

NEW-JERSEY
COURT OF ERRORS AND APPEALS.

EBENEZER S. WILLIAMS, Administrator
of Sarah Williams, deceased,
Appellant,
and
DANIEL CARLE, Administrator of Ann
Carle, deceased, DANIEL C. WILLIAMS,
THEODORE WILLIAMS, AND SARAH
ANN WILLIAMS,
Appellees.

On Appeal
from the
Decree
of the
Court of Chancery.

STATE OF THE CASE

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This Appeal is brought to reverse the Decree of the Court of Chancery, made at the term of October, 1855, between the parties aforesaid, upon the following Bill, Answers, and Proofs.

To the Honorable BENJAMIN WILLIAMSON, Esquire,
Chancellor of the State of New-Jersey:

Humbly complaining, shows unto your Honor your orator Ebenezer S. Williams, of the township of Bernards, in the county of Somerset, and State of New Jersey, that on or about the seventeenth day of March, in the year of our Lord eighteen hundred and nineteen, he was lawfully married to Sarah Carle, a single woman, who never, before then, had been married, a daughter of Jonas Carle, then deceased, at the towship of Morris, in the county of Morris, and State of New Jersey.

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And your orator further shows, that the courtship between your orator and the said Sarah, commenced about one year before, and was continued until the said marriage.

And your orator further shows, that before said courtship commenced, and while it was going on, he knew that the said Sarah was entitled to considerable personal property bequeathed to her by the last Will and Testament of her father the said Jonas Carle, and by the last Will and Testament of her brother Jacob Carle, deceased, but the amount thereof your orator does not now know, and never did know, and as no inventory

of the Personal Estate of the Jonas Carle, deceased, has been filed in the office of the Surrogate of the county of Morris, and as neither the accounts of the Executors of the said Jonas Carle, nor the accounts of the Executrix of the said Jacob Carle, have ever been settled in the Orphans' Court of the county of Morris, (that being the proper county for such settlement.) Your orator does not know, and is unable to state the amount of the estate to which the said Sarah was entitled by the said two wills.

10 And your orator further shows, that his father at and before the time of said marriage, was the owner of considerable property, and that the prospects of your orator of receiving from his said father an equal share of his estate were good and open to no reasonable doubt—and that one strong and material reason why your orator desired a marriage with the said Sarah, was because she had property and an estate which made her, in that respect, a suitable and an equal companion for your orator. And your orator further shows, that as the laws of the State of New Jersey then were all the personal property belonging to a woman at the time of her marriage became the property of her husband, and your orator fully believed during all his courtship with the said Sarah, that as soon as he married the said Sarah all her personal property would vest in and belong to him—that such believe was one important and material consideration in inducing him to enter into the marriage state with the said Sarah, and that if said Sarah or any of her friends or relatives had intimated to your orator before said marriage, that the said Sarah would, or intended to withhold from your orator any considerable portion of her personal property after their contemplated marriage, or intended to place it in any situation before her said marriage, in which your orator could not control it, if he saw fit so to do, after said marriage, he never would have given his consent to any thing of the kind, and would not have entered into said marriage upon the understanding that said Sarah should place or keep beyond the control of your orator any considerable portion of her personal property.

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And your orator further shows, and charges that while his courtship or treaty of marriage with the said Sarah was pending, she, the said Sarah, nor any of her friends or relatives, nor any person whatever ever said or intimated or gave your orator any cause or opportunity to suspect, that she, the said Sarah, desired or intended to appropriate or settle any of her property, for her own exclusive use, or control, or for or to the use or control or for the benefit of any person or persons whatever; or to do any act or thing whatever which should or could in any way withhold from the use and entire control of your orator, any part of her personal property, and at 40 the time said marriage was celebrated, your orator did not know nor even suspect that said Sarah had settled or disposed of any of her personal property for the use or benefit of any person then in existence or afterwards to come into existence, but your orator fully believed that when he married the said Sarah there was no obstacle in the way of his having the whole of her personal estate whenever he might desire to take it, and that she had not withheld or concealed and would not in any way withhold or conceal from your orator any part of her said estate.

50 And your orator further shows, that for several years after his said marriage, he had no particular need for any of the funds which had belonged to his said wife while she was sole, and therefore he allowed his said wife, to a considerable extent, to direct and control a considerable portion of the funds which had belonged to her before her marriage. That some twelve or fourteen years after his said marriage, when he was about purchasing a farm, his said wife gave up to your orator, as your orator

then understood and supposed, and always supposed, until about five months ago, all the funds which she had owned while the said courtship was going on, with all the increase which had been gained thereto by interest and otherwise.

And your orator further shows, that Daniel Carle, the brother of your orator's said wife Sarah, was one of the Executors of the last Will and Testament of the said Jonas Carle, dec'd., and that Ann Carle, a sister of the said Sarah, was the acting Executrix of the last Will and Testament of the said Jacob Carle, deceased. That the said Jonas Carle had been dead about four years, and the said Jacob Carle had been dead about sixteen months, when the aforesaid marriage of your orator took place.— That as your orator was not by his said wife requested to look after her rights and interests in the said two estates, and as your orator understood from his said wife, and believed that she was satisfied with the administration of the said two estates, and with what she had received therefrom, he did not concern himself about or inquire into or ascertain how said estates had been settled.

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And your orator further shows, that after his said marriage, he begat three children by his said wife Sarah, who are now all living, are all past twenty-one years of age, and are named as follows: Daniel C. Williams, Theodore Williams, and Sarah Ann Williams, and that said Sarah Ann is sole and unmarried.

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And that your orator further shows, that his said wife Sarah, departed this life on or about the nineteenth day of November, eighteen hundred and thirty-four, at the township of Bernards, in the said county of Somerset, and that on or about the twenty-eighth day of March, eighteen hundred and fifty-four, letters of administration of the goods and chattles, rights and credits which were of the said Sarah Williams, by Samuel Reynolds, Esquire, Surrogate of the said county of Somerset, were, in due form of law granted to your orator, to a duly certified copy of which letters of administration now in possession of your orator, your orator prays leave to refer if it be necessary for him so to do.

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And your orator further shows unto your Honor, that on or about the sixth day of June, in the year eighteen hundred and thirty-seven he married Lydia Carle, a sister of his said first wife, Sarah; and that his said second wife is still alive, and living with your orator.

And your orator further shows, that from before the time of our orator's marriage with said Sarah until the death of the said Ann Carle, she the said Ann and the said Daniel Carle had their homes and lived together in the township of Morris aforesaid, and that on or about the twenty-fifth day of September, eighteen hundred and fifty-two, the said Ann Carle, the sister of your orator's wife, departed this life, intestate, at the said township of Morris—that said Ann was never married, and that on or about the first day of October, eighteen hundred and fifty-two, administration of the goods and chattles, rights and credits which were of the said Ann Carle, were granted by the Surrogate of the county of Morris to the said Daniel Carle, who has taken upon himself the burden of the said administration, and possessed himself of her estate, and the funds in her power and under her control.

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And your orator further shows unto your Honor, that the only Inventory of the Personal Estate of the said Ann Carle which has ever been filed in the office of the Surrogate of the county of Morris by the said Daniel Carle, contains only three items or specifications, which are as follows:

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Purse and apparel,	\$441 71
Household Goods, Grain and Rails,	145 43
Bonds, Notes, &c., esteemed good,	7,766 97
	<hr/>
	\$8,354 11

And your orator further shows unto your Honor, that on or about the thirteenth day of December, eighteen hundred and fifty-three, he was informed for the first time, by the said Daniel Carle, who made the statement at his own house, in the presence and hearing of your orator, your orator's wife and children hereinbefore named, William M. Clark, and several other persons, and in substance and effect as follows: That thirty-five years, or more, before the day last named, the said Sarah, your orator's first wife, had left in the hands, or under the control of her sister the said Ann Carle, the sum of seven hundred dollars, to be kept and invested by the said Ann for the use or benefit of the children of the said Sarah, in case she should afterwards have any children—that said Ann had received and invested said money, and that it and the accumulations thereon, then, (on the day last named) amounted to fifteen hundred dollars, or more, and that he the said Daniel Carle had been advised to, and was going to put that fund in with the other estate of the said Ann Carle, to be drawn out by and paid to whomsoever the same might legally belong.

And your orator further shows, that since the said Daniel Carle disclosed the facts last mentioned, he has been informed by his present wife, and your orator charges it to be true, that said Sarah did voluntarily and without consideration place or leave in the hands of said Ann the sum of seven hundred dollars, or thereabouts, to or for the use and benefit of the children of the said Sarah in case she should afterwards have any children—that she knew of the arrangement at the time it was made, and your orator has been informed, believes and charges, that the said Daniel Carle was also privy to the said arrangement at the time it was made, and that said arrangement, deposit or trust was made after the courtship between your orator and said Sarah was commenced—in anticipation of as preparatory to, and very shortly before the time said marriage between your orator and said Sarah took place. And your orator expressly charges that the said Daniel Carle advised and encouraged such disposition as aforesaid to be made of the said seven hundred dollars, advised the concealment of all knowledge of the fact from your orator, and that he the said Daniel Carle, although well knowing all the facts in reference to said seven hundred dollars, constantly concealed the same, and never in any way informed your orator thereof before the thirteenth day of December, 1853, and that your orator up to the day last named, had no knowledge, and had never received any notice whatever thereof.

And your orator further shows, that he has been informed, and believes, that since the said thirteenth day of December, 1853, the said Daniel Carle has frequently admitted that he has in his hands or under his control the said sum of seven hundred dollars, left as aforesaid by said Sarah with said Ann, together with the interest or some considerable part of the interest which has accrued and accumulated thereon.

And your orator further shows, that by his Solicitor in this suit he requested the said Daniel Carle to settle with your orator respecting the moneys last mentioned, and to pay over the same to your orator, that said Daniel Carle made no reply himself to said request, but that shortly after said request was made, the Solicitor of your orator received a letter, of which the following is a copy:

"PLAINFIELD, FEB. 13th, 1854.

"JACOB VANNATTA, ESQ.,
DEAR SIR :

I saw Mr. Carle on Saturday, and the letter sent to him by you. He instructs me to say to you that anything that is recovered from him as Adm'r. will be recovered by law.

Please proceed as soon as possible, as we are anxious to settle up the estate at once.

Truly yours,

JOS. ANNIN."

To which letter now in the possession of the Solicitor of your orator, your orator prays leave to refer if he shall be advised so to do. 10

And your orator further shows, that the said Joseph Annin, Esq., was present on the said 13th day of December, 1853, when the said Daniel Carle made the admission or declaration hereinbefore stated—acting as the Attorney and Counsel of the said Daniel Carle, and that he has so acted before and since the day last named.

And your orator further shows, that although no one of his children hereinbefore named, has distinctly informed your orator that he or she does or will claim to be entitled to receive the whole or any part of the said seven hundred dollars and the increase thereof, yet your orator has heard that they or some of them, as also the said Daniel Carle do insist that said children are entitled to receive said money and the increase thereof, but your orator is advised and so charges and insists that he is solely and exclusively entitled to receive the said seven hundred dollars and the increase thereof for his own use, and that the said trust was a fraud upon the marital rights of your orator, and as against your orator was and is null and void. 20

And your orator further shows, that he has lately been informed, and he charges the truth to be, that the said Ann Carle in her life time took especial care to keep the said seven hundred dollars and the interest therefrom arising, safely and profitably invested, and that said Ann during her life time received not only simple interest on the said seven hundred dollars, but also interest upon the said interest, and that the said seven hundred dollars and the interest gained therefrom, at the death of said Ann, amounted to considerably over two thousand dollars—all of which your orator verily believes and charges is now in the keeping or under the control of the said Daniel Carle. 30

And your orator well hoped that the said Daniel Carle would have paid to your orator the said seven hundred dollars, and all the increase thereof, and gains therefrom, as in justice and equity he ought to have done; but now so it is, may it may it please your Honor, that the said Daniel Carle, Daniel C. Williams, Theodore Williams, and Sarah Ann Williams, combining and confederating with divers other persons at present unknown to your orator, but whose names when discovered your orator prays may be inserted in this his Bill of complaint, with apt and proper words to charge them as defendant's hereto, to injure and aggrieve your orator in the premises, not only refuse to pay to your orator the amount of principal and interest so as aforesaid due to your orator, or in any other manner to comply with such request of your orator before mentioned, but they the said defendant's or some of them sometimes pretend and give out in speeches, that although the said sum of seven hundred dollars was left with the said Ann Carle by the said Sarah as hereinbefore stated, yet that your orator has no right to, or interest in the same, nor in the interest or increase thereof, and at other times pretend that if your orator ever had 40 50

right to or interest in the same, that your orator's right thereto is lost or barred by lapse of time, and at other times pretend that your orator before his marriage with the said Sarah knew, and in some way consented that said Sarah should dispose of the said seven hundred dollars as hereinbefore stated, whereas your orator charges the contrary of all such pretences to be true, and your orator particularly charges that before his marriage with the said Sarah, he was not informed and did not know that the said Sarah had left or placed or intended to leave or place in the hands of the said Ann Carle or in the hands or in the care of any other person whatever for her own use after her said marriage, or for the use of any child or children that she might afterwards have, or for the use of any other person or persons whatever the said seven hundred dollars, or any other sum, and also that he had no such knowledge or information at any time during the life time of the said Sarah, nor during the life time of the said Ann Carle; and he further expressly charges that he never in any way consented that said Sarah should dispose of or settle any of her estate to the use of her children or any other person, and never in any way gave his consent to any such settlement or disposition. All which actings and pretences of the said defendant's are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator. In tender consideration whereof, and for as much as your orator is without adequate remedy in the premises by the strict rules of the common law, and without the assistance of this Honorable Court where matters of this nature are particularly cognizable and relievable.

