, making the whole sum fifteen hundred and ninety dollars, was, by consent of these defendants, stricken from the said account, and the estate of the said Owen Oberly was allowed to enjoy the benefit of the said principal sum of fifteen hundred dollars.

And these defendants admit, that these defendants, Benjamin F. Lerch and Anna Maria Lerch, did, on or about the time mentioned in the said bill of complaint, file their final account of the estate of the said Owen Oberly, deceased, in the manner set forth in the said bill of complaint, and that there was left a balance for distribution in their hands amounting to the sum of five thousand seven hundred and ninety-four dollars and forty-one cents.

And these defendants, Benjamin F. Lerch and Anna Maria Lerch, deny, and the other defendant believes such denial to be true, that the said Charles Oberly, as such guardian of Emma Oberly, objected to the making of the said order for the sale of the said lands, on the grounds stated in the said bill of complaint or for any other reason. On the contrary, these defendants, Benjamin F. Lerch and Anna Maria Lerch,

further answering for themselves say, and the other defendant believes it to be true, that the said Charles Oberly was anxious to have the said land sold, and was the first to urge the sale of the said farm; that he at first thought he could pay the debts from the proceeds, and the said Charles did pay certain claims against the estate, and afterwards and shortly before the application for the sale of the said lands was made, the said Charles Oberly came to these defendants and urged the sale of the said lands, and that he, the said

10 Charles Oberly, would get his son-in-law, William Lants, to buy the said farm, and he could do better to have the money on interest, than to have the land; that the said Charles Oberly further remarked, as a reason for selling the said lands, that by the time the tenant's share came out, and the coal for burning lime and the widow's third, there was but little left for the child, and he thought it was better to have it sold; and besides, the said Charles Oberly had paid some eight hundred and some few dollars of said debts without any authority of law, and he was anxious to get it back, and

20 urged that as another reason, why the said lands should be sold. And these defendants, Benjamin F. Lerch and Anna Maria Lerch, being satisfied that the said debts could not be paid in any other way, proceeded, as they have before stated, to sell the said lands, and they were bought by the said John Lants.

And these defendants further answering admit, that the said Benjamin F. Lerch and Anna Maria Lerch did pay over to the said Charles Oberly, as guardian, of the said Emma Oberly, the said sum of five thousand seven hundred and

30 ninety-four dollars and forty-one cents, being the balance still remaining of the proceeds of the sale of the said lands after the payment of the debts of the said Owen Oberly, deceased, and deducting the sum of four thousand two hundred and ninety-two dollars and sixteen cents, secured by mortgage on the said premises, to answer the dower of the said Anna Maria in the said lands.

And these defendants further admit, that the said Emma Oberly died on the second day of April, eighteen hundred

40 age, without issue, having never been married; and that the

said complainants are the paternal uncles, and that the said Emma Baker is related to the said Emma Oberly as the said bill of complaint sets forth.

And these defendants further admit, that the said Charles Oberly, as guardian of the said Emma Oberly, has from time to time presented his accounts of said guardianship to the Orphans Court of the county of Warren, and that on the third day of October, A. D. eighteen hundred and sixty-five, the said Charles Oberly filed, in the surrogate's office of the said county of Warren, an account, together with what the 10 said Charles Oberly was pleased to call a schedule, pretending to set forth the sources from which he had derived the said moneys, but these defendants deny that it is entitled to be called a final account at all of his said guardianship of said Emma Oberly. And they further deny, that the said Charles Oberly had a right to pay out a single item of the moneys the said Charles Oberly professed to have paid out on and by the said account, and that the whole credit side of the said account is illegal, unjust, and the said Charles Oberly is not, as these defendants will more fully show hereafter, 20 entitled to any part of it, except possibly the item for tax.

And these defendants further answering say, that they have no reason to doubt the correctness of the statements of the said bill of complaint, as to the sources from which the said Charles Oberly originally derived the estate of the said Emma Oberly, but these defendants say the eighth account, filed by the said Charles Oberly, as guardian of the said Emma Oberly, show particularly the sources from which the said Charles Oberly derived the assets of the said estate; and these defendants further insist, that the said bill of complaint 30 does not correctly set forth the order in which the said Charles Oberly, as guardian, received the said assets. And these defendants further say, that by the first account filed by the said Charles Oberly, as guardian as aforesaid, which was filed on the fifteenth day of April, eighteen hundred and fifty-six, that the said Charles Oberly had received in cash for grain sold to different persons, the sum of seven hundred and eighty-eight dollars. And by the said Charles Oberly's second account, which was filed in the surrogate's office of the said county of Warren, on the fifteenth day of April, 40

eighteen hundred and fifty-nine, and in which the said Charles Oberly charges himself with the sum received from these two defendants, Benjamin F. Lerch and Anna Maria, from the sale of said lands, it appears that up to the thirty-first day of March, eighteen hundred and fifty-nine, and before the said Charles Oberly had received the proceeds of the sale of the said real estate, he had received in cash for grain sold, the further sum of twelve hundred and three dollars or thereabout, making the whole amount of money received by the

10 said Charles Oberly, as guardian as aforesaid, from the proceeds of grain belonging to said ward, Emma Oberly, prior to the time the said Charles Oberly received the said sum of five thousand seven hundred and ninety-four dollars and forty-one cents, the proceeds of the sale of the said real estate, and prior to the first day of April, eighteen hundred and fifty-nine, he had received the sum of nineteen hundred and ninety-one dollars and forty-five cents.