To the end therefore, that the said defendant's and their confederates when discovered, may upon their several and respectful corporal oaths or affirmations full, true, perfect and distinct answer make to all and every the matters aforesaid, and that as fully as if the same were here again repeated, and they thereto particularly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their several and respective information, hearsay and belief, and more especially that the said Daniel Carle may fully, particularly, and distinctly answer whether your orator was not married to he said Sarah Carle at the time hereinbefore stated—whether the courtship between your orator and said Sarah did not commence soon after the death of his brother Jacob Carle, and about one year before said marriage, whether the said Sarah at and before her said marriage was not the owner of money, choses in action and personal property, and if so, how much the value thereof was, and how and where, and when acquired—what amount of money and property the said Sarah received or became entitled to from her father's estate as one of the devisees named in his will, or by agreement with the devisees and executors named in the will of Jonas Carle, or any of them? What amount of money and property the said Sarah received or became entitled to from her brother Jacob Carle by devise, bequest or otherwise, and also what she received or became entitled to from all or any of the heirs, devisees, legatees, and executor's and executrix of the said Jacob Carle. And also whether the said Sarah before her marriage with your orator, informed your orator that she intended or desired to withhold from the use and control of your orator, after her marriage with your orator, any part or portion of her money or personal property; whether any of the friends or relatives of the said Sarah before the marriage of said Sarah, gave any such information to your orator, and if so, which of them, when, where, in what manner, and under what circumstances; whether the said Sarah at or before or after her said marriage left any money, funds or personal property in the hands or under the care,

power, direction, or control of the said Ann Carle, and if so, the amount thereof, the time when and the place where such money, funds or personal property was or were left with or placed under the control of said Ann? How long it was before or after the marriage between your orator and said Sarah took place, who were present, when such money, funds, or property were left or agreed to be left with the said Ann by said Sarah, and whether he said Daniel was then present who advised with the said Sarah upon the subject, and whether he the said Daniel gave her any advice or directions in reference thereto, and if so what he said to said Sarah and said Sarah to him in reference thereto; whether there was any writing made or signed by said Sarah showing the terms upon and purposes for which she left said money, funds or property in the hands or under the control of said Ann, and if so, where said writing now is—what was done with it, and where he said Daniel last saw or heard of it, and that if he have the same in his possession or under his power or control that he set out a copy thereof in his answer, and if the same is lost to state the contents thereof, and also that he particularly and fully answer and state whether the said Ann made or signed any written declaration of trust in respect to said money, funds or property, and if so, where the same now is—in whose possession, in whose custody, and under whose power and control—and if he has, or can procure the same that he set forth a true copy thereof in his answer, and if he has it not and does not know and cannot tell or as certain where the same is, that he state as fully and particularly as he can the contents, language, purport and effect thereof. And if no such writings as last aforesaid were or was made or signed by said Sarah or said Ann, that he state fully and particularly what said Sarah and said Ann, while either of them was in life, said in reference to the objects, intents, uses and purposes for which said money, funds or personal property was or were left with said Ann by said Sarah, what reason they or either one of them assigned for not informing your orator of said arrangement and disposition—whether said money, or property was left for the use of children, and if so, in what shares and proportions, and when and how it was to be paid—whether said Sarah had any children when said money or property was so left, and if so how many and their names, and if she then had no children, what disposition was to be made of said money or property in case she, said Sarah should never have any children, and whether, in case said Sarah saw fit so to do, she could in her life-time take back from said Ann said money or property and dispose of it to other uses than the use of her children? And further that he state whether at any time before the marriage of said Sarah anything was said by said Sarah, said Ann, by said Daniel Carle or any other person about informing your orator of, or concealing from your orator the fact that said Sarah had placed in the hands or under the power and control of said Ann a part of her money or property, and if so what was said upon that subject, and why your orator was not informed thereof before the death of said Ann, and particularly why he the said Daniel Carle before the death of said Ann never informed your orator thereof?

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And also that the said Daniel Carle may fully and particularly state, set forth and show, whether money, choses in action, or goods and chattles, were left with said Ann by said Sarah, and the amount and value of each and all that was so left, what use and disposition said Ann made thereof—whether she loaned the same or any part thereof, and if a part only, what part—to whom she loaned it—in what sums, on what kind of securities—at what rate of interest—how often said interest was paid, whether half-yearly, yearly, or how? In what way said Ann disposed of

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had any said interest, whether she kept it lying idle or loaned it out, and if so, whether upon interest or not, and if upon interest, how often she made such loans and at what rate of interest. Whether the said Ann mingled the money or funds which she so received from said Sarah, and the interest thereof, with her own money or funds, or kept the two separate and distinct, and if distinct in what way the distinction was made, manifested or known, and where and with whom were the said money and funds so by said Ann Carle held in trust, at the death of said Ann, and the amount of all the interest, increase and profit which said Ann during her life-time received from the money, goods and personal property left with her in trust by said Sarah, and what interest, increase and profit he the said Daniel Carle has received from the same funds since the death of said Ann. And also, whether he the said Daniel Carle, on the thirteenth day of December, eighteen hundred and fifty-three, did not state in the presence and hearing of your orator and others, that about thirty-five years before that time said Sarah shortly before she was married, had put into the hands of said Ann for safe keeping the sum of seven hundred dollars, to be paid to the children of said Sarah in case she should ever have any children, and that at that time, the said thirteenth of December, 1853, the said seven hundred dollars had increased to fifteen hundred dollars or more, and that he the said Daniel Carle, was going to put it in with the property of said Ann, or words to that purport meaning and effect, and if not as hereinbefore stated, and asked, that he state exactly and particularly what he did say on that occasion, and that the said defendant's may fully answer the premises. And also, that the said Daniel C. Williams, Theodore Williams and Sarah Ann Williams, may particularly state what interest, if any, they or any of them claim, of, in, or to the said seven hundred dollars, and the increase thereof, and if they or any of them claim any right or interest therein or thereto, or in any part thereof, that they state, set forth and show what claim or title they have thereto, where, when, by whom from whom and in what way and manner and under what circumstances acquired, and if any consideration was given, what that consideration was, and by whom and to whom and when and how given. And that an account may be taken by and under the direction of this Honorable Court of the amount of money, choses in action and personal property which the said Sarah, the former wife of your orator at any time left in trust with the said Ann Carle, and of the interest, gains and increase thereof, which was received by the said Ann Carle in her life-time, and which have been received by the said Daniel Carle both before and since the death of the said Ann, and of the whole amount of such principal, interest gains and increase, and that the said trust created by the said Sarah, in the hands of said Ann, in respect to the said seven hundred dollars, may be set aside, for nothing holden, and be by this Honorable Court decreed to be null, void and of no effect, and that the said Daniel Carle may be decreed and required to pay to your orator not only the said seven hundred dollars and simple interest for the same since the seventeenth day of March, eighteen hundred and nineteen, up to the time of signing the final decree in this cause, but also all the compound interest which was compounded by the said Ann Carle, from the interest arising from the said seven hundred dollars, and all the gains, profits and increase which have been or with reasonable diligence could have been made, gained and added to the said seven hundred dollars from the seventeenth day of March, 1819, up to the time of signing the final decree in this suit. And that your orator may have such further and such other relief in the premises as the nature of his case shall re-

quire, and as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

May it please your Honor, the premises considred to grant unto your orator the State's Writ of subpoena issuing out of and under seal of this Honorable Court, to be directed to the said Daniel Carle, Daniel C. Williams, Theodore Williams, and Sarah Ann Williams, and the rest of the confederates when discovered, thereby commanding them and every 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 all and singular the premises, and to stand to perform and to abide such order and decree therein as to this Honorable Court shall seem agreeable to equity and good conscience, and your orator as in duty bound will ever pray, &c.

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JACOB VANATTA,
Solicitor and of Counsel with Complainant.

STATE OF NEW JERSEY, }

MORRIS COUNTY, ss. } EBENEZER S. WILLIAMS, the Complainant in the foregoing bill named, being duly sworn on his oath saith, that he has heard the foregoing bill read and that the facts, matters, and things therein stated and set forth so far as they relate to his own acts and deeds are true, and so far as they relate to the acts or deeds of any other person or persons, he believes them to be true.

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E. S. WILLIAMS.

Sworn and subscribed this 15th day of May, 1854.

VANCLEVE DALRIMPLE,
Master and Examiner in Chancery of New Jersey.

ANSWER OF DANIEL CARLE.

The several answer of Daniel Carle, Administrator of Ann Carle, deceased, one of the defendants, to the bill of Complaint of Ebenezer S. Williams, Complainant.

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This defendant now, and at all times hereafter, [saving and reserving to himself all manner of benefit, and advantage of exception, to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much, and such parts thereof as this defendant is advised is material for him to make answer unto answers, and says that he admits that the said complainant was married to Sarah Carle at the time and place mentioned in his said bill, and also that the courtship of the complainant commenced and was continued as in the said bill is alleged.

And this defendant further answering, says, that he believes it to be true, that at the time of the said marriage, the laws of New Jersey were such that all the personal property belonging to a woman at the time of her marriage became the property of her husband.

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And this defendant further says, that he believes the pecuniary prospects of the said Sarah, and of the complainant, to have been, as is alleged in the said bill, and that the complainant's motive for marrying the said Sarah, was, as in in the said bill stated.

And this defendant further answering, says, that he has no knowledge whether or not an inventory of the personal estate of the said Jonas Carle, deceased, has ever been filed in the Office of the Surrogate of the county of Morris, or whether the accounts of the Executor's of the said Jonas Carle, deceased, or the accounts of the Executrix of Jacob Carle, deceased, have ever been settled in the Orphans' Court of said county, except from the allegations of the complainant's bill that they have not.

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And this defendant further answering, says, that it is true so far as he knows, or has ever heard, that while the complainant's treaty of marriage with the said Sarah was pending, the complainant was not informed that the said Sarah intended to appropriate or settle any of her property for her own exclusive use or control, or for the benefit of any person or persons whatever.

10 And this defendant further says, that he believes that at the time the complainant married the said Sarah, he the complainant believed, that there was no obstacle in the way of his having the whole of her personal estate whenever he might desire to take it, and that if the complainant had not so believed, he would not have married the said Sarah at all.

And this defendant further answering, says, that he does not remember at this distance of time, anything about the pecuniary circumstances of this complainant for several years, succeeding his said marriage, nor does the defendant know what funds the said Sarah paid over to the said complainant, when he was about to purchase a farm, as stated in his said bill or whether the funds so stated by the complainant to have been paid over to him, were all which she owned while the said courtship was going on, with all the increase which had been gained thereto by interest or otherwise.

20 And this this defendant further answering, says, that he believes his sister Ann Carle, was the active executrix of the last will and testament of Jacob Carle, deceased, but he denies that he was one of the executors of the last will and testament of Jonas Carle, deceased.

And this defendant further says, that he believes that at the time of the complainant's marriage to the said Sarah, Jonas Carle had been dead about four years, and Jacob Carle had been dead about sixteen months. And this defendant further admits that the complainant begat by his wife Sarah three children, whose names are as stated in the complainant's bill.

30 And this defendant further answering, admits that the said Sarah departed this life at the time stated in the bill, but whether the complainant has taken out letters of administration upon her personal estate, this defendant does not know, except from the allegation of the bill that he has. And this defendant admits the complainant's marriage with Lydia Carle, a sister of his first wife at the time mentioned in the bill, and that she now lives with him.

40 And this defendant further answering, admits that the said Ann and this defendant, had their homes together from the time of the said complainant's marriage, with the said Sarah, until the death of the said Ann, which happened at the time mentioned in the said bill, that the said Ann was never married, and that at or about the time mentioned in the said bill, this defendant took out letters of administration upon her estate, and possessed himself of the funds thereof.

And this defendant admits the allegations of the said bill, in reference to the inventory of the personal estate of the said Ann filed in the Office of the Surrogate of the county Morris.

50 And this defendant further answering, says, that he does not know what information the said complainant has received from his present wife respecting his said first wife's leaving in the hands of the said Ann the sum of seven hundred dollars, or thereabouts for the purposes mentioned in the said bill, but this defendant says, that he does not himself know that any such sum, or any other sum for any such purpose, or for any other purpose was ever placed in the hands of the said Ann, by the said Sarah previous to her marriage with the complainant.

And the defendant further says, that he never in any way or manner counselled or advised any investment or concealment of any such funds.

And this defendant further says, that in the month of April last he asked the said Lydia, the present wife of the complainant for the purpose of ascertaining the truth of the matter, whether she knew of any funds having been placed in the hands of the said Ann, by the said Sarah before her marriage, and she told him she did not.

And this defendant further answering, says, that the statement alleged in the said bill to have been made by this defendant at his house, on or about the thirteenth day of December, eighteen hundred and fifty-three, was not then and there made by him, but that on the occasion referred to, and in the presence of the persons in the bill said to be present, Joseph Annin, the Attorney and adviser of this defendant in the settlement of the estate of the said Ann, by the authority and at the request of this defendant, stated that Sarah, the complainant's first wife, before her marriage had left in the hands of her sister Ann the sum of seven hundred dollars, to be held in trust for the future children of the said Sarah in case she should have any, that the said seven hundred dollars at the death of the said Ann, amounted to fifteen hundred dollars or over, but that as no evidence of the fact was to be found among the papers of the said Ann, he this defendant as administrator of the said Ann, intended to put the same in with the estate of the said Ann, unless by the consent of those interested in the estate of the said Ann, he was allowed to pay over to the said children the sum of five hundred dollars apiece. And this defendant further says, that all present who were interested in the estate, and the said complainant among them, said, that they were willing the children of the complainant should have the five hundred dollars a piece. And this defendant further saith, that the said Attorney of this defendant asked the said complainant whether he was willing that his said children should have five hundred dollars a piece out of the estate, and he replied that it would seem to be nothing more than right and that he was willing.

And this defendant now says, that his reasons for instructing his said Attorney to make the foregoing statement was that before the marriage of his said sister Sarah with the complainant, and while the same was in contemplation, he remembered there had been some conversation in the family of this defendant respecting the propriety of the said Sarah's placing seven hundred dollars, in the hands of her said sister Ann, to be held by her in trust for any children she the said Sarah might have by the said complainant; and also that a few days before the death of the said Ann, she the said Ann said to this defendant these words: "There is fifteen hundred dollars or over coming to the children." And this defendant says, that the foregoing is the only evidence he ever had, that any funds were ever placed in the hands of the said Ann in trust for the children of the said complainant, and he therefore determined to treat all the property which came into his hands as the property of the said Ann, unless upon representing to those interested in the estate what he supposed might be the fact, they should consent to the division of the said fifteen hundred dollars among the three children of the complainant.

And this defendant further answering, says, that he never knew that any arrangement of the kind proposed before the marriage of the said Sarah was ever carried into effect, nor has he any recollection of what was said by him to the said Sarah, or to any other person, or by the said Sarah or by any other person to him, when the arrangement was proposed, or at any time afterwards.

And this defendant further answering, says, that he believes that the said Sarah before and at her marriage, was the owner of monies choses, in action, and personal property, but what the value thereof was he does

not know, that the same was acquired by the last wills and testaments of her said father and brother, that he cannot remember what amount she received under either or by agreement made by their executors, legatees, or devisees if any such agreement was ever made, that the said Sarah never before her marriage said a word to this defendant about placing or after her marriage about having placed any of the funds beyond the control of the complainant, that he does not know of any writing left by the said Sarah in reference to the said supposed trust, that the said Ann never to his knowledge made or signed any written declaration or trust in respect to said money, funds or property, nor did the said Sarah ever leave with the said Ann to his knowledge, any money, choses in action, goods or chattles.

10 And this defendant further answering, says, that he does not remember since the thirteenth day of April, eighteen hundred and fifty-three, to have said anything to any person about his having in his hands or under his control the said sum of seven hundred dollars, together with interest, but if he has said any such thing, this defendant says that it was said for the same reason for which he directed the statement to be made on the said thirteenth day of December. And this defendant further says, that there
20 are persons not named in the said bill, that is to say, John Vail, James Vail, and Charles Ross, who are intested in the estate of the said Ann, and are not made parties to the said bill; and also that the complainant alleges in his said bill that he is solely and exclusively entitled to receive the said seven hundred dollars, and the interest thereof for his own use, and in his own right, instead of for the use of the estate of his said first wife, and in the right of administrator thereof. And the defendant prays that he may be allowed the same benefit of exception to the sufficiency of the said bill by reason thereof, to which he would have been entitled if he had demurred thereto.

30 And this defendant denies all and all manner of combination and confederacy wherewith he is in the said bill charged, without this that there any other matter or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and herewith well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

40 **JOS. ANNIN,**
Solicitor for and of Counsel with Defendant.

STATE OF NEW JERSEY, ss: DANIEL CARLE, the administrator of the goods, chattles and credits of Ann Carle, deceased, within named, being duly sworn according to law, on his oath saith, that the facts and allegations in the within answer set forth and contained, so far as they relate to the acts and deeds of this defendant are true, and so far as they relate to the acts and deeds of other persons he believes them to be true.

50 DANIEL CARLE,
Subscribed and sworn before me the 27th of June, 1854.
WILLIAM F. DAY, Master in Chancery.

ANSWER OF DANIEL C. WILLIAMS, THEODORE WILLIAMS AND SARAH ANN WILLIAMS.

The joint and several answer of Daniel C. Williams, Theodore Williams, and Sarah Ann Williams, three of the defendants to the bill of com-

plaint of Ebenezer S. Williams, administrator, &c., of Sarah Williams, deceased, complainant.

These defendants saving to themselves all and all manner of advantage of exception to the many errors, untruths, uncertainties and other imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto such parts thereof, as these defendants are advised is material for them to make answer unto, answering, say that they are strangers to all and singular the matters and things in the said bill of complaint contained, and that they claim no right or interest in or to the seven hundred dollars, or the increase thereof mentioned in the complainants bill of complaint, and therein alleged to be in the hands of Daniel Carle, as administrator of the estate of Ann Carle, deceased. And these defendants deny all combination and confederacy in said bill charged, without this that any other matter or thing in the complainant's said bill of complaint contained, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied is true. And they pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained. 10

JOS. ANNIN,

Solicitor for and of Counsel with Defendants. 20

STATE OF NEW JERSEY, MORRIS COUNTY, ss: Theodore Williams, Sarah Ann Williams, and Daniel C. Williams, above named, being duly sworn according to law, on their several and respective oaths say that the facts and allegations in the within answer set forth and contained, so far as they relate to the acts and deeds respectively of these deponents are, and so far as they relate to the acts and deeds of other persons, they respectively believe them to be true.

THEODORE WILLIAMS,
SARAH ANN WILLIAMS,
DANIEL C. WILLIAMS. 30

Subscribed and sworn before me this 5th day of September, A. D. 1854.
WM. M. CLARK, Justice of the Peace of the county aforesaid.

REPLICATION TO ANSWER OF DANIEL CARLE.

This Repliant saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer of the said defendant Daniel Carle, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the defendant Daniel Carle, is uncertain, untrue and insufficient to be replied unto by this repliant; *without that*, that any other matter or thing, whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is untrue; all which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct, and humbly prays as in and by his said bill he has already prayed. 40

JACOB VANATTA,

Solicitor for and of Counsel with the Complainant.

TESTIMONY.

Examination of witnesses in a cause depending in the Court of Chancery of the State of New Jersey, wherein Ebenezer S. Williams is complainant, and Daniel Carle, Daniel C. Williams, Theodore Williams and Sarah A. Williams, are Defendants, taken at the office of Yancleve Dal- 50

rimple at Morristown, in the county of Morris, on the eighth day of December, in the year eighteen hundred and fifty-four, before said Vancleve Daltriple, one of the Masters and Examiners of the said Court, in the presence of Jacob Vanatta, Esquire, Solicitor and of Counsel for the said Complainant, and of Joseph Annin, Solicitor and of Counsel for said Defendants. DANIEL CARLE one of the Defendants in said cause being called by the said complainant to testify in said cause, and being first duly sworn was examined as a witness by question and answer, and testified as follows, to-wit:—

- 10 1. Were you a brother of Ann Carle, deceased, and are you now her administrator?
Yes.
2. What was your father's name, and when did he die? His name was Jonas Carle, I think he died about thirty-eight years ago.
3. State the names of your father's children living at the time of his death? Elizabeth, Jacob, Ann, Sarah, Lydia, and myself.
4. State which was the oldest? Elizabeth, Jacob next, Ann next, myself next, Sarah next, Lydia youngest.
- 20 5. Which of your brothers and sisters are dead, and state the times when they respectively died? Elizabeth has been dead about eight years, Jacob about thirty-six years, I suppose, Ann two years this last September.
6. Was Elizabeth married, and if so, state the name of her husband? She was married to James Vail, who died before she did.
7. State which other of your sister's were married, and to whom, and when? Sarah was married to Ebenezer S. Williams I should think about thirty-five years ago. Lydia was married to Ebenezer S. Williams I think about eighteen years ago, don't know exactly, Ann was never married.
- 30 8. Where have you resided since the death of your father? On the place on Long Hill, where he used to live.
9. Where did Ann live from the death of your father till she died?—She lived there with me on the place.
10. Where did Sarah live from the death of your father till she was married? and where did she live from her marriage till she died? she lived with me till married, after her marriage she lived in two or three places, but she died in Liberty Corner or near it. She lived with her husband after her marriage.
11. Where did Lydia live from the death of your father till she was married? She lived with me.
- 40 12. Did your father leave a Will? He did.
13. Who acted as his Executor or Executors? Jacob Carle and Benjamin Ludlow.
14. Which one of them had the chief care and management of the estate? I don't know as to that.
15. Did Jacob Carle leave a last Will and Testament? He did.
16. Who acted as his Executor or Executors? Ann Clarke, she was the only one.
17. Did Ann Carle at her death leave any last Will and Testament? I did not know that there was any—I could not find any.
- 50 18. Was your sister Sarah at the time of her marriage with Mr. Williams the owner of any moneys, bonds, promissory notes, or other personal property? Well I don't know how much she had, anything about it. She had some I know, but can't tell how much.
19. Do you not know, and cannot you not state about the amount of property left to your sister Sarah by the will of her father? I don't know.

20. Can't you state some amount ? I can't.
21. State about the amount or value of property which you received by virtue of your father's will ? Can't do that.
22. Cannot you tell whether the amount you received was over or under five thousand dollars ? It was over I expect.
23. Was the amount Sarah received by his will over or under five thousand dollars ? It was under.
24. How much under ? I can't tell how much it was.
25. State as near as you can ? I can't tell anything about it—how much under it was. 10
26. Was it over or under four thousand dollars ? It was under.
27. Was it over or under three thousand dollars ? It was under.
28. Was it over or under two thousand ? I believe it was under.
29. Was it under or over one thousand ? I can't tell.
30. Did your sister Sarah receive anything under or by virtue of the will of her brother Jacob Carle ? she got something but what I can't tell.
31. State as near as you can how much you received by virtue of your brother Jacob's will ? I can tell you how much.
32. Did you receive over or under five thousand dollars from his estate ? Well, I should suppose about five thousand dollars. 20
33. Was Sarah entitled by that Will to more or less than you ? It was less I expect.
34. Was the property given to Sarah by the will of Jacob Carle worth over or under three thousand dollars ? Under.
35. What as near as you can tell was the value of the whole estate of Jacob Carle at the time of his death ? I can't tell.
36. Was it over or under twelve thousand dollars ? It was under I expect.
37. Was it under ten thousand ? I think it was.
38. Was it under eight thousand ? I believe it was. 30
39. Was it under six thousand ? Well, I can't tell about that.
40. What was considered as the value of your father's estate when he died ? I can tell that.
41. Do you think it was over or under twenty thousand dollars ? I should think it was under.
42. Do you think its value was under fifteen thousand dollars ? I think it was.
43. Do you think its value was over ten thousand dollars, and if so how much over ? It might have been worth ten, I don't know whether anything over. 40
44. What use was made of Sarah's funds before she was married ? were they loaned out or not ? Yes, I believe it was.
45. What kind of securities were generally taken for it, notes, bonds or mortgages ? Notes I believe.
46. Tell us the name or names of some person or persons to whom Sarah lent money upon note ? I can't do it.
47. Why can you not ? I don't remember it ?
48. Can you remember whether she lent any to Thomas Coon upon bond or note ? I don't remember.
49. Can't you tell somewhere near the amount she was worth when she was married ? I don't know, I can't tell anything about it. 50
50. Whereabouts in the house did she usually keep her notes, and private papers of value ? I don't know.
51. Did she not keep notes and other valuable papers in a cupboard in your sitting room before she was married ? I don't know.

52. Was there not a cupboard in your sitting room? I don't recollect, it has been so long ago.
53. Where did Ann in her life time keep her notes and valuable private papers? she kept them in a desk in the hall.
54. Where was that desk kept when Sarah lived with you, before her marriage? That sat in the sitting room.
55. Do you not remember that before Sarah's marriage there was a cupboard in the same room with that desk, and that cupboard was kept locked? Well I can tell whether it was in there or not at the time.
- 10 56. Was there such a cupboard somewhere about your house? There was one, but where it set I don't remember.
57. Who usually carried the key to that cupboard? Well, Ann I believe carried it.
58. Did you not understand that while Sarah was living with you her notes and valuable papers were kept in that cupboard? I don't know about that.
59. When Mr. Williams was visiting Sarah in courtship, did he visit her at your house? He did.
60. For how long a time before her marriage did Mr. Williams visit her as near as you can tell? I can't tell anything about it.
- 20 61. Was it a considerable period or a very short one? I can't tell about that.
62. You state in your answer filed in this cause that shortly before the marriage between Mr. Williams and Sarah, there was a conversation in your family about the propriety of Sarah's placing some funds in the hands of Ann for the use of Sarah's children, if Sarah should afterwards have any, I wish to enquire at what place that conversation took place? Well I don't know.
- 30 63. Was it at your own house or at some other place? It must have been at my house, if there was anything of it.
64. Who were present at that conversation, name all? I can't do that, that I know of, I think there was. I can't tell anything about it.
65. Were not Ann and Sarah both present? Sarah talked to me about it, but I don't know whether Ann was present or not. I think she was not.
66. Did Sarah speak of leaving the funds in your hands or in Ann's hands? I don't know.
67. What was the conversation which took place between you and Sarah upon that subject; state it all as fully as you can? I can't recollect it at all.
- 40 68. Did Sarah ask your opinion about her making such an arrangement? I don't recollect anything of it at all.
69. You say Sarah talked to you about it, did she introduce the subject to you or you introduce it to her? well I don't know.
70. What time of the year was it when that conversation occurred between you and Sarah? I don't know anything about it.
71. About how long was it before Mr. and Mrs. Williams were married? I don't know, I can't fix upon any time.
72. Was it more or less than a month before their marriage? I can't tell nothing about it.
- 50 73. Did you advise her to do so or not to do so? I don't remember anything about it.
74. Do you remember that you ever advised her not to do so? I don't remember anything about it.
75. Do you remember that you ever advised her to consult Mr. Williams

before she made any such arrangement? I don't remember anything about it.

76. Where were Sarah's funds for the first few years after her marriage? I don't remember.

77. Were any of the funds which she owned at the time of her marriage ever paid over to Mr. Williams, and if so, when? I got money and paid him some of it, I don't know how much—I think it was likely all that was coming to him—I don't know, he made a great fuss about it.

78. When was it that you made him that payment. I can't tell.

79. Did you not take a receipt from him? I think I did.

80. Where is that receipt now? I expect it is amongst my papers somewhere.

81. Will you produce it so that it can be offered in evidence in this case?—if I can find it I will.

82. Where was Mr. Williams living when you made him that payment? I think he was living on Long Hill.

83. At what place on Long Hill? on the south side of Long Hill where Capt. Layton used to live—I think that is the place.