And these defendants further say, that they have not carefully examined the accounts of the said Charles Oberly so as

20 to be able to state accurately his disbursements during the time of his guardianship, but they deny that the said Charles Oberly disbursed from said estate of his ward, moneys for the payment of the debts of the said Owen Oberly, as by the said bill is implied, any money which he did not receive back; on the contrary, these defendants state the truth to be, that the said Charles Oberly, in his second guardianship account, charges himself with the sum of eight hundred and seventeen dollars and twenty-six cents, received of these defendants, Benjamin F. Lerch and Anna Maria Lerch, admin-

30 istrators of the said Owen Oberly, deceased, for moneys which the said Charles Oberly had paid for the debts of said Owen Oberly, deceased, and that the said Charles Oberly, guardian as aforesaid, shows by his said second account, filed as aforesaid on the fifteenth day of April, eighteen hundred and fifty-nine, that there was in his hands, after paying out all the sums of money for which he claimed credit in the said account, and the one that preceded it, for the debts of the said Owen Oberly and the support and maintenance of the said child, Emma Oberly, the sum of fourteen hundred

40 and three dollars and eighty-eight cents, over the said sum

of five thousand seven hundred and ninety-four dollars and forty-one cents, the proceeds of said real estate which was paid to him on or about the first day of April, eighteen hundred and fifty-nine, making the whole amount in the hands of the said Charles Oberly, on or about the first day of April, eighteen hundred and fifty-nine, and for which he charges himself in a bulk, the sum of seven thousand one hundred and ninety-eight dollars and twenty-nine cents. And these defendants entirely deny that the said Charles Oberly, as guardian as aforesaid, paid all the expenses and disbursements of his said guardianship out of the moneys he received from the sale of grain prior to the sale of the said lands, or that he kept that money separate and out of it paid said expenses and disbursements; on the contrary, these defendants charge that the said Charles Oberly mingled the moneys of the said estate all together, and paid the expenses for keeping the said ward and other expenses incident to his said guardianship out of such moneys of the said ward as he happened to have in hand when called on for said accounts. 10

And these defendants further say, that whether the proceeds of the said real estate which remained in the hands of these defendants, Benjamin F. Lerch and Anna Maria Lerch, were personal or real estate while they remained in the hands of these defendants undisposed of, it is not material for the purposes of this case to say, but these defendants submit as a question of law to this court, that the said proceeds even while in the hands of these defendants, were personal estate. But these defendants distinctly insist and charge, that the moment these defendants, Benjamin F. Lerch and Anna Maria Lerch, paid to the said Charles Oberly, as guardian of the said Emma Oberly, the said sum of five thousand seven hundred and ninety-four dollars and forty-one cents, the proceeds of the said real estate, for the use and benefit of the said Emma Oberly, the said ward, it became converted into personal estate; and that all the other sums of money received by the said Charles Oberly, as guardian as aforesaid of said Emma Oberly, from the proceeds of real estate as charged in said bill, became converted in the hands of the said Charles Oberly, guardian as aforesaid, into personal estate, precisely the same as if the said moneys had been 30 40

paid into the hands of the said Emma Oberly herself. And these defendants further insist and charge, that the said Charles Oberly gave to the said money all the attributes of personal estate, that he loaned it out for the benefit of the said ward and in her place and stead to different individuals, on bond and mortgage and other personal security; and that the said moneys have been mixed up with the other moneys of the said ward, derived from the sale of grain belonging to said ward, and with the interest moneys received for the
 10 said ward from the loan of the said moneys, and has lost all its specific character.

And these defendants further insist and charge, that the said estate in the hands of the said Charles Oberly has greatly increased by the accumulations of interest thereon, so that on the twenty-first day of April, eighteen hundred and sixty-five, when the said Charles Oberly filed his eighth account, after the death of the said Emma Oberly, after paying for all the expenses of her last sickness and the expenses of her funeral, the said Charles Oberly charges himself as such
 20 guardian as aforesaid, with a balance in hand amounting to the sum of ten thousand four hundred and fifty-six dollars and thirty cents. And these defendants further say, that an examination of the eight accounts filed by the said Charles Oberly, as guardian of the said Emma Oberly, in the Orphans Court, and were made a part of the said bill of complaint, and to which eight accounts these defendants beg leave to refer, it will appear that from mere accumulations of interest, the said estate in the hands of the said Charles Oberly has nearly or quite doubled itself. And these de-
 30 fendants further charge and state, that moneys derived from the sale of grain grown upon the real estate of the said ward are not real estate, but simply personal estate, and are to be administered as such; and that interest moneys, derived from the loaning of the money, the proceeds of the sale of the real estate of said ward, Emma Oberly, and which she derived from her _____ are not real estate, but simply and only personal estate, and are to be administered as such. And these defendants further say, that in the said accounts the said Charles Oberly charges himself with the balance of the whole
 40 sum due for the proceeds of said estate from every source, and

carries such balance from one account to another, until, on the twenty first of April, eighteen hundred and sixty-five, after the death of the said ward, the said Charles Oberly charges himself with the net balance due said ward's estate of ten thousand four hundred and fifty-six dollars and thirty cents. And these defendants distinctly deny, that any part of the assets in the hands of the said guardian are real assets, which are distributable among the heirs-at-law of the said Emma Oberly, deceased, subject to such rights therein as this defendant, Anna Maria Lerch, as mother of the said Emma 10 Oberly, would have in case the same were lands.

And these defendants do further deny, that by the laws of New Jersey the said assets descended to the said Charles Oberly, John S. Oberly, Robert Oberly, and Emma Baker, as the heirs-at-law of the said Emma Oberly, in equal shares, subject to the life estate of this defendant, Anna Maria Lerch, as the mother of the said Emma Oberly, deceased. And they further deny, that the said complainants have any right, title, or interest in any way whatever in the said assets.

And these defendants distinctly charge, that there is now 20 in the hands of the said Charles Oberly, as guardian of the said Emma Oberly, deceased, as will appear by his account filed in the office of the surrogate of the said county of Warren, on the twenty-first day of April, eighteen hundred and sixty-five, a copy of which is attached to the said complainants' bill, and to which account these defendants beg leave to refer, the sum of ten thousand four hundred and fifty-six dollars and thirty cents, and that the whole of the said sum are personal assets, and are to be administered as personal 30 assets; and that these defendants, as the administrators of the said Emma Oberly, deceased, are entitled to administer the said assets and to recover the same from the said Charles Oberly, as guardian as aforesaid.

And these defendants, Benjamin F. Lerch and Anna Maria Lerch, answering for themselves say, and the other defendant believes it to be true, that the said Anna Maria inter-married with the said Owen Oberly in the year eighteen hundred and fifty, and that somewhere about the year eighteen hundred and fifty-one, as nearly as these defendants can now recollect, this defendant, Anna Maria Oberly, received 40

from her father, Joseph Keller, the sum of fifteen hundred dollars, which she immediately gave to her said husband, Owen Oberly, to aid him in paying for the said farm of which he died seized as aforesaid. And these defendants submit, that in equity the said Anna Maria is entitled to receive from the proceeds of said estate the said sum of fifteen hundred dollars, with all interest thereon.

And these defendants further say, that so far as they or either of them know, the said Emma Oberly, deceased, has
10 no debts unpaid, but these defendants deny the right of the said Charles Oberly to pay any debts which he might have contracted for or on behalf of the said Emma Oberly after her death, and they insist that any debts which the said Charles Oberly may have contracted or paid for or on account of the said Emma Oberly, since her death, he contracted and paid in his own money, and is not entitled to any allowance therefore out of the said estate. And these defendants state the truth to be, that whether there are any
20 creditors of the said Emma Oberly, deceased, or not, it is necessary and required that the said assets should be administered upon as personal estate, in order that the same may be distributed among the next of kin of the said Emma Oberly, deceased.

And these defendants, Benjamin F. Lerch and Anna Maria Lerch, answering for themselves deny, and the other defendant believes their denial to be true, that they have endeavored to obtain the possession of the said estate at the hands of the said Charles Oberly, as such guardian, with a view to and for the purpose of diverting the same from the proper course
30 of distribution and defeating the rights of the heirs-at-law of the said Emma Oberly therein; and that in the execution of their purpose they applied to William L. Hoagland, surrogate of the county of Warren, for letters of administration on the estate of the said Emma Oberly; on the contrary, these defendants distinctly charge that the heirs-at-law of the said Emma Oberly have no interest in said assets. And that these defendants, Benjamin F. Lerch and Anna Maria Lerch, being advised by their counsel and being entirely satisfied that the said assets in the hands of the said Charles
40 Oberly, as such guardian as aforesaid, were personal estate,

and required to be administered upon in order that they might be legally distributed to the next of kin of said Emma Oberly, deceased. And that the said Anna Maria Lerch, as the mother of the said Emma Oberly, and this defendant, Benjamin F. Lerch, as the husband of the said Anna Maria, were entitled to the administration of the said estate, did apply to the said William L. Hoagland, surrogate of the said county of Warren, for letters of administration upon the said estate, and inasmuch as these defendants, Benjamin F. Lerch and Anna Maria Lerch, were residents of the state of Penn- 10 sylvania, they associated with themselves in the said administration the said Jehiel T. Kern, a resident of the town of Belvidere, in the said county of Warren; and inasmuch as the said Emma Oberly died at the house of these defendants, Benjamin F. Lerch and Anna Maria Lerch, in the state of Pennsylvania, and was a non-resident of the state of New Jersey at the time of her death, these defendants, on the thirty-first day of July, eighteen hundred and sixty-five, applied by petition to the said William L. Hoagland, surrogate as aforesaid, setting forth the circumstances of the 20 death of the said Emma Oberly, and her relationship to these defendants, and that it was necessary to have letters of administration granted on her estate in this state, and requesting the said surrogate to grant an order for cause to be shown, according to law, why letters of administration should not be granted on the said estate of the said Emma Oberly, deceased, to these defendants; and that the said surrogate did make an order accordingly, that cause should be shown before him on the eleventh day of September, eighteen hundred and sixty-five, why letters of administration should not 30 be granted on the estate of the said Emma Oberly, deceased, to these defendants. And these defendants admit, that the said Charles Oberly did present to the said surrogate and request him to file, and the said surrogate did file in his office, on the said eleventh day of September, eighteen hundred and sixty-five, the paper, a copy of which is set forth in the said bill of complaint, purporting to be signed by the said Charles Oberly, for himself and the other heirs-at-law of the said Emma Oberly, deceased, but these defendants deny that the said paper was of the least possible validity, and 40

that it had no right whatever upon the files of the surrogate's office; and these defendants cannot conceive of any reason why the said Charles Oberly should file the said caveat, except that he had some hope thereby to intimidate the surrogate from granting the said letters of administration. And these defendants admit, that the surrogate of the said county of Warren did issue letters of administration on the said estate to these defendants, on the eleventh day of September, eighteen hundred and sixty-five, and that these defendants, 10 have taken upon themselves the burthen of said administration, and these defendants deny that the said administration was taken out solely for the purpose of obtaining the said assets in the hands of the said guardian, in order to defeat the rights of the heirs of the said Emma Oberly therein, but that said administration was taken out on the said estate because it was right and lawful to take it out; because said assets were personal estate and could be settled in no other way than by taking out letters of administration thereon and administering the said estate, in order that it might be dis- 20 tributed according to law among the next of kin of the said Emma Oberly, deceased.

And these defendants further say, that on the twenty-eighth day of September, in the year of our Lord eighteen hundred and sixty-five, this defendant, Jehiel T. Kern, in company with a witness taken for the purpose, did go to the said Charles Oberly, at his residence in the township of Greenwich, in the said county of Warren, and did show him the letters of administration granted to these defendants by the surrogate as aforesaid, and demanded of him, the said Charles 30 Oberly, the sum of ten thousand four hundred and fifty-six dollars and thirty cents, money in his hands belonging to the estate of the said Emma Oberly, deceased, with interest thereon from the first day of April, eighteen hundred and sixty-five; and that the said Charles Oberly did then and there reply that he would pay the money whenever the court decided he was bound to pay it, and not before. And that these defendants did, on the thirtieth day of September, eighteen hundred and sixty-five, commence an action in the Supreme Court of New Jersey against the said Charles Oberly, 40 in the manner the said complainants have set forth in their

said bill of complaint, to recover the said moneys from the said Charles Oberly, and they admit that they intend to prosecute their said suit as rapidly as possible to recover judgment for said money, unless restrained by the injunction of this court. And these defendants submit, that they have a legal right to prosecute said suit and recover said money, and that this honorable court will not interfere to restrain them from pursuing their rights as administrators as aforesaid, and obtaining the said moneys, that they may administer the said estate according to law. 10

And these defendants further say, that the said Charles Oberly, on the third day of October, A. D. eighteen hundred and sixty-five, after these defendants had demanded the said money of him, and after they had commenced suit against him for the recovery thereof, as they have above set forth, filed, in the surrogate's office of the said county of Warren, an account which he called his final account, as guardian of the said Emma Oberly, deceased; and that he appended to said pretended final account a schedule, professing to set out the sources from which he derived the said estate. 20

And these defendants further say, that being satisfied that the said account was, so far as the claims for credit therein were concerned, illegal, and improper, and unjust, and that the said pretended schedule was improper and against the usage and practice of the said Orphans Court, and of the said surrogate's office, put into the said account by said Charles Oberly, for the purpose of making some evidence in his own behalf or for some other purpose unknown to these defendants; these defendants, by their counsel, at the December Term, eighteen hundred and sixty-five, of the said Orphans Court, moved the said court to strike from the said pretended final account the said schedule, and for leave to file exceptions to the said pretended final account. And that it was thereupon agreed between the counsel of these defendants and of the said Charles Oberly, and the said Orphans Court did so order and direct that all proceedings upon the said pretended final account should be suspended in the said Orphans Court until the matters pending in reference to the said estate in this court should be settled, and that these defendants should take all these objections to the said pre- 40

tended final account in this court, and that this court should adjudicate thereon.