84. Had not Mr. Williams then been married several years? I don't know how long.

85. What was that payment for, which you then made to him? It was money which was coming to his wife.

86. For what was it due to his wife? Well I can't tell whether it was from her father or from her brother—I don't remember.

87. Was it not a legacy left to his wife by the will of her brother Jacob Carle? I don't know which it was from.

88. Did you at that time pay anything more than what was due upon a single specific legacy? I paid it all off that was coming to him—I can't tell whether it was a single specific legacy or not—I think it was both, for I know he made a great fuss about it.

89. In your last answer you say, you think it was both—what do you mean by both? Why both wills, what was willed to her both by my father and my brother.

90. If you was not the Executor of either will, how happened it that you were paying off the legacies given by the wills? My sister she was there, and she got me to go and get the money and pay it—I went to the Bank and got it, a good deal of it, five-penny and ten-penny pieces.

91. At what Bank did you get it? The State Bank at Morris.

92. How much of it was in five cent and ten cent pieces? I can't tell.

93. Was as much as half of it in that coin? It was all small change pretty much, I don't know what it was.

94. How much money did you get out of the Bank for that purpose? I got enough to pay him off, but how much that was I don't know.

95. Why did you get it all in small change? Well he would not take paper, and they gave me such out of the bank and I took it.

96. Did they give you such without your asking for it? I don't remember about that.

97. Do you think it probable that the State Bank would ask you to take such money if you had not asked for it? I don't know anything about it.

98. Did you not at the time you made that payment wish to aggravate Mr. Williams as much as you could? Well he would not take paper, and I think it's likely I did.

99. Did you ever have more than one conversation with your sister Sarah about her leaving funds in the hands of Ann for her children, or for any other purpose? I don't know that I did.

100. Did you ever say anything to your sister Ann or Ann to you about Sarah's having left about seven hundred dollars in the keeping of Ann? Not that I know of.
101. Have you not said in your answer in this case that Ann said something to you upon the subject in her last sickness? she said she had fifteen hundred dollars or upwards for them children. She did not say how she got it, or where it came from.
102. What children do you mean? I don't know, that's what she said, she said them children.
- 10 103. What children did you suppose she meant; I thought it was likely it was Williams' children.
104. Had you any doubt in your own mind but that she meant the children of Ebenezer S. Williams? I don't know as I had.
105. How long was that before Ann died? I don't know exactly, I think likely about two or three days.
106. Who were in the room at the time besides you and Ann? well I don't remember.
107. Was any one? I don't remember about that.
108. Was she lying in the bed or sitting up? she was in the bed.
- 20 109. Did you then ask her, how or in what way there was fifteen hundred dollars or over due to those children? I don't know as there was anything more said about it—I don't remember asking her, I don't think I did.
110. Did you not think it was very curious that there should be fifteen hundred dollars and over due from Ann to those children? I don't know as I thought anything about it
111. Was your sister Ann in the habit of contracting debts and then leaving them stand unpaid? I believe not.
112. Had you ever before that time heard of her being indebted to any person in any considerable sum? I don't know that I had.
- 30 113. How was it then, that when she said there was fifteen hundred dollars and over owing from her to them children that you felt no curiosity as to how she came to be owing that much or as to how that amount came to be due those children? I did not ask her, nor she did not tell me. I don't know why I did not enquire into it, but I did not.
114. Did you not then feel satisfied in your own mind without asking any questions that Ann referred to funds which had been left with her by your sister Sarah? I don't know whether I thought anything at all about it—I don't remember anything about it.
- 40 115. Am I to understand you as testifying that your sister said there was fifteen hundred dollars and over coming to them children, and that when she said so, you were entirely ignorant as to how or on what account that much money was coming to those children, and that you took so little interest in her statement that you did not even ask her anything about it? She was so far gone that I did not want to bother her anything about it, and did not ask her any questions about it.
116. At the time Ann made the statement to you referred to in the last question, had you, or had you not any knowledge, information, belief or suspicion, that Sarah your sister had left money or notes, with Ann which were still under Ann's control? I did not know anything about it, I do
- 50 117. Not know that I had any information about it, I might have thought it was so, but there was no certainty of it in my mind, I did not know but what it might be so.
117. What induced you to think it was so or might be so? Williams wife talked of doing it before their marriage—I don't know as she talked to Ann about it, but she spoke to me about it.

118. When Ann told you there was fifteen hundred dollars or over coming to them children, had you any doubt but that the money she referred to was the funds and the increase of the funds left with her by Sarah? I don't remember about that whether I had any or not.

119. Have you any doubt now as to what funds Ann referred to? I do not know what to think of it, it might have been so, and it might not.

120. If Ann did not then refer to funds left with her by your sister Sarah, will you tell us what funds she did refer to, or what you think she did refer to? For my part I can't tell what funds she did refer to.

121. Have you never had since Ann made that announcement to you, any belief or opinion in your own mind as to what funds she referred to— I might have thought may be it was some such thing, but I don't know, it was kind of guess work. 10

122. What do you mean by some such thing? I did not know, but it might be left in that way, but I did not know it.

123. Do you mean to say that you thought that she referred to funds left with her by Sarah? I did not know but what it might be so, I did not know.

124. Were you not so well satisfied in your own mind that, that was the case that you thought it useless to make any inquiry upon the subject? I don't know as I thought about making any inquiry about it. 20

125. After the marriage of Sarah until the death of Ann, was it not a thing perfectly well understood between you and Ann that Ann was holding funds left with her by Sarah? I don't know whether it was so understood, I don't know as I understood it so at all.

126. Were you or not acquainted with Ann's business affairs in her life-time? Some part of it I was, and some part of it I was not.

127. Did you not know generally to whom her money was lent, and what kind of security she had for it? The most part of the time I know'd I believe.

128. Did you not assist her in the collection of her money and interest, and in loaning out her money? I did. 30

129. Did you not know about the amount of notes and obligations she held? I might have known then, but I don't know now.

130. Did you not frequently when Ann was about receiving payments, see her notes and obligations, and cast interest upon them for her? Sometimes I would, and at other times I would not be there.

131. Have you not seen notes or other obligations for the payment of money upon which you have cast the interest, which you knew or believed were the funds or the representatives of the funds left with Ann by Sarah? I don't remember of it. 40

132. After the marriage of Sarah, and in the life-time of Ann, did you ever say anything to your sister Ann or Ann to you about Sarah having left or talked about leaving funds in Ann's hands? I don't remember of it.

133. Before the death of your sister Ann was there ever any conversation between you and your sister Lydia about Sarah having left money, funds or personal property of some kind in the care and keeping of your sister Ann? I don't know that there was, if there was, I don't remember it.

134. Can you swear and will you swear that you and your sister Lydia in the life-time of Ann did not have conversations upon that subject? If we ever had any such, I don't remember it. 50

135. After the marriage of Sarah have not you and Lydia and Ann frequently talked about funds left with Ann by Sarah? I don't remember it.

136. Do you remember that Mr. Williams bought a farm near Liberty Corner, in Somerset county? I do.

137. Was that after his marriage with Sarah, and if so about how long after? It was after the marriage, but how long after I cannot tell—it might have been ten years afterwards, I don't know.
138. Had not Sarah up to the time that was bought at Liberty Corner left the principal part of her notes and obligations at your house, in the care and keeping of your sister Ann? If she did, I did not know it.
139. Do you not know that about the time that farm was purchased, Sarah came to your house and took away some funds which she had there with Ann? I did not know anything about it, and do not now.
- 10 140. Do you know of Mr. Williams ever receiving any of Sarah's property except what you paid him in small change as you have stated? I don't know anything about any other.
141. Did you pay him anything besides a legacy of two hundred and fifty dollars, and the interest due on that legacy? I don't remember how much it was I paid him—but I think it's likely, I can find a receipt which will show all about it.
142. After Sarah had asked you about leaving some of the funds with Ann, after her marriage, did you never after that enquire of Sarah or Ann or Lydia, or learn from either of them whether Sarah had done so? I
20 asked Lydia about it and she said she did not know anything at all about it.
143. When was it that you asked Lydia that? Well I don't recollect exactly the time, whether it was last winter or spring, along it was since the death of Ann.
144. Where were you when you asked her that? I was in my house.
145. Who were present besides you and her? Nobody.
146. Did you not then ask her whether she had ever told anybody about it, or words to that effect? Not that I know of.
147. Was not the reply she made to you that she had never told anybody
30 about it, instead of, that she did not know anything about it? No, she said she did know nothing about it.
148. What prompted you or induced you to speak to her upon that subject? There was a talk of it around the neighborhood, and everywhere almost, that is the way I came to speak to her about it.
149. At the time you spoke to her upon that subject, did you not know or believe to your own satisfaction that she did know about it? I did not know anything about it whether she did or did not.
150. Was that conversation you have had with Lydia which we have
40 been speaking about since the first day of January, eighteen hundred and fifty-four? I can't tell whether it was before that or after.
151. Do you recollect a meeting of the heirs of Ann Carle held at your house on the thirteenth day of December, eighteen and fifty-three? We had a kind of meeting there, but I don't know the day of the month—upon reflection I think it was on the thirteenth day of December, eighteen hundred and fifty-three.
152. Was that conversation with Lydia before or after the meeting mentioned in the last question? I think it was before, but I can't tell certain.
153. At that meeting of the heirs on the thirteenth of December, or near that time, was there anything said by you to any one about funds left
50 with Ann by said Sarah? Mr. Annin I think said there was some such thing, there was something said by me about it, but what I don't remember.
154. Who did you speak to upon the subject? I don't remember who—Mr. Annin and I talked something about it that day.
155. Had you never spoken to Mr. Annin upon that subject, nor he to

you before that day ? There was something said about these fifteen hundred dollars, and we left notes out of the inventory to that amount.

156. Was that inventory which you refer to, the one that was made soon after Ann died ? Yes.

157. Who suggested that the fifteen hundred dollars should be left out of the inventory ? I believe I did.

158. Why did you make that suggestion ? Because she said there were fifteen hundred dollars or upwards going to these children.

159. Were you not then under the belief that these notes did not belong to Ann in her own right, and that they ought not to be put into the inventory as part of her estate ? I did not know whether they should or should not.

160. Had you ever said anything to Mr. Annin about that fifteen hundred dollars before you were making the said inventory ? I don't remember as I did.

161. Do you think that was the first time you ever mentioned it to Mr. Annin ? I don't know whether it was or not.

162. Did you not talk with Mr. Annin several times upon that subject between the time the said inventory was made and the time when the heirs met in December, 1853. I don't remember how that was.

163. What did you say to Mr. Annin upon that subject at the meeting of the heirs in December, 1853 ? I don't remember what it was.

164. How are we to ascertain what it was ? Are you willing to take Mr. Annin's statement as to what it was ? I am willing to take his statement as to what it was.

165. Did you then state to Mr. Annin that you had any serious doubt in your mind as to whether Sarah had in point of fact left funds in Ann's hands ? No I don't remember anything about that, whether I did or did not.

166. Did you seek the aid of Mr. Annin to ascertain whether as a matter of fact Sarah had left seven hundred dollars in Ann's hands, or did you assume that as a fixed fact, and ask Mr. Annin how you were to dispose of the funds under that state of facts ? I don't know that I employed him for either one.

167. Was not Mr. Annin engaged for you, and by you in that very matter ? I don't know that he was at all.

168. Did he say anything about it to the heirs when they met at your house in December, eighteen hundred and fifty-three ? He said something about it, but I don't know what it was.

169. Was what he then said upon that subject said at your request and according to your instructions ? Not that I know of, I don't know, as I did, and I don't know but I did request him and authorize him.

170. How did Mr. Annin happen to be present at that meeting—was he there by your request or not ? It was by my request he was there.

171. Had you not told him all that he knew or stated about the fifteen hundred dollars ? I expect likely I did.

172. Did Mr. Annin then state anything about the fifteen hundred dollars or its history which was not true—not that I know of.

173. Were you present when he made the statement to the heirs ? I was.

174. Had you not asked him to tell the heirs why you had not put that fifteen hundred dollars into the inventory ? I don't recollect asking him to do so, but he made the statement and I don't know but he told it right.

175. Did you contradict anything Mr. Annin stated there ? I don't know that I did.

176. Did you not pay him for his attendance there that day ? No.

177. Do you not expect and intend to pay him for his attendance there that day? I expect he'll get his pay for it.
178. Please state to us what Mr. Annin said to the heirs in your presence about that fifteen hundred dollars, or as much of what he said as you can recollect? I don't seem to recollect what he said.
179. Did you say anything on that occasion to the persons there present, or any of them except Mr. Annin about the fifteen hundred dollars? Yes I did; but what it was, I don't recollect.
- 10 180. To whom or with whom besides Mr. Annin did you converse upon that subject on that occasion? I don't know.
181. Who were present when you were talking about it? The room was full, but I don't seem to remember who they *was* all.
182. Did you then state anything about the matter, that was not true? I don't know as I did—I don't remember as I did, nor what I said about it.
183. What was your motive or object in speaking about it and in getting Mr. Annin to speak about it? I don't recollect what it was now.
- 20 184. After the death of Ann and before the meeting of the heirs at your house in December, 1853, did not your sister Lydia several times speak to you privately about the funds Sarah had left with Ann? I don't know that, she did at all, except the time when she said she did not know anything at all about it.
185. Do you not remember that after the death of Ann you and your sister Lydia were together alone in your kitchen, and she then asked you how much those funds which Sarah had left with Ann amounted to, and that you told her they amounted to over fifteen hundred dollars? I don't remember nothing about it at all.
- 30 186. Do you remember your sister Lydia after the death of Ann asking you when you were going to pay that fifteen hundred dollars over to the children or anything like that? I don't remember nothing of it at all.
187. Did you ever say to her that it would be one while before they got it, or anything to that effect? I don't know that I ever did at all, I don't think I did.
188. After the death of Ann did you ever have any conversation with any of the children of Ebenezer S. Williams about that fifteen hundred dollars and over? I don't seem to recollect that I have.
189. After Ann on her death bed had told you there was fifteen hundred dollars and over due those children, what is the reason you never said anything to any of them about it? I don't know any reason for it at all.
- 40 190. After she had told you that money was coming to them and you had kept it out of the inventory, why did you not mention something about it to Mr. Williams or some of his children? I did not think it worth while to tell him anything about it—I don't know of any reason why I did not tell the children.
191. Who were the appraisers who assisted in making the inventory by you previously mentioned? William M. Clark and Abraham Dunn.
192. Did they know the fact that you had kept out of the inventory notes to the amount of fifteen hundred dollars, or did you conceal the fact from them? I don't think they know'd it.
- 50 193. Why did you not let them know it? I don't know any reason for it.
194. Where were Ann's notes and obligations at the time of her death—they *was* in an old desk in the hall.
195. Were the notes to the amount of fifteen hundred dollars which you did not put in the inventory in that desk at Ann's death? All the notes she had were in there or all that I could find.