And these defendants object to the schedule annexed to the pretended final account, and ask this court to order it to be stricken out as illegal and improper, and as being contrary to the usage and practice of the Orphans Court and the surrogate's office, and a mere attempt to make evidence for himself by the said Charles Oberly, and as being a dangerous innovation upon the usage and practice of the said Orphans Court and of the said surrogate's office, in reference to the accounts of guardians.

And these defendants further say, that the said Emma Oberly died on the second day of April, eighteen hundred and sixty-five, and that on the twenty-first day of April, eighteen hundred and sixty-five, nineteen days after the death of the said Emma Oberly, the said Charles Oberly filed his account as guardian of said Emma Oberly, deceased, in which the said Charles Oberly claimed allowance for all the expenses incurred during the last sickness of the said Emma Oberly, and for the expenses of her funeral; and that in and by the said account the said Charles Oberly completely settled up, as these defendants believe and therefore charge, all his accounts as guardian of the said Emma Oberly, deceased, and these defendants really believe and therefore charge, that if these defendants had not proceeded to recover said moneys from the said Charles Oberly, that said Charles Oberly never would have filed said pretended final account.

And these defendants object to all the credits claimed by the said Charles Oberly, in the said pretended final account, except perhaps the item for tax, and they submit whether the said Charles Oberly, as guardian, had any right at all to pay that tax. They object to the following items:

1865.

May 15.	To hauling stone and cement and fixing grave of said ward,	\$5.00
May 24.	Amount paid D. J. Howell, for monument of said ward,	225.00
Aug. 24.	Amount paid Young & Schlough, for fence around burial plot,	72.20
40 Sept. 1.	Amount paid Isaac Zeller, for painting fence around burial plot,	4.84

Sept. 1. For services getting fence and hauling and putting it up, \$12.00

Sept. 30. Actual and necessary expenses, 12.50

Because all said debts were contracted and said liabilities were incurred and said services rendered long after the death of said Emma Oberly, and long after the rights and powers of the said Charles Oberly, as such guardian, had ceased; and therefore, the said Charles incurred the said debts and obligations and rendered said services and paid out said moneys without any authority of law and is not entitled to any allowance for the same.

And these defendants further say, that the said Charles Oberly had no right or authority, under any circumstances whatever, to incur said debts and pay them out of the said ward's estate after her death.

And these defendants further object to the items in the said account:

1865.

Sept. 30. Cash paid P. B. Kennedy, counsel fee, \$20.00

Sept. 30. D. A. Depue, 20.00 20

April 24. Amount paid D. A. Depue, 10.00

Because these sums of money, as these defendants believe and charge, were paid to counsel not really for services rendered to the said Charles Oberly, *as guardian* of the said Emma Oberly, deceased, but as counsel fee and retaining fee in advising and aiding the said Charles Oberly to claim for himself and the other complainants the said estate, and therefore the said Charles Oberly cannot claim compensation therefore out of the said estate.

They further object to the item of commissions of \$717.³⁰ 74, because the said charge is exorbitant and erroneous, and is entirely too high, and because he is not entitled to any commissions, and because he has charged commissions on said estate in every account by him filed. And these defendants ask that these items should be all stricken out and that the said account should be stricken from the files, and that the said account filed by the said Charles Oberly, on the twenty-first day of April, eighteen hundred and sixty-five, be taken and held as the final account of the said Charles Oberly of his said guardianship. 40

And these defendants further show, that this defendant, Anna Maria Lerch, is about thirty-six years old, and that since her intermarriage with the said Benjamin F. Lerch she has resided in the state of Pennsylvania, and that she is the mother of three children by the said Benjamin F. Lerch, to wit, Mary E. Lerch, aged nine years, Thomas F. Lerch, aged six years, and Irwin B. Lerch, aged two years, and that they are half brothers and sister to the said Emma Oberly, deceased.

10 And these defendants further state, that this defendant, Anna Maria Lerch, the mother, and the said Mary E. Lerch, Thomas F. Lerch, and Irwin B. Lerch, the half brothers and sister of the said Emma Oberly, are, under the laws of New Jersey, the next of kin of the said Emma Oberly, deceased, and are entitled to the whole of the said estate, after paying the expenses of the administration of said estate and any debts which may be outstanding against the said estate, if any there be, which these defendants do not believe.

And these defendants, Benjamin F. Lerch and Anna Maria
 20 Lerch, deny, and the other defendant believes their denial to be true, that they are endeavoring to obtain the said funds, in the hands of the said Charles Oberly, as such guardian, with intent to remove the same beyond the jurisdiction of this court, and thereby to defraud, hinder, or embarrass the complainants in obtaining their rights therein; but these defendants charge, that they are seeking to settle up the said estate of the said Emma Oberly in the said Orphans Court of the county of Warren, in order that distribution
 30 said Emma Oberly, according to law, and that the said complainants have no rights whatever in the said estate, and that all such charges as these made by the said complainants are untrue and unfounded.

And these defendants further insist and charge, that if the said assets were real assets, which they insist they clearly are not, but are altogether personal assets, as these defendants have already shown, this defendant, Anna Maria Lerch, having the life estate in the said assets, would have the clear legal right to take the said assets into her own possession,
 40 uncontrolled by the said Charles Oberly or any of the said

complainants. But these defendants insist, that the whole of the assets are personal assets, and that they, as administrators of the said Emma Oberly, deceased, have a right to administer the same under the direction of the said Orphans Court, and pay over the said assets to the said Anna Maria Lerch, Mary E. Lerch, Thomas F. Lerch, and Irwin B. Lerch, as the next of kin of the said Emma Oberly, deceased.