196. Were all the notes in one place in that desk or in different places in the desk ? They *was* in different drawers.
197. Were those notes you did not put in the inventory in one drawer, or place in the desk by themselves ? They *was* mixed up altogether.
198. How can that be when you say they were in different drawers and places in the desk ? They were all mixed up together in different drawers. I did not know—as the fifteen hundred dollars were kept by themselves.
199. Who was present with you when you first opened the desk and examined the notes after Ann's death ? I don't know as there was any one with me. 10
200. How long had Ann been dead before you opened the desk and examined the notes ? I don't know.
201. Was it over or under a week ? I think likely it was under a week ; I can't tell about that.
202. Was it before or after the funeral ? It was after.
203. You say that when you first examined it you found some notes in one drawer and some in another drawer or place, in how many different places in the desk did you find notes or obligations ? I can't tell—I found them in different places.
204. Please reflect and tell us whether you have not understood from some one of your sisters that Ann always kept the notes or funds she held in trust in a place by themselves separate from her own ? Not that I know of. 20
205. After the death of Ann and before the thirteenth of December, 1853, did you not tell Sarah Ann Williams that you had for her and her brothers fifteen hundred dollars and over, which had been left with her Aunt Ann by her, Sarah Ann's mother ? No, I never telled her any such thing as I know of—I don't think I did.
206. Did you or did you not after you had kept that fifteen hundred dollars out of the inventory intend to pay it to the children of Ebenezer S. Williams by your sister Sarah ? By what my sister said about the fifteen hundred dollars, I did not know but it might belong to them—I expected to pay to pay it to them if it belonged to them—I did not know whether it did or not. 30
207. Did you not think it was your duty then under such circumstances to let them know so that they could assert their rights if they had any ? I did not think nothing about it.
208. Did not Mr. Annin state to the heirs on the thirteenth of December, eighteen hundred and fifty-three, that Sarah shortly before her marriage had left with Ann seven hundred dollars for her children if she should have any, and that it then amounted to fifteen hundred dollars and over, or words to that effect ? Something like that I believe he did. 40
209. Had you not the same day or shortly before told Mr. Annin that such were the facts of the case ? I told him about the fifteen hundred dollars that was left in that way, that she said that there were fifteen hundred dollars and upwards coming to the children.
210. What I wish to know now is how you or Mr. Annin got hold of the fact that that sum was originally seven hundred dollars, and that it was left with Ann shortly before Sarah's marriage ? William's wife before her marriage wanted to leave it, seven hundred dollars in Ann's hands, but I don't know whether she did or not, that's the way the talk came. 50

Adjourned to-morrow at 9 o'clock.

Parties and Counsel met pursuant to adjournment Saturday morning, 9th December, 1854—examination of witness was resumed :

211. You say Sarah spoke to you before her marriage about leaving seven hundred dollars with Ann for the use of her children if she should have any ; did she state what was to be done or what she would wish done with the money in case she should not have any children ? Not that I remember of, at all.
212. Did she state when it was to be paid to the children in case she had any—was it to be paid in her life-time or not till after her death ? I don't remember anything about it, whether she did or not.
- 10 213. At the time you had that conversation with Sarah, was it understood in your family that Sarah and Mr. Williams were engaged to be married ? I don't remember anything about it.
214. Had Mr. Williams before you had that conversation with Sarah been visiting Sarah at your house ? I believe he had.
215. Did he continue to visit her from that time on until a marriage took place ? I think he did.
216. Did Sarah say she had left seven hundred dollars with Ann for the use of her children, or did she say she was going to leave that sum with her for that purpose ? She did not say either one or the other.
- 20 217. Be good enough to tell us what she did say ? she talked something about it, but what I don't remember.
218. From what she did talk, did you receive the impression that she then had left the money or funds with Ann or that she contemplated doing so at some future time ? I do not know what I thought about it.
219. Have those notes to the amount of fifteen hundred dollars which you say were not included in the said inventory been collected or any of them ? There was some paid in and put out again—I don't remember what notes.
220. Who paid in the money that was paid in on those notes ? That I don't remember.
- 30 221. To whom did you loan out what has been loaned out since that time ? Well I can't tell who.
222. Did you receive the money that was paid in on those notes and loaned it out again ? I did.
223. And yet you cannot say you cannot tell who paid it to you or who you loaned it to ? I can't tell who.
224. Who were the makers of such of those notes included in that fifteen hundred dollars as have not been paid ? I don't know.
225. Have you not received interest on them since the death of Ann ? I have received some, but I can't tell from who, except one man, Joseph Runyon paid me the interest on twelve hundred dollars I think for one
- 40 year.
226. Then one of those notes was made by Joseph Runyon for twelve hundred dollars ? No. It was an old mortgage given by the man who lived on Runyon's place before he came there.
227. Who was that man that gave the mortgage on the Runyon place ? Madison Terill.
228. What is the date of that mortgage or about what time was it given ? I don't know.
229. Has that fifteen hundred dollars been drawing interest ever since Ann's death ? All the notes that she had I believe have been drawing interest ever since—the fifteen hundred dollars has been with the rest.
- 50 230. I wish you to state your opinion and belief as to how and when the funds which Ann told you were coming to the children came into Ann's hands or under her control ? I did not know but they might have come in that way, by being left by her sister Sarah.

231. Do you not believe that Sarah's notes and obligations for several years after Sarah's marriage were left in the hands or under the control of Ann, and that when Mr. Williams purchased the farm at Liberty Corner, Sarah left seven hundred dollars remaining in Ann's hands, and took away the balance to use in the purchase of that farm? I do not know what I believe about it.

Witness being cross-examined by Counsel of Defendants, further saith :

1. Soon after Ann's funeral did you not go to Plainfield after Mr. Annin to come up and advice you in reference to the settlement of Ann's estate? I did. 10

2. Did Mr. Annin come? He did.

3. When he came to your house did he tell you to give him an account of all Ann's personal property, and to produce all her money, notes, bonds and mortgages? He did.

4. Did you do so? I did.

5. Did he count the money and then put it back where you brought it from? He did.

6. Did Mr. Annin take an account of all the notes, bonds and mortgages belonging to Ann Carle? He did.

7. When he was about to do so, did you tell him that you had a notion to leave out fifteen hundred dollars of notes for the children of Ebenezer S. Williams? I believe I did. 20

8. Did he ask you why you proposed to leave out those notes? I believe he did.

9. What answer did you make to him? That Ann said there was fifteen hundred dollars coming to them or thereabouts.

10. Did you tell him that Ann said there was fifteen hundred dollars coming to them or that there was fifteen hundred dollars coming to the children? Fifteen hundred dollars coming to the children.

11. Did you then say that you supposed the children referred to by Ann to be Ebe Williams children? I believe I did. 30

12. When did you tell me that Ann made this remark? Two or three days before she died.

13. Did Mr. Annin ask you what reason you had to think that she referred to Mr. Williams children? I don't know that he did.

14. Did you tell him that you supposed she referred to the children of Mr. Williams, because previous to the marriage of your sister Sarah there was some conversation in the family about the propriety of placing in the hands of Ann seven hundred dollars for the use of any children she might have by Mr. Williams? I don't seem to remember that I did. 40

15. You have since told Mr. Annin so frequently, have you not? I think its likely I have told him something like.

16. You did know of some such talk occurring in the family before the marriage of Sarah, do you not? She talked to me about it.

17. Were your reasons and your only reasons for leaving out fifteen hundred dollars of the notes, the conversation which occurred in the family previous to the marriage of Sarah and the remark made by Ann which you have already stated? That was the reason I wished that fifteen hundred dollars left out.

18. Have you any other evidence of any kind whatever except that above stated that Sarah ever did leave seven hundred dollars in the hands of Ann before her marriage with Mr. Williams for the use of any children she might have by him? I have none. 50

19. Did you not state to Mr. Annin at the time he was about taking an account of the notes, bonds and mortgages of Ann Carle, deceased, that

you had no other evidence of that fact ? Objected to. I think it's likely I did tell him so.

20. Did not Mr. Annin advise you at that time, that you had better then put all the notes into the estate and leave Mr. Williams children to assert their own rights ? He did.

21. Did he not tell you so afterwards, and has he not always told you so ? He did.

22. Did you notwithstanding Mr. Annin's advice determine to keep back notes to the amount of fifteen hundred dollars, and not suffer them to be appraised as the property of Ann Carle I did.

23. When the appraisers came did you produce these notes before them ? I believe I left them back.

24. Did the inventory made by the appraisers state merely the amount of the notes, bonds and mortgages belonging to the estate ? It merely stated the amount.

25. After the appraisalment was made did Mr. Williams express to you very great dissatisfaction that the particular notes, bonds and mortgages which made up the amount stated in the inventory were not particularly set forth in the inventory ? (Objected to.) He did make a great fuss and blustered about it.

26. Did you afterwards offer to show to Mr. Williams a statement of the particular notes, bonds and mortgages with the sums and dates of each which were appraised by the appraisers ? (Objected to.) I believe I did.

27. Did he decline to look at it ? (Objected to.) He did and said it was not good for nothing.

28. Did Mr. Annin after that advise you to have any article of personal property and every note, bond and mortgage of Ann Carle including the notes before withheld again appraised, that a new inventory might contain a practical specification of them ? He did.

29. Was such an appraisalment made, and if so, by whom ? it was made by William M. Clark and David Coon.

30. Did you at that time yield to the advice of Mr. Annin and produce before the appraisers the notes before omitted ? I did.

31. Did Williams object to the filing of that new inventory ? (Objected to.) I don't know that he did.

32. Why did you not have it filed ? There was one already in.

33. Did Mr. Annin at your request, state to Mr. Clark and to Mr. Coon, that in the previous appraisalment of Ann Carle's notes, certain notes amounting to fifteen hundred dollars had been withheld by you for the reasons above stated by you ? (Objected to) and which you now proposed to have appraised ? I believe he did.

34. Did not Mr. Annin advise you that the proper mode under the circumstances of giving to the children fifteen hundred dollars out of the estate was to state the fact of the case to all interested in the estate and get their consent that five hundred dollars apiece should be paid out of the funds of the estate to the children of Ebenezer S. Williams ? He did.

35. Did you consent that this should be due ? I did, and they all consented to it.

36. When the heirs met at your house on the thirteenth of December, eighteenth hundred and fifty-three, did you request Mr. Annin as the best mode of obtaining their consent that five hundred dollars should be given to each of the children of Ebenezer S. Williams to make to the heirs the statement which you have said in your answer you did request, and au-

thorize him to make, and did he then and there make that statement ? I think it's likely I did—I believe I did.

37. Did you authorize him to make that statement because from what you knew had occurred before the marriage of your sister Sarah, taken in connection with what Ann said upon her death bed, you supposed that the fact might be that the children were entitled to five hundred dollars apiece out of the estate of Ann Carle, and that there being no direct evidence of the fact within your knowledge you supposed they might not otherwise be able to get it ? (Objected to.) I did not know any other way, they had to get it, and that was my reason. 10

38. Did you know at that time that a portion of that five hundred dollars apiece which would be paid to them would come out of your own pocket ? (Objected to.) I did.

39. Have the children of Mr. Williams or any of them lived with you for the last few years, and if so who and why ? (Objected to.) There was two lived there with me a spell ; Theodore and Sarah Ann ; Sarah Ann was drove from home, drove out doors ; Mr. Williams brought her to my house himself and said if she came home he would kick her out doors.—Then afterwards he came to my house and wanted me to kick her out doors. 20

40. How old was Sarah Ann when her father brought her to your house ? (Objected to.) I don't know exactly, but I think about twenty-five or twenty-six years of age.

41. How long has Theodore lived with you ? and how did he come to live with you ? (Objected to.) I suppose he has lived there not far from twenty years. His father sent him there.

42. Has Carle Williams ever lived with you, and if so, how long, and how did he come to live with you ? (Objected to.) He came to my house one day, and his father had drove him out of doors, and I think he said when he came to my house he had slept the night before in a carriage in a buffalo skin. 30

43. How long ago was this, he came to your house ? I can't tell exactly ; it was about five or six years ago, may be a little more, I can't tell.

44. When Mr. Annin made the statement to the heirs in your parlor on the thirteenth of December, eighteen hundred and fifty-three, did he not ask the heirs individually, whether they were willing that five hundred dollars apiece should be paid to the children of Ebenezer S. Williams out of the funds of the estate of Ann Carle, and did they not each say that they were willing, and did not Mr. Williams also say that it would seem to be nothing more than right, and that he was willing ? (Objected to.) They all said so and he too. 40

45. Did you attempt to conceal from Mr. Williams that his first wife had if she ever did, placed funds in the hands of Ann for the use of the children, and if so, why did you attempt to conceal it from him ? I never had any hand in it—I did not tell him anything about it—I don't know why I did not tell him.

46. Was not the reason probably that his first wife had chosen to conceal it from him during her life-time, and Ann since her death if any such investment had been made ? (Objected to.) I don't remember nothing about it, how it was. 50

47. Did you ever attempt to conceal it from the children of Ebenezer S. Williams ? I don't know that I did.

48. Did you ever tell Mr. Annin not to tell the children anything about it ? I don't know that I did.

49. Had you ever the remotest intention of appropriating that fifteen hun-

dred dollars to your own use without either giving it up to the estate or paying it over to the children? (Objected to.) I never had.

50. You stated in your examination direct, that you thought it was before the thirteenth of December, eighteen hundred and fifty-three, that you asked your sister Lydia whether she knew of any money having been entrusted by Sarah before her marriage in the hands of Ann Carle for the use of any children she might have, are you still of opinion that this took — place before the thirteenth of December, eighteen hundred and fifty-three, and if you are not of that opinion, at what time do you think it did take place? I now think it was not far from along last April.

51. What makes you think it was along last April? Well I had been sick, and she came there, and I asked her about it.

52. Are you quite sure it was last spring? I think it was.

53. Are Jno. Vail, James Vail and Lydia Ann Ross entitled to a portion of the property of Ann Carle, deceased? (Objected to.) They are.

Direct examination resumed:—

1. Did you swear to the first inventory made with the assistance of Mr. Dunn and Mr. Clark at the Surrogate's Office? I did.

20 2. Did you ever make oath to the second inventory which was made with the assistance of Mr. Clark and Mr. Coon? I did not.

3. Have you ever paid to any of the children of Ebenezer S. Williams any portion of that fifteen hundred dollars? I don't think I have—I have not.

4. If all the heirs, as you say agreed that you should pay that fifteen hundred dollars to those children why did you not pay it to them? I don't know any reason that I did not.

5. What is your age? I am upwards of sixty-five.

6. How much above sixty-five? Five years above.

30 7. How much older were you than your sister Sarah? I don't know, I think I was two or three years older.

DANIEL CARLE.

Sworn and subscribed before me this 9th day of December, A. D., 1854.

V. DALRIMPLE,

Master and Examiner in Chancery of New Jersey.

ANN VAIL of the township of Bernard, in the county of Somerset, a witness called on the part of said Complainant, being objected to by said Defendants' Counsel as interested— and then, duly sworn, was examined as a witness by question and answer, and testified as follows:—

40 1. Was Ann Carle a relation of yours, and if so, what relation was she to you? she was my Aunt, on my mother's side.

2. Please state your mothers name? Elizabeth Vail, her maiden name was Elizabeth Carle.

3. Are you acquainted with Daniel Carle, and if so, and how long? I have been acquainted with him ever since I can remember.

4. Were you acquainted with Ann Carle for many years before her death? I was.

50 5. After the death of Ann Carle did you have any conversation with Daniel Carle about some money or funds, which were said to have been left with Ann Carle for the children of Ebenezer S. Williams? I did.

6. When and where did that conversation occur? It was on the road from Plainfield to his house; a year ago last summer, I think the latter part of June or first of July.

7. What did Mr. Carle then say upon that subject? He said that it had

then amounted to fifteen hundred dollars.—Some money that Aunt Sally Williams had left had amounted to that.

8. Did he say whether any of the interest had been paid in the life-time of your Aunt Sarah, and if so, state what he said about the collection and payment of interest in Sarah's life-time? He said she came there sometimes and got the interest, and when she did not Aunt Ann went and took it to her.

9. Had you ever before that time heard from any other person that your Aunt Sarah had funds in the hands of your Aunt Ann? (Objected to.) None but Aunt Sarah herself.

10. Tell us what you heard from Aunt Sarah about it? She said they made such a fuss about the property right away as soon as she was married, that she meant they should never know what she had or how much she had.

11. When did she tell you this, or near as you can tell? I think it was when she lived on Long Hill—she had then been married several years; it was very likely six or eight years before her death.

12. Did she state to you or inform you where her funds then were? Well, I can't tell you about that, she allowed she left it behind with her folks, but she did not say which one.

13. Did you ever state to your Aunt Ann what your Aunt Sarah had told you? I don't think I ever did in my life.

14. Did you ever hear your Aunt Ann say anything about her having funds left with her by your Aunt Sarah? I never did.

15. You have said that your Aunt Sarah said they made so much fuss about her property, after she was married? Who did you understand had made the fuss? Her husband and his father.

Witness being cross examined by Counsel of Defendants, further saith:—

1. How long has your Aunt Sarah been dead? I can't tell may be twenty-one or twenty-two years.

2. How long did this conversation occur before her death? I think as much as six or eight years.

3. What is your age? Fifty-nine years, that is in my fifty-ninth.

4. Where did this conversation occur? I cannot remember, only there was such conversation.

5. Do you distinctly remember that she said she had left her property among her folks—I believe she did, I cannot say I distinctly remember it.

ANN VAIL.

Sworn and subscribed before me this 9th day of December, A. D., 1854.

V. DALRIMPLE,

Master in Chancery of New Jersey.

SARAH ANN WILLIAMS, one of the Defendants in said cause, being called by the said Complainant to testify in said cause, and being first duly sworn was examined as a witness by question and answer, and testified as follows:—

1. Are you a daughter of Ebenezer S. Williams and Sarah Williams? Yes sir.

2. State the names of your brothers and your sisters if any you have? Daniel C. Williams and Theodore Williams, I have no sister.

3. Which is the youngest of the three children? I am.

4. Please state your age and the age of your brothers? I am almost twenty-eight, Theodore is a little over thirty, and Danl. C. is thirty-four.

5. State if you can when your brother died? The nineteenth of November, eighteen hundred and thirty-four.

6. State whether you lived with your Aunt Ann Carle at the time of her death, and if so, how long you lived with her before her death? I lived with her before her death a few days over a year.

7. Did you live at the house of your uncle Daniel Carle after the death of your Aunt Ann, and if so, how long after her death? Yes sir, two years.

8. After the death of your Aunt Ann, did your uncle Daniel Carle ever say anything about his having money in his hands which belonged to you and your brothers? He did.

10 9. State when it was he told you that? After Aunt Ann's death—I don't know how long after, it was before the sale—the sale was on the thirteenth day of December, 1853.

10. State what he said to you upon that subject? He said that Aunt Ann said there was fifteen hundred dollars there for us.

11. Did he state how it came there, or how your Aunt Ann came by it? It was money mother had left there—I think it was just so he said it.

12. Had he ever told you anything of the kind before that? I don't remember that he had.

20 13. Had you ever heard of it in any way before that? No other way than Mrs. Cooper told me mother had made a will and left Carle and me some money, but had not left Theodore any.

14. When did Mrs. Cooper tell you that? It was when I first went down to uncle Daniel's to live.

15. Up to the time when your Aunt Ann's things were sold, had you ever told your father anything that you had heard about that money left by your mother? I don't remember that I did.

Witness being cross examined by Counsel of Defendants further saith:

30 1. When was it your uncle Daniel told you that your Aunt Ann said there was fifteen hundred dollars there for yourself and brothers? It was before the sale, that is before the thirteenth of December, eighteen hundred and fifty-three.

2. How long was it before the sale? I can't tell—I knew it some time before the sale.

3. Did Mr. Annin ever tell you of it? I don't remember now.

4. Did Mr. Carle ever tell you how he knew that there was money in the hands of your Aunt Ann for yourself and brothers? I don't remember now.

SARAH ANN WILLIAMS.

Sworn and subscribed before me this ninth day of December, A. D. 1854.

40 V. DALRIMPLE,

Master and Examiner in Chancery of New Jersey.

Examination adjourned by consent of parties to 13th instant, at 10 1-2 o'clock, A. M.

Wednesday morning, December 13th, 1854, parties and Counsel met pursuant to adjournment, and thereupon the Solicitor of complainant called

DANIEL C. WILLIAMS one of the Defendants in said cause, and he being first duly sworn as a witness in said cause and examined by question and answer, he the said Daniel C. Williams testified as follows:—

50 1. Were you at the house of Daniel Carle on the thirteenth of December, eighteen hundred and fifty-three? Yes sir.

2. State who else were there? Mr. Annin, my father, my step-mother, Ann Vail, James Vail, Wm. M. Clark, the Auctioneer, Wm. Cory, Squire Terrill and his lady; my brother and sister were living there then, Wm. Moore and his wife were there then also, Mr. Danl. Carle was there.

3. Was there anything said there in the presence of Mr. Danl. Carle or by him about money which had been left with your Aunt Ann by your mother, and if so, state fully and particularly all that was said upon that subject? Mr. Annin spoke to my uncle Mr. Carle and asked him if there was not money left in trust for certain children, Mr. Annin asked him whose those children was or to the same effect, Mr. Carle said for his sister Sarah's children.

4. Was there anything said as to how long before that time it had been left with your Aunt Ann? My uncle said over thirty-five years.

5. Was it said by whom it had been left with your Aunt Ann? By my mother I understood. 10

6. Was the sum to which the money then amounted named, and if so, who named it? My uncle said it was fifteen hundred dollars.

7. Give us as near as you can his exact words as to the amount? That's all I remember, and that's as near as I can tell.

8. Was there then anything said to your father about that money, and if so, what and by whom? I think Mr. Clark asked my father how that would do, and my father said he did not know but it would do well enough, or something like that.

9. What was it that Mr. Clark asked him about which he said would do? There was some talk about putting it all into the estate by Mr. Annin or Mr. Clark, I don't know which—and then let the children get it by law. That's it, as near as I can recollect. 20

10. Were Mr. Annin and Mr. Daniel Carle both there present? I believe they were.

11. Whereabouts did that conversation take place? In my uncle's parlor.

12. Before that time, had you ever heard anything about that money, and if so, when and from whom did you first hear about it? I think it was about two or three months before that time from Mr. Annin.

13. Was what Mr. Annin then said to you the first information you ever received upon the subject? It was. 30

14. Do you remember when your father purchased and moved upon the farm at Liberty Corner, and if so state the time as near as you can? I think it was in the year 1832 or 1833, somewhere along there.

15. State as near as you can how long your mother lived on that farm before her death? I think it was about a year and a half, may be two years—I do not think it was over that.

Witness being cross examined by Counsel of Defendants further saith:

1. Do you remember distinctly that Mr. Annin in your uncle's parlor on the thirteenth of December, eighteen hundred and fifty-three, asked your uncle in reference to money having been placed in the hands of your Aunt Ann by your mother for the use of yourself, brother and sister? Or do you only remember that Mr. Annin stated to those present and in presence of Mr. Carle that about fifteen hundred dollars had been left in that way by your mother more than thirty-five years ago? Mr. Annin asked Mr. Carle. 40

2. Did not Mr. Annin first make the statement to those present, and then turn to Mr. Carle and ask him if that statement was correct? I believe it was so.

3. Do you remember that Mr. Annin after making the statement asked each one of those interested personally, whether he or she was willing that five hundred dollars apiece should be given to the children out of the estate, and that they all said they were willing? (Objected to.) I believe Mr. Annin asked something about it, but all the heirs did not seem to be 50

willing—my father did not seem to be willing—he did not say he was willing—he said he did not know but it was right enough.

Direct examination resumed :

1. Did you hear Danl. Carle after the statement had been made about the money having been left with your Aunt Ann, ask your father if he had ever heard of it or knew of it ? I did not hear him ask it.

DANIEL C. WILLIAMS.

Sworn and subscribed before me 13th December, A. D., 1854.

V. DALRIMPLE,

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Master and Examiner in Chancery of New Jersey.

WILLIAM M. CLARK, of the township of Morris, in the county of Morris, a witness produced and sworn on the part of said Complainant, being examined by question and answer, testified as follows:—

1. Do you know Daniel Carle—do you reside near to him, and if so, how long have you known him, and how near do you live to him ? I know him—I reside within about one and a half miles of him—I have known him about thirty-four years.

2. Did you know Ann Carle in her life-time, and if so, how long did you know her ? I knew her for about thirty-two or thirty-three years.

20

3. Soon after her death did you assist Mr. Daniel Carle in making an inventory of the personal estate of Ann Carle ? I was called on by Mr. Carle a short time after the decease of his sister, to assist in appraising the personal property of Ann Carle, deceased, and I did so.

4. Did you then receive any information from Daniel Carle or any one else, that all the notes and securities which Ann had had in her possession at her death were not included in the inventory then made out ? No sir.

5. Did you afterwards receive any such information, and if so, when and from whom ? I never received any such information to my recollection.

30

6. Did you assist in making a second inventory of the estate of Ann Carle, and if so, when was that second one made ? I did on the third of December, eighteen hundred and fifty-three, if my recollection is correct.

7. Which inventory showed the largest aggregate amount of property ? The first one.

8. What was left out of the second inventory that was included in the first, so as to make the second the smallest ? I understood Mr. Carle to say that something over two thousand dollars had been paid in, that was appraised at the first meeting—we left that out, it was not before us to be appraised.

40

9. What was the difference between the aggregate amount of the first and the second inventory ? I think about a thousand dollars.

10. What reason if any did Mr. Carle assign for making a new inventory ? He stated to me that Mr. Annin his Attorney advised him to pursue that course, or something to that effect.

11. Did he state for what reasons or on what grounds Mr. Annin gave him such advice ? It was considered that the first inventory was not specific enough.

50

12. Did he say anything about there being securities which Ann had held to the amount of about fifteen hundred dollars, which he had not included in the first inventory ? No sir.

13. Did you in the second inventory appraise securities which had not been appraised in the first ? I cannot say positively—I think I did a few—I can't say positively.

14. Were you at Daniel Carle's house on the thirteenth of December,

eighteen and fifty-three? The exact day I cannot say, but I was there the day the sale took place.

15. Were you in his parlor on that day when a conversation took place about money said to have been left with Ann Carle by her sister Sarah? Yes sir, I was present.