And these defendants deny all unlawful combination and confederacy in said bill charged, without this, that any other 10 matter or thing material for these defendants 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 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 their reasonable costs and charges in this behalf most wrongfully sustained.

J. G. SHIPMAN,

Solicitor for and of counsel with the defendants. 20

New Jersey, ss.—Benjamin F. Lerch and Anna Maria Lerch, two of the foregoing defendants, being duly sworn according to law, on their respective oaths say—that they have heard the foregoing answer read, and understand its contents, and that the facts, matters, and things therein contained, so far as they relate to the acts and doings of these defendants and of each of them, are true; and so far as they relate to the acts and doings of other persons, they believe them to be true.

BENJAMIN F. LERCH. 30

ANNA MARIA LERCH.

Sworn and subscribed before me, this 28th day of June, 1866, at Phillipsburgh, New Jersey.

WM. M. DAVIS, M. C.

New Jersey, ss.—Jehiel T. Kern, one of the above named defendants, being duly sworn according to law, on his oath saith—that he has heard the foregoing answer read and un-

derstands its contents, and that the facts, matters, and things therein set forth, so far as they relate to his own acts and doings, are true; and so far as they relate to the acts and doings of other persons, he believes them to be true.

JEHIEL T. KERN.

Sworn and subscribed before me, at Belvidere, New Jersey, this 28th day of June, 1866.

J. M. ROBESON, *M. C.*

Order.

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[Filed June 18, 1867.]

IN CHANCERY OF NEW JERSEY.

This matter coming on to be heard before his Honor the Chancellor, at the Term of March now last past, in the presence of Edward T. Green, of counsel with complainants, and J. G. Shipman, esquire, of counsel with defendants, upon the bill of complaint and answer thereto, and the said pleadings being read, and the said defendants having thereupon moved his Honor the Chancellor to dissolve the injunction heretofore granted in the cause, and to dismiss the
 20 bill of complaint of the said complainants, and the arguments of counsel having been heard thereon and considered, and the Chancellor having taken time to advise thereon, and now being of opinion that said motions ought not to be granted—

It is, upon this eighteenth day of June, in the year of our Lord one thousand eight hundred and sixty-seven, ordered, that the said motions to dissolve the said injunction and to dismiss the said bill of complaint be denied, with costs.

A. O. ZABRISKIE, *C.*

30 A true copy—B. GUMMERE, *Clerk.*

Opinion.

Owen Oberly, of Warren county, died on the first day of September, 1852, intestate, seized of a valuable farm in that county, leaving a widow, the defendant, Anna Maria Lerch, who afterwards was married to the defendant, Benjamin F. Lerch, and one child, Emma Oberly, an infant three weeks old. His personal estate was not sufficient to pay his debts. Administration of his estate had been granted to his widow, and upon application by her and the defendant, Benjamin F. Lerch, who, after the intermarriage, had been joined with 10 her in the administration, the Orphans Court of Warren county, in April, 1853, made an order for the sale of the farm to pay debts of the intestate, to the amount of thirty-eight hundred and eighteen dollars and eighty seven cents. On the fourth of September, in that year, the farm was sold for twelve thousand eight hundred and seventy-six dollars and forty-nine cents, including the widow's right of dower. Of this sum one third was invested on mortgage for the life of the defendant, Anna Maria; and of the residue there remained, on the settlement of the final account on the sixth 20 of April, 1859, five thousand seven hundred and ninety-four dollars and forty-one cents, above debts and expenses. This balance was paid unto Charles Oberly, one of the complainants, who had been duly appointed guardian of the infant, Emma Oberly.

In 1861, Charles Oberly, as such guardian, received three hundred and eighty-nine dollars and fifty-nine cents, the infant's share of that part of the proceeds of the lands of her paternal grandfather, John Oberly, situate in the county of Warren, sold in 1834, by a partition sale, which had been 30 invested for the dower of her grandmother, Catharine Oberly, who died in 1860. And also, sixteen hundred and ninety-four dollars and forty-seven cents, her share of proceeds of lands of the same grandfather, situate in Pennsylvania, sold about the same time on like proceedings, and which had been invested for the same purpose.

The infant, Emma Oberly, died on the second of April, 1865, aged twelve years, leaving the complainants, Charles

Oberly, John F. Oberly, and Robert Oberly, her paternal uncles, and the complainant, Emma Baker, the daughter of her deceased paternal aunt, her only heirs-at-law, besides her mother, who inherited for her life, and leaving her mother and three infant children of her mother by the second marriage her next of kin.

In 1865, after the death of Emma, the complainant, Charles Oberly, as her guardian, settled his account in the Orphans Court of Warren county, upon which the balance was nine
10 thousand four hundred and sixty-four dollars and seventy-four cents.

In September, 1865, administration of the estate of Emma Oberly was committed by the surrogate of Warren county to the defendants, Benjamin F. Lerch, Anna Maria Lerch, and Jehiel T. Kern, who thereupon sued the complainant, Charles Oberly, the late guardian, in the Supreme Court of this state, for the whole balance in his hands.

The bill in this court is filed to enjoin that suit. The complainants claim that so much of that balance as is made up
20 of the proceeds of real estate must be considered as real estate, and descend as such; that the administrators of Emma are not entitled to receive it, but that it belongs to them, as her heirs-at-law, subject to the life estate of her mother, and that they are entitled to have it invested and secured under the direction of this court.

If the complainants are right in their claim, the case is a proper subject of equity jurisdiction. The proceeds of the real estate must be separated from the rents of the farm and the interest of these proceeds which are personal estate, and
30 form part of the balance in the hands of the guardian, and when separated must be invested for the life of the mother.

The main, if not the only question in the case is, whether the surplus of the proceeds of lands of a decedent, sold by direction of a court for the payment of his debts, which remains after payment of the debts, or the proceeds of lands sold on proceedings in partition, because they cannot be divided, when such surplus or proceeds belong to an infant, are, upon the death of the infant, to be considered as
40 real estate or as personal estate, for the purposes of succession.