16. Please state all the conversation which then and there occurred upon that subject as nearly in the order in which it occurred as you can? The fifteen hundred dollars was talked about by Mr. Carle, myself, Mr. Cory and Mr. Annin. I asked Mr. Carle the question when this fifteen hundred dollars was left, his answer was before they were married, alluding as I took it to Mr. Williams and his wife—I then proposed, or it was proposed, that Mr. Carle and Mr. Williams settled their differences in regard to the estate of Ann Carle, with regard to the fifteen hundred dollars, Mr. Cory suggested that the fifteen hundred dollars be taken out of the estate and divide the balance among the heirs equally. I asked Mr. Williams how that would do, his answer was I think it will do or something to that effect, but the settlement did not place—the Auctioneer proceeded and sold the property belonging to deceased. 10

17. Please state who first mentioned there that day that that money had been left with Ann, and how the statement was made? I think Mr. Annin first spoke on the subject, and after it was introduced several of us made certain remarks relative to it. Mr. Annin when he first spoke of it, asked the question about this fifteen hundred dollars—Mr. Carle's reply I cannot recollect, but in answer to my question as to the time when this was left that it was before they were married. 20

18. What question did Mr. Annin first ask about it, and whom did he ask? The first question he asked I think he asked Mr. Carle—the question I cannot recollect, it was relative to the fifteen hundred dollars.

19. Was it stated there by any one how long before that time the money had been left with Ann, and if so, what was the time? It was not stated by any one that the money had been left with Ann, it was only conjectured—no time was stated except as I have already stated in answer to the other question. I remarked in course of conversation on the subject, that if all the heirs were willing this fifteen hundred dollars might be given to Mr. Williams children or be divided equally amongst them—I stated did not see any other way it could be done. 30

20. Was it stated there how much money had been left in the start? No sir, it was not stated at all to my recollection.

21. Did you not hear Mr. Annin state that thirty-five years ago or over, there had been seven hundred dollars left, which at the time of Ann's death amounted to fifteen hundred dollars and over, or anything to that effect? Not to my recollection. 40

22. Did you hear any one state or say for what purpose or for whose benefit that money had been left? No, not to my recollection.

23. Why then were they talking about paying it to the children of Ebenezer S. Williams? I suppose in consequence of Mr. Carle's stating what his sister told him a short time before her death that there was fifteen hundred dollars left for the children.

24. Did you hear Mr. Carle or any one else ask Mr. Ebenezer S. Williams whether he had ever before heard about that money? I don't think I did. 50

25. Did you hear Mr. Williams there say there had been so much smuggling or anything like that? Yes, I did hear him say with regard to the estate of Ann Carle, deceased, that Mr. Carle had not rendered up all the obligations.

26. Whose and what remark elicited that remark from Mr. Williams? The occasion of that remark I suppose was in consequence of my requesting him, Mr. Williams, to effect a settlement with Mr. Carle—he then stated that Mr. Carle had not rendered a true account or report of all the obligations, stating that his present wife, Lydia, he called her, told him so.

27. Had you ever heard anything about that fifteen hundred dollars before that day of sale? That fifteen hundred dollars, I can't say; but previous to that time Mr. Carle had said to me something about fifteen hundred dollars for the children.

10 28. How long before that, and what did he say? I cannot say how long, I think about the third of December previous he said something about some money, but did not name the amount in regard to his sister's leaving or wishing to be left to the children—the precise conversation I cannot recollect.

Witness being cross examined by Counsel of Defendants further saith :

1. You have stated here Mr. Clark that you remarked in the course of the conversation in Mr. Carle's parlor on the thirteenth of December, eighteen hundred and fifty-three, that if all the heirs were willing, the fifteen hundred dollars might be divided equally among the children of Mr. Williams, do you remember of Mr. Annin asking the heirs upon your making that statement, and Mr. Williams among them, whether they were willing that this fifteen hundred dollars should be divided? I don't know whether he asked the question or not—I think a part of the heirs expressed their willingness there that day.

20

2. Do you remember the precise language used by Daniel Carle when speaking to you of the fifteen hundred dollars being left for the children? No sir, not the precise language.

3. Are you able to say whether Mr. Carle said that Ann had remarked to him that there was fifteen hundred dollars left for the children, or whether she said there was fifteen hundred dollars coming to the children? I cannot say, I think he did not define it.

30

4. You have said that on the third of December, eighteen hundred and fifty-three, Mr. Carle said something to you in reference to this fifteen hundred dollars, was not the day on which the second inventory was made, and did he not mention it in connection with his producing before you certain notes for appraisement which were not included in the first appraisement? I don't think he did, it was on the third December.

5. You say that the first appraisement exceeded the second by about one thousand dollars, and that the first included about two thousand dollars, which the last did not, what explanation if any was made by Mr. Carle or any one else in reference to the other one thousand dollars? Mr. Carle made no explanation. On the day of the sale at the time this matter of settlement between Mr. Carle and Mr. Williams, relative to the estate of Ann Carle, deceased, I stated to Mr. Williams that I supposed this difference of about fifteen hundred dollars, between the first and second inventory, that he had not included this fifteen hundred dollars which would make them about tally.

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WM. M. CLARK.

Sworn and subscribed before me this thirteenth day of December, A. D., 1854.

V. DALRIMPLE,

Master and Examiner in Chancery of New Jersey, &c.

IN CHANCERY OF NEW JERSEY.

Between EBENEZER S. WILLIAMS, } Exhibit A. on part of
 Complt., } Complt.,
 and } made before V. DALRIMPLE,
 DANL. CARLE, & al., } Master and Examiner, &c., in
 Defendants. } Chancery of N. J.

STATE OF NEW JERSEY, }
 COUNTY OF SOMERSET, ss. } I, SAMUEL REYNOLDS, Surrogate of the
 county of Somerset, do certify, that on the 28th day of March, A. D., 1854,
 administration of the goods and chattles, rights and credits, which were of
 Sarah Williams, deceased, late of the county of Somerset, who died in-
 testate, was granted by me to Ebenezer S. Williams, who is the hus-
 band of said deceased, who died November 19th, 1834, of the county of
 Somerset, who is duly authorized to administer the same agreeably to law.
 Witness my hand and seal of office, the 28th day of March, in the year
 of our Lord, one thousand eight hundred and fifty-four.

10

SAMUEL REYNOLDS.

This cause was set down and noticed for final hearing at February
 Term, 1855, but then went off.

It was again set down and noticed for final hearing at May Term,
 1855, and then heard.

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At October Term, 1855, the Chancellor delivered the following opinion,
 and made the following decree :

IN CHANCERY OF NEW JERSEY.

OCTOBER T., 1855.

EBENEZER WILLIAMS, v. DANL. CARLE, Adm'r. &c.,
 and others.

SARAH WILLIAMS, the wife of the Complt. died in the year 1834, the
 Complt. took out letters of Administration upon her estate—he exhibited
 this bill against Daniel Carle as the Adm'r. of Ann Carle, who was the
 sister of Mrs. Williams, and against his three children by his said wife.—
 The Bill alleges that while Complt. was in treaty of marriage his inten-
 ded wife Sarah without his knowledge or consent in contemplation of her
 expected marriage, placed seven hundred dollars in the hands of Ann
 Carle her sister in trust for any children she might have by her marriage,
 that Ann Carle died in the year 1852, having this money in her possession
 with a large amount of accumulated interest, that the Complt. did not make
 the discovery of this fraud upon his marital rights until after death of Ann
 Carle it was revealed and made known by her Adm'r. The Prayer of
 the Bill is, that he may be declared entitled to seven hundred dollars and
 interest, and that D. Carle as the personal Representative of the Trustee
 may be decreed to pay it to him. Jacob Vanatta & E. W. Whelpley
 for the Complt. cited,

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Newland on Con. 424 ; Howard v. Hooper 2, Chan. 42 : Taylor v.
 Pew 1. Hare 608 ; Goddard v. Snow, 1 Russ. 485 ; White Lead Co. in
 Eq. 313 ; Ball v. Montgomery 2 Ves J. 193, Carlton v. Earl of Dorret 2
 Vern 17, Stratmore v. Bowes 1 Ves. J 229, B Monroe, 5. Iredell 163 ; 6
 il 544, 1 Roper H & W. 163 ; Still on trustees, 162.

Jos. Annin & J. W. Miller for Def'd'ts. cited Clancy 455, Blights
 case ; Freeman's Rep. 92, Hunt & Matthews 1 Van 408. King v. Colton
 1 P. W. 674, 2 Vis 264, 2 Coxe 28, Newlands Eq. 427, Story 273, 1
 Ves & Beam 354, 1 Dess 26,]

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The Chancellor, the Defendants' Counsel when this cause was moved for final hearing raised a preliminary question upon the pleadings. They objected to the hearing of the cause on the ground that the Complainant had not answered the cross Bill filed by two of the Defendants, and insisted that the original cause could not be heard until the case made by the cross bill was ready for a final hearing.

10 The filing of a cross bill does not as a matter of course stay the proceedings in the original suit. If the party filing the cross bill wishes to stay the cause upon the original pleadings he should give notice and apply to the Court for an order to that effect. We have no rule of the Court regulating the proceedings, and, and the only statute upon the subject is that which declares, that "if a cross bill be exhibited, the Defendant to the first bill shall answer thereto before the defendant to the cross bill shall be compelled to answer such cross bill." In all other respects the proceedings are governed by the English practice. This practice will be found correctly stated in the case of *White v. Bulrid* (2 Page 164.) If the proceedings in the original suit are stayed until both causes are ready for hearing, then the Complt. in the cross suit may have an order that both causes may be heard at the same time. This mode of proceeding is necessary in order to prevent the original complainant from being unnecessarily delayed in his cause. In the present case, the original bill was filed in May, 1854. The cross bill was not filed until May, 1855, after the proofs had been taken and the original cause noticed for hearing.

20 It is true, upon the hearing of a cause the Court will in some instances, of its own motion order a cross bill to be filed; as where such pleadings are indispensable in order that a proper decree may be made to settle the matter in controversy. In such case the original suit must of necessity, be delayed. I do not however see any necessity for a cross bill for any such purpose here. If the Complt. can sustain the case made by his bill, he is entitled to a decree against the defendants and none of the defendants if the Complt. succeeds are entitled to any collateral relief. If the Complt. fails with the view I take of the case the defendants are entitled to no relief upon the trust set up by them in their cross bill.

30 There is another objection to this cross bill,—it was irregularly exhibited. It is filed by two of the defendants who had put in their answers, disclaiming any interest in the original suit. They now come with their cross bill alleging that they filed their answers improvidently and through mistake and under a misapprehension of their rights.

40 Their proper course was to have applied to the Court for leave to withdraw their answers. The Court might have granted leave upon such terms as under the circumstances, it might have been proper to impose. The pleadings are now irregular and incongruous. By one pleading they deny a trust and disclaim any interest in it, by another they set up the trust, and ask that it may be established.

I shall proceed to examine the case as it is presented, by the pleadings and proofs in the original cause.

50 The Complt. is the Administrator of his deceased wife, and the case made by his bill is this, that he was in expectation of a considerable fortune upon the death of his father, that Sarah Carle was entitled to a large property from the estate of her deceased father, and also from that of a deceased brother; that their expectations made a marriage between himself and Sarah Carle a suitable one, and with other considerations induced him to propose their connection. That after their engagement and agreement to marry, Sarah Carle without his consent or knowledge, and to deprive him of the benefit of her property, and in fraud of his marital

rights placed in the hands of her sister Ann Carle the sum of seven hundred dollars for the use and benefit of any children the said Sarah might have, that the marriage was consummated in 1819, that they had three children who are all of age and low living, that his wife died in 1834, that Ann Carle the alleged trustee died in 1852, and her estate was administered upon by one of the defendants Daniel Carle, that in Dec'r. 1853, the Complt. for the first time discovered through the admission of Daniel Carle the disposition of the seven hundred dollars. The Complt. prays that Danl. Carle, the Administrator of the Trustee, Ann Carle, may be decreed to pay him the seven hundred dollars with the interest that has accumulated. 10

The three children of the Complt. with Daniel Carle the Administrator of Ann are the defendant's in the suit. The three children filed their disclaimers, Daniel Carle by his answer admits all the facts charged in the bill, except that of any sum of money having been placed by Sarah Carle in the hands of her sister Ann, for any such purpose as that mentioned in the bill. Of this he denies all knowledge information or belief.