There is nothing in the statutes by which these sales are authorized to settle the question. The partition act says the proceeds shall be paid "to the parties interested in the real estate so sold, their guardians or legal representatives, in proportion to their respective rights in the same;" and the act authorizing lands to be sold for debts, directs that "the surplus money arising from such sale shall be distributed among the heirs or devisees, according to the law of descents in the former, and the will of the testator in the latter case." But this, while it *seems* to regard it as real property does not give any character to it to guide its transmission after its being converted into money. The disposition of the surplus must have been the same without this provision. In such cases, by the descent or devise, the land had vested in the heir or devisee, subject to the lien for debts, and all beyond that lien would, by settled principles of law, have belonged to the owner of the property before the sale. The provision may show, by the superabundant care in inserting it, that the legislature was very careful not to disturb, by a sale, the transmission of the proceeds as real estate.

The general rule is, that property is transmitted as real or personal, according to the form in which it exists at the death of the owner. But courts of equity, by the doctrine of *equitable conversion* now well established, hold that in certain cases property actually existing in one form shall, for transmission, be held to be in the other. This doctrine of *notional conversion*, as it has been termed, is applied in cases where, by a will or marriage settlement, money is directed to be laid out in land, or land converted into money; to carry out the object of the will or settlement in such case, it is considered in equity to be the kind of property into which it is directed to be converted from the time the change should have taken place, whether such conversion is actually made or not; and this theoretical conversion is considered in equity to continue until the ownership vests in some person who would have the right to convert it from one kind to the other, and who, when of legal capacity, accepts it or does something to recognize it or give it character in the shape in which it exists. Until this is done, it must retain the character of real or personal, impressed upon by the last absolute owner who had such power over it. *Fletcher v. Ash-*

bound, 1 *Lead. Cases in Eq.* 671; *Wheldale v. Partridge*, 8 *Ves.* 235; *Craig v. Leslie*, 3 *Wheat.* 563; *Sweezy v. Frazer*, 1 *Duer.* 301 and 306.

An infant or lunatic cannot elect, and therefore cannot change the character impressed upon the property. *Leigh & Dulzell on Eq. Con.* 182; *Seely v. Jago*, 1 *P. W.* 389; *Earlom v. Saunders*, *Ib.* 241; 1 *Lead. Cases in Eq.* 684, notes to *Fletcher v. Ashwiner*; *In re Wharton*, 5 *De Gez. M. & Gord.* 33.

10 The question in this case is, when land is, by legal proceedings, converted into money for a definite purpose, whether the proceeds are to be considered as converted into money except for that purpose, and whether they do not, for all other purposes, retain their character as land. It is contended that on a sale for the payment of debts the surplus not needed for debts remains real estate, and that on a partition sale the proceeds are personal only for the purpose of division; that for all other purposes they must be considered to remain as real.

20 The question is not the same as when one species is directed to be converted into the other by a will, or marriage settlement. Yet it is placed upon the same principle, which is, that property shall retain the character impressed upon it by the last absolute owner until that character is changed by some one having like power over it.

In this state there is one case in which this question has been brought up for decision, the case of *Snowhill v. Snowhill*, in 2 *Green's Ch.* 20. In that case the lands of an infant had been sold by virtue of a special act of the legislature; the
30 act authorized the sale, and directed the proceeds to be invested, and one third of the interest to be for the use of the mother of the infant, and two thirds for the use of the infant, and gave no directions as to the principal. The infant died under age, without issue, and his mother obtained administration of his estate. The bill was filed against the administratrix by his heirs-at-law, who claimed that the proceeds retained the character of real estate, and descended to them as such. This brought up the precise question that we are
40 considering here. Chancellor Vroom, in a well considered opinion, held that the doctrine of equitable conversion only

applied in cases of fraud or breach of duty. But where property was lawfully changed in character by the courts or by the legislature, that the heir or next of kin must take it as it actually exists; and that the proceeds of sale in that case must pass as personal property—and he dismissed the bill. On appeal to the Court of Errors this judgment was reversed. The decision in that court is not reported, but the result appears in a subsequent proceeding in the same case in this court, reported in 1 *Green's Ch. R.* 30. There Chancellor Pennington gives effect to the decision of the Court of Errors 10 as establishing the right of the heir-at-law to the proceeds of the sale.

This decision, upon the very point by the highest court in the state, should be considered as putting the question at rest. But it is contended that the decision is against the clear weight of authority, and as no opinion was delivered, and no principle was settled by the Court of Errors, that the utmost extent to which it should be held binding is in cases like that in which it was made; that is, sales by virtue of a special statute. This, perhaps, might be a correct view if the 20 decision was against a well established principle or against a series of well considered cases, uniform or nearly uniform in their rulings. Or there may be cases in which it might be wise to bring up for re-consideration an opinion of that court when it seems to be made without due and full consideration of the principles that should have guided it.

But on this point the decisions in courts that ought to have weight here are very different and apparently irreconcilable. Most of the decisions in England, referred to on the argument, have no real bearing on the point. The case 30 of *Ackroyd v. Smithson*, reported in 1 *Br. C. C.* 503, and in 1 *Lead. Cases in Eq.* 690, with the full and learned notes of the English and American editors, does not decide the point. That case contains the very able argument of Mr. Scott, afterwards Lord Eldon, which induced Lord Thurlow to decide for him against his preconceived opinion, so fixed that he at first declined to hear the adverse counsel. But it only decides that when a testator had ordered his land to be sold and converted into money to pay certain legacies, two of which had lapsed by death in his lifetime, that the amount 40

of these lapsed legacies descended to the heir as real estate. The cases of *Wright v. Wright*, 16 *Ves.* 188; *Hewitt v. Wright*, 1 *Bro. C. C.* 84; *Smith v. Claxton*, 4 *Madd.* 484; *Dixon v. Dawson*, 2 *Sim. & Stu.* 327; and *Jessup v. Watson*, 1 *Mylne & Keene* 665, decide the same point, but they hold further that it goes to the heir *as money*, and is held by him as personal estate. That it should go to him as if real estate, does not affect the present question; the property existed in land at testator's death, and as his intention of disposing of it failed by the lapse, the land, or the interest in it undisposed of, descended to the heir at the testator's death, and when the land was sold the proceeds belonged to the heir. Holding that these proceeds, when in the hands of the heir, were personal estate, seems at first to be more directly on the point, as it settles the continuance of the character of the property. But in all these cases the testator, the last absolute owner, had directed a conversion out and out of the property; he had the power to change and did change its character; he failed to dispose of it; and before it was changed, either actually or by the theory of equitable conversion, the title vested in the heir, and necessarily it vested in him as money, the character so fixed.

There are many other cases in which the proceeds of lands, directed out and out to be converted into money, have been held for want of any valid disposition of them by the testator to go to the heir. *Collins v. Wakeman*, 2 *Ves.* 683; *Fitch v. Weber*, 6 *Hare* 145; *Robinson v. London Hospital*, 10 *Hare* 19; *Shallcross v. Wright*, 12 *Beav.* 505; *Gordon v. Ackroyd*, 1 *De Gez. & Smalc.* 478; *Taylor v. Taylor*, 3 *De Gez. M. & Gord.* 190.

But all the effect these cases have here is, that they show the leaning of the English Courts is in favor of the heir; and that he is not to be disinherited except by a valid and express disposition of the estate.

The case of *Oxenden v. Lord Compton*, 2 *Vesey*, p. 70, is more in point. Here the proceeds of timber cut on a lunatic's estate, were held at his death to pass as personal property, and Lord Chancellor Loughborough remarks that there is no "equity between the real and personal representatives. Both are volunteers, each must take what they find at the death

of the person entitled for life, on the condition in which they find it." And he holds, that the court, in administering the estate of a lunatic, will not regard the interest either of the heirs or the next of kin, but only that of the lunatic. The force of this case is perhaps somewhat affected by the fact that appears by the case, that the timber cut was in a state that required it to be cut for the benefit of the estate, and that the cutting was only taking the produce of the estate in the usual way, and therefore the proceeds were, at all events, personal estate.

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The case of *Flanagan v. Flanagan*, as stated by Sir Thomas Sewall, M. R., in his masterly opinion in *Fletcher v. Ashbourn*, 1 Br. C. C. 497, is an authority in favor of the proceeds of lands unnecessarily sold being considered for transmission as personal estate, and its effect is not explained away by Mr. Scott in his remarks upon it in *Ackroyd v. Smithson*.

The case of *Cooke v. Dealey*, 22 Beav. 196, decided by Sir John Romilly, master of the rolls, is much like the present. The real estate of the decedent had been sold by order of the court for payments of debts and legacies. More was raised by the sale than was needed; the devisee died after the sale; the suit was between her administrator and her heir, and the sole question was whether, at her death, it passed as real or personal estate. It was held that it passed to the heir as real estate. Sir John Romilly remarks, "more of the real estate was sold than was necessary, of course the conversion is complete to the extent to which the purchase money was required for the particular object for which the sale took place, namely, for the payment of debts and costs, but the excess, though in the form of money, remained as before impressed with the character of land."

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In "the matter of Wharton, a lunatic, 5 De Gex. Mc. N. & Gord. 33, the real estate of a lunatic had been sold by order of the court by virtue of the Stat. 11 Geo. 401, Wm. 3, which enacts that the proceeds of the estate sold "shall be of the same nature and character as the estate sold." The sale was in 1829. Wharton, the lunatic, died in 1841, leaving an heir, who was also a lunatic, incapable of electing, and who died in 1842, intestate, and without having received the money. It was held by the Lords Justices that at the death 40

of the lunatic's heir, it passed as real estate to his heir-at-law, and not to his next of kin. The statute controlled the first transmission, the second was upon the principle that money impressed with the character of land remains such until it is accepted as money by its absolute owner, of sufficient capacity to make such election.

In the state of New York, the case of *Bogert v. Furman*, 10 *Paige* 496, is like the present. It was as to the surplus moneys arising from the sale of lands to satisfy a mortgage; one of the owners of the equity of redemption died, after the foreclosure and sale, but before the surplus was distributed; it was held by Chancellor Walworth that this surplus was personal estate, and went as such to the next of kin. The principles contained in the cases on the subject were not discussed at the bar, nor do they appear to have been investigated or considered by the chancellor. The decision has, however, the authority of this eminent jurist.

In the case of *Graham v. Dickinson*, 3 *Barb. Ch. R.* 170, lands of the testator had been sold to pay his debts. Subsequently personal estate of the testator was realized from claims against the French government sufficient to liquidate these debts. It was held that the devisees, whose lands had been sold to pay debts, were entitled to be reimbursed out of the personal estates so recovered, that being the fund primarily liable to debts. But that in case of devisees who died before the recovery, their claim against that fund was personal estate and went to the next of kin. This case decides nothing that bears upon the point in question. The claim of the devisee at his death was a chose in action, a mere personalty. It was not to the proceeds of the sale of real estate. But a mere right of action growing out of a mal-administration of the estate. But in the opinion of Vice-Chancellor Hoffman, he says that the surplus of a sale of mortgaged premises made in the lifetime of the mortgagor is personal estate, but if made after his death his devisee would take; "but she would have taken such surplus as money, not as land, and the devolution from her would be altered accordingly." This seems to conflict with his subsequent opinion in *Sweezy v. Thayer*. In that case, reported in 2 *Duer* 286, it is expressly held that the surplus of the

sale of mortgaged lands, under a decree of foreclosure, where the equity of redemption at the time of the sale belonged to a minor, who subsequently died under age, was to be deemed real estate, and at his death go to his heirs and not to his next of kin. The referee, Murray Hoffman, and the Superior Court, by Justice Bosworth, in very able and well considered opinions, in which the cases are reviewed, agree in this result.

In Massachusetts, in *Emerson v. Cutler*, 14 *Pick.* 108, it was held in an opinion delivered by Chief Justice Shaw, that the overplus of the proceeds of the land of an infant, sold by 10 license of the court for the benefit of the infant, at her death under age was personal estate and passed to her administrator. This case differs somewhat from that under consideration; as in it the land was sold for the very purpose of converting it into personalty for the benefit of the infant. It was not a surplus above the purpose for which the land was sold.

The case of *Merick v. Bavier*, 6 *Ired. Eq. R.* 524, was like the present, as to the surplus proceeds of lands sold by order of a court to pay debts. The sale was in the lifetime of the 20 infant heir, who died under age. The court held that the land was converted into money only to the extent of the object of the sale, the payment of debts, and that the surplus remained real estate, and at the infant's death descended to her heirs.

In Pennsylvania, the decisions are contrary to each other. In *Grider v. McClay*, 11 *S. & R.* 224, decided in 1824, it was held in an elaborate and well considered opinion delivered by Chief Justice Tighlman, that the surplus of lands sold for 30 debts of the ancestor in the lifetime of an infant heir, who died under age, at the death of the infant was personal estate and went to the next of kin.

The decision in *Deyer v. Cornell*, 4 *Barr.* 396, made in 1846, approves of that in *Grider v. McClay*, and holds that the proceeds of an infant's lands sold by its guardian are personal estate, and on the death of the infant under age go to the personal representative. This is the point ruled in *Emerson v. Cutler*.

In *Biggert v. Biggert*, 7 *Watts* 563, decided in 1846, it is

held that a sale in partition proceedings converts lands into money for transmission at the death of an infant tenant in common.

On the other hand, *In re Tighlman*, 5 *Whart.* 64, decided in 1839, it was held that the proceeds of an infant's lands, sold by virtue of an act of the legislature, on the death of the infant under age, remained impressed with the character of real estate and went as such to her heir-at-law. This case is precisely the same as that of *Snowhill v. Snowhill*, and was
10 decided about the same time.

Again: in the case of *Lloyd v. Hart*, 2 *Barr.* 473, decided in 1846, the question was as to three thousand dollars, the surplus of the proceeds of the lands of a lunatic, sold by order of the court for the payment of his debts. Chief Justice Gibson delivered the opinion of the court, and on an able discussion of the question, held that this surplus must be considered, at the death of the lunatic, as real estate, and must go to his heirs.

After this review of the authorities, I cannot consider that
20 the decision of the Court of Errors in *Snowhill v. Snowhill*, was against a well settled principle or the decided weight of authorities, and that it should be therefore, if not disregarded, confined to cases in the precise circumstances of that case. On the contrary, it appears to me that the preponderance of the conflicting authorities is on the whole with that decision, and that the principles and reasoning on which the question ought to be decided is also with that decision.

It is also in accordance with the spirit of the legislation of
30 the state in other matters. The provision in the act under which this sale was made, put there for abundant caution, shows that intention. And the provision expressly made in the act authorizing the sales of lands of infants that the nature of the estate should not be changed by the sale, evinces the same spirit. And while it is the doctrine of this court that the property of an infant or lunatic must be managed for the benefit of the owner only, and not for that of his heirs or next of kin, it is wise to hold that neither shall gain or
40 lose by the change of its character; so that neither class will be tempted to procure a sale when it is not for the owner's benefit, or to defeat it when it would benefit him, as may, in the end, be for their own advantage. Some such persons

generally have the management of the infant's estate, and although the sale is ordered by the court, yet they have it in their power in these *ex parte* applications, so to place the matter before the court as to procure the decision they desire.

In this very case the sale was an extraordinary one, and the parties who procured the order appear here to claim the benefit of the change. The rule established in *Snowhill v. Snowhill*, is based upon high grounds of public policy and I do not feel inclined to disturb it. 10

As to the proceeds of the lands in Pennsylvania, they must be governed by the law of that state. Its statute relating to partition proceedings, and the money invested for the widow's dower, simply directs "that at her death it shall be paid to the persons legally entitled thereto." *Purdon's Dig.* of 1861, p. 298, § 152; and in *Hise v. Geiger*, 1 W. & S. 273, it was held that it must be paid to the heirs of the intestate, and not to his administrators.

This settles that if Owen Oberly was living he would be entitled to these proceeds, but does not determine what 20 character they would retain or to whom they would go at his death. But on the authority of *Biggert v. Biggert*, which is upon the proceeds of a partition sale, and among the conflicting decisions in that state, approaches nearer this case than any other, I will hold that these proceeds, at the death of Owen Oberly, were personal estate and were transmitted to and by his daughter as such, and that they belong to her administrators.

The principal of the proceeds of the sale of lands in Warren county, including the proceeds of lands of John 30 Oberly and the surplus of the sale of lands of Owen Oberly, belong to Anna Maria Lerch for her life, as heir of her daughter Emma, and must be invested under the order of this court, and the interest thereon, including the interest from the death of Emma, must be paid to her. At her death the principal, and the principal invested for the dower of Anna Maria Lerch, must be divided equally among the three uncles and Emma Baker, as the heirs-at-law. The residue of the fund in the hands of Charles Oberly is personal estate, and must be paid to the administrators of Emma Oberly. 40

The motion must be denied.

Appeal.

The defendants hereby appeal from the decree of the Chancellor made in this court on the 18th day of June, A. D. 1867, in the above stated cause, denying with costs the motion of the said defendants to dissolve the injunction heretofore granted in this cause, and to dismiss the complainants' bill.

Dated July 27th, 1867.

J. G. SHIPMAN,

Solicitor for and of counsel with the defendants.

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

J. G. SHIPMAN,

Of counsel with the defendants.

 Petition of Appeal.

[Filed July 27, 1867.]

Between

20 BENJAMIN F. LERCH and ANNA MARIA, his wife, and JEHIEL T. KERN, administrators of Emma Oberly, deceased, appellants,

and

CHARLES OBERLY, JOHN S. OBERLY, ROBERT OBERLY, GEORGE BAKER, and EMMA, his wife, appellees.

Petition of Appeal.

The humble petition of Benjamin F. Lerch and Anna Maria his wife, and Jehiel T. Kern, administrators of Emma Oberly, deceased, the appellants in the above cause, respectfully shows that your petitioners find themselves aggrieved by an interlocutory decree of the Chancellor, made on the 30 eighteenth day of June, in the year of our Lord one thou-

said eight hundred and sixty-seven, wherein your petitioners were defendants, and the said Charles Oberly, John S. Oberly, Robert Oberly, George Baker, and Emma, his wife, were complainants, in this respect, that the said decree adjudges that the motion made by your petitioners to dissolve the injunction granted in behalf of the said complainants, and to dismiss their said bill of complaint should be denied, with costs. And your petitioners appeal from every part of the said decree on the ground that the same is erroneous, for that the said injunction should have been dissolved and the 10 complainants' said bill should have been dismissed, with costs.

Your petitioners therefore pray that the said decree of the said Chancellor may be reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

Dated July 27th, 1867.

J. G. SHIPMAN,

Solicitor and of counsel with the appellants.

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CHAPTER I

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