The defendants in resisting the complainant's claim object to his maintaining this suit on account of the length of time which has intervened between the period when the alleged fraud is said to have been committed and the filing of the present bill. There is no objection on account of the lapse of time. The bill charges actual fraud, and as was said in *Michoud et al v Girod et al* (4 Howard 561) "in the case of actual fraud no case can be found in which a Court of Equity has refused to give relief within the life-time of either of the parties upon whom the fraud is proved or within thirty years after it has been discovered or become known to the party whose rights are affected by it." The present bill was filed with great promptness after the supposed discovery of the alleged fraud was made. The first intimation the Complt. had of any fraud was in Dec'r. 1854, and in less than six months after, this suit was instituted. 20

Nor is there any doubt as to the laws affording the Complt. ample redress under the circumstances, if the fact is established, that Sarah Carle placed the money in the hands of her sister Ann at the time and for the purpose alleged. The rule is laid down by Lord Thurlow in the case of the Countess of Strathmore v Bowes (1 Ves J. 22.) "A conveyance made by a wife whatsoever may be circumstances and even the moment before the marriage is *prima facie* good, and becomes bad only upon the imputation of fraud. If a woman during the course of a treaty of marriage with her makes without notice to the intended husband a conveyance of any part of her property, I shall set it aside though good *prima facie* because affected with that fraud." There is some conflict of authorities as to whether the mere fact of concealment alone, on the part of the woman is sufficient to constitute a fraud upon the intended husband's marital rights; and whether in addition to the concealment it must not be shewn that the intended husband knew the woman to be possessed of the property which she disposed of. The English and American cases will be found collected in the notes to the case of *Strathmore v. Bowers* (1 leading cases in *Eq. Hare v. Wallace* Notes 338.) In the case of *Goodard v. Snow* 1 Rep 485, a woman ten months before her marriage, but after the commencement of that intimate acquaintance with her future husband which ended in marriage made a settlement of a sum of money which he did not know her to be possessed of. The marriage ceremony took place she concealing from him both her right to the money, and the existence of the settlement, ten years afterwards she died, and after her death he filed a bill to have the money paid him. It was held that the settlement was. 30

void as being a fraud on his marital right—altho' some dissatisfaction has been expressed with this case. And it was said by Lord Brougham in *St. George v. Wake* (1 *My L.* 622) that the principle was carried further in *Goddard v. Snow* than in any other case. I think the case was decided upon the right principle. In *Taylor v. Pugh* (1 *Hare* 608) it was argued by the Defendant's Counsel that as the Defend't. was ignorant of his wife's having any property, and as she had practised no actual deception upon him a Court of Equity ought not to interfere, but the Vice Chancellor declared the argument unsound and approved the rule as stated by *Roper* that "deception will be inferred if after the commencement of the Treaty for marriage the wife should attempt to make any disposition of her property without her intended husband's knowledge or concurrence. In *England v. Down's* (2 *Bear* 524.) The master of the Rolls says, "The non-acquisition—of property of which (the husband) had no notice, is no disappointment but still his legal right to property actually existing is defeated, and the vesting and continuance of a separate power in his wife over property which ought to have been his, and which is without his consent made independent of his control is a surprise upon him and might if previously known have induced him to abstain from the marriage." The present case is free from all difficulty in respect to these rules about which there appears some difference in the minds of learned Judges. It is admitted that the Compt. knew that his wife was entitled to a portion of her deceased father's and brother's estate, and that during the treaty of marriage he expected that upon its consummation he would, as her husband be entitled to this property. It is perfectly clear that if any of this property was disposed of, without his consent during the treaty of marriage his just expectations were disappointed, and that he was fraudulently deprived of his marital rights.

The Counsel of the Defendants further insisted that the disposition which is alleged to have been made of the property being for the benefit of the children of the proposed marriage, the trust was a meretorious one, and such as a Court of Equity will not disturb. The cases of *Hunt v. Matthews* 1 *Vern* 408, and of *King v. Cotton* 2. *P. W.* 674 were cited as sustaining the rule, that a settlement by a widow upon her children by a former marriage even if made during the treaty for a second marriage without the consent or knowledge of her intended husband is valid. It was argued that a settlement for the benefit of children of the contemplated marriage is equally meritorious. But I cannot understand upon what just principle a trust in either case can be declared valid by a Court of Equity. In *Hunt v. Matthews* the Court is reported to have said or or rather *thought* for that is the word used, that a widow might with a good conscience before she put herself under the power of a second husband provide for the children she had by the first.

Now there may be no difference of opinion as to the propriety of her making such a provision for her children, and in some cases she would be conscientiously and morally bound to do so. But the question remains, could she conscientiously do it without the knowledge of her husband? Could she contract with him upon the assumption that upon its execution the property was to be his, and yet clandestinely place the property beyond his control. The settlement though a meritorious one would not be less a fraud upon the husband; and the Court interferences with it, because it is done in a manner which makes it a fraud upon his marital rights. But many of the cases in *Vernon* are very inaccurately reported, and this would seem to be so in the case of *Hunt v. Matthias*, for in Mr. Rathby's edition of *Vernon*, it appears by an extract from the decree in the case that

the husband *consented* to the settlement being made by his intended wife upon her children. In *King v. Cotton* the settlement was made *before the treaty of marriage* for the Lord Chancellor said "it was a very reasonable thing for a widow while it was in her power, to make a provision for her children by her former husband, and *this being before her Treaty of marriage with Mr. King*; it had been impossible to have asked him to be a party thereto, he not being thought of."

The master of the Rolls in the case of *England v. Downs* (2 Bear 527,) gave no countenance to the proposition that a settlement like that in *Hunt & Matthews* would be sustained in equity if made without the intended husband consented. He remarks, "a woman in such circumstances can reconcile all her moral duties by making a proper settlement on herself and her children with the knowledge of her intended husband." The weight of American authorities is, that a settlement upon children of a former husband, if made without the knowledge of the intended husband and during the Treaty of marriage, is fraudulent and will be set aside as against him. See cases collected in (1 Lea Ca in Eq. H. & W. 351.)

Let us now examine the facts by which the complainant expects to maintain his case. He relies upon the answer of Daniel Carle, upon his evidence given as a witness called by him the Complt. and upon the admissions and conduct of Carle.

The bill charges, that Daniel Carle admitted, that Sarah Carle left in the hands or under the control of her sister Ann Carle, the sum of seven hundred dollars to be kept and invested by the said Ann for the use or benefit of the children of the said Sarah, in case she should afterwards have any children, that Ann had received and invested the money, and that it, and the accumulations thereon, then amounted to fifteen hundred dollars or more, and that he the said Daniel Carle had been advised, to and was going to put that fund in with the other estate of the said Ann Carle to be drawn out, by and paid to whomsoever the same might legally belong.

Daniel Carle by his answer acknowledged that he made such admission. Take the admission without any explanation or qualification and conceding that a decree might be made upon an admission of Carle alone, there is not enough in it to entitle the Complt. to a decree. The Complainant must shew that the money was disposed of by Sarah Carle during the treaty of marriage between her and the Complt. and in a case like this when fraud is alleged, and actual fraud is the ground upon which relief is sought a fact so essential to establish the fraud must not be left to probability, or inference. The fact must be proved.

In the case of *England v. Downs* the witness testified, that Mr. Mason told him he was about to be married and instructed him to prepare the settlement: that he did not think it was prepared or executed with the priority or assent of *her then intended husband*. But the witness did not state who the then intended husband was. There were only two months elapsed between the date of the settlement and Mrs. Mason's marriage. The impression upon the mind of Counsel who argued against the settlement was, that the fact was sufficiently established of its being made during the treaty of marriage with the person, she actually did marry John T. Broad, and in arguing they assumed the fact to be so, so strong was the inference of that fact from the evidence. The Master of the Rolls held that the fact was not sufficiently proved of the settlement having been made during the treaty of marriage, because tho' the witness said the settlement was made without the assent of her then intended husband, some one else might have been her then intended husband other than Broad.

But here it is not charged that Carle admitted that the money was disposed of during the treaty of marriage, and his admission in his answer does not embrace that fact.

The bill however does charge the fact to be that the disposition was made of the money during the treaty of marriage, and Carle was called upon to answer as to his knowledge, information and belief upon this subject. Carle had a right by his answer to explain and qualify the admission which it was alleged he had made and in making the discovery which the bill calls upon him to make of his knowledge information and belief, the Defendants are entitled to the benefit of his whole answer. By his answer he denies that he has any knowledge himself of the fact that Sarah Carle ever placed any money in the hands of her sister for the purpose named in the bill. He denies all knowledge or information of any evidence by which the fact can be established. He then states all the facts bearing upon the subject within his knowledge, and which are the facts which influenced him to make the admission which he did. He states that before the marriage of his sister and the Compt. and while the same was in contemplation he remembered that there had been some conversation in the family of the Defendant respecting the propriety of his sister Sarah's placing seven hundred dollars in the hands of her sister Ann, to be held by her in trust for any children she the said Sarah might have by the said Compt. and also that a few days before the death of the said Ann, she said to the Defendant these words: "There is fifteen hundred dollars coming to the children." He declares, that the foregoing is the only evidence he ever had, that any funds were ever placed, in the hands of the said Ann in trust for the children of the Compt. and he therefore determined to treat all the property which came into his hands as the property of Ann his intestate, unless upon representing to those interested in the estate, what he supposed might be the fact, they should consent to the division of the fifteen hundred dollars among the three children of the Compt. It will be seen that here is an explanation of the alleged admission which deprives it of the efficacy of concluding the rights of the Defendants. It is a full denial of the fact that to the knowledge or information of the Def'dt. his sister Sarah placed the seven hundred dollars as alleged in the hands of Ann Carle. The facts stated by the Defendant of the talk in his own family and of what Ann said just before her death do not establish, that Sarah Carle, while in treaty of marriage with the Compt. and to defraud him of his marital rights, fraudulently placed seven hundred dollars in the hands of Ann Carle in trust for such children as she might have by the Compt. It appears to me quite unnecessary to criticise the answer for no Court would be justified to conclude from it, that it established the alleged fraud. The Complainant has admitted this by filing his replication. By taking issue, he undertakes to prove the denial of the answer untrue. Our next inquiry is how far he has been successful in doing so. He relies upon the evidence of Carle whom he has examined as a witness and upon the evidence of other witnesses as to the conduct and declarations of Carle.

It does not appear by what authority Carle was examined as a witness in the cause. The rule is, that where the Compt. examines a Defendant as a witness, he waves the right to a decree against him. There are exceptions to the rule in the cases of Executors and Trustees of persons who are made Defendants as merely holding the fund and who are only nominally interested in the suit, but such is not the case with Daniel Carle. He is not a nominal party or made such simply as the Administrator of Ann Carle. He is charged with actual fraud. The bill charges that he ad-

vised and encouraged the disposition of the seven hundred dollars and the concealment of the fact from the Complt. He is besides, personally interested in the estate of his intestate, and as one of her next of kin entitled to a distributive share of her estate. He cannot be brought within any of the exceptions to the rule. But he might be examined with the consent of all parties, and this consent is implied from the fact, that no objection was interposed before the master,—and his evidence was read without objection at the hearing.

What does Daniel Carle prove as a witness? Nothing more than he admits by his answer. He denies all knowledge, or information as to any fact bearing upon the case, except the conversation in his own family and what Ann said a few days before her death. I have already remarked this Court cannot from these facts, draw the legal inference that seven hundred dollars were fraudulently placed by Sarah Carle in the hands of her sister Ann Carle. They do not prove the fact that any money for any purpose was ever placed by Sarah in the hands of her sister Ann.

The Complt. has proved the admissions and conduct of Daniel Carle. Giving them their greatest weight, I do not think they amount to anything. They only prove that Daniel Carle himself believed that the money was placed by one sister into the hands of the other in trust for the Complainant's children, and that acting upon that belief, he for one was willing and disposed to see the trust executed. But this Court cannot decide the case upon the *belief* of the witness. It is not right that the Defendants should be prejudiced by it. He has stated the facts upon which his belief is founded. The Court cannot tell what amount of evidence is sufficient to produce that belief in the mind of the witness is. The question is whether the *facts* stated by the witness and not his belief are sufficient to found a decree on, in favour of the Complt. If they are not, the Court cannot decide in his favour, no matter what may be the belief of Daniel Carle.

With this view of the case, the conduct of Carle which the Complt. relies on can have no influence in enabling the Court to reach a correct conclusion. In making his inventory as administrator he kept fifteen hundred dollars out of it. This only shews the bias of his own mind and what his own belief was. He tells us, why he did it, and we must now determine whether he was justified in doing so.

It was insisted that the admissions and conduct of Carle impeach his Testimony and show that he did not tell the whole truth in giving his evidence. I am at a loss to conceive how this can help the Complainant; Daniel Carle was the Complainant's own witness. If he was successful in impeaching his own witness and in showing that he was not a man of veracity and one upon whom the Court can rely, what becomes of the Complainant's case? The Complt. has no other witness. Surely it will not be contended that the Complt. cannot recover upon the evidence of the witness upon oath, they may upon his contradictory statements when not under oath, and by proving that he is not a credible witness.

The admissions of Carle for the purpose of contradicting him as a witness were not admissible as evidence. He was the Complainant's own witness, and it was not competent for the party calling him to impeach him. The case presents this singular aspect, of a party relying upon the testimony of one single witness to prove his case and yet endeavoring to impeach that witness by shewing that his statements under oath are not entitled to credit. I do not mean to insinuate that the Complt. has been at all successful in impeaching the testimony of Daniel Carle. His evidence it is true does not appear well. It appeared to have been very difficult to draw the truth from the witness and by his manner of giving his

testimony he has done himself no credit. But all this should not prejudice the other defendants in the suit. If the Complainant has been unable to get the truth from the witness, it is his own misfortune, and other parties in interest must not be made to suffer.

I have examined the case with great care, commencing my investigation with the impression produced upon me by the argument, that the Complt. was entitled to a decree. I have however come to the conclusion perfectly satisfactory to myself that the Complt. has not made out his case and is not entitled to the relief he prays for.

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IN CHANCERY OF NEW JERSEY.

Between Ebenezer S. Williams, Administrator, &c. } of Sarah Williams, deceased, Complainant, and } Daniel Carle, Daniel C. Williams, Theodore } Williams, and Sarah Ann Williams, Defendants. }	On Bill, &c. } Decree } of } Dismissal. }
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This cause coming on to be heard at the last regular Term of the Court of Chancery, held at the State House in the City of Trenton, before the Chancellor in the presence of Jacob Vanatta of Counsel with the Complainant, and Jacob W. Miller, of Counsel with the Defendants, and the pleadings, depositions, exhibits and proofs, being read, and the arguments of the respective counsel being heard and considered, and the Chancellor having taken time to advise thereon, and now, on this seventeenth day of October, in the year of our Lord one thousand eight hundred and fifty-five, it appearing to the Chancellor that the Complainant is not entitled to the relief sought and prayed for by him in his said bill of complaint. It is ordered, adjudged and decreed, that the Complainants said bill be and the same is hereby dismissed with costs.

B. WILLIAMSON, C.

IN CHANCERY OF NEW JERSEY.

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Between Ebenezer S. Williams, Administrator of } Sarah Williams, deceased, Complainant, and } Daniel Carle, Administrator of Ann Carle, de- } ceased, Daniel C. Williams, Theodore Wil- } liams, and Sarah Ann Williams, Defendants. }	On Bill, &c. } Appeal. }
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The Complainant hereby appeals from the final decree made in in this Court in the above stated cause, dismissing the said Complainant's Bill with costs, to the Court of Errors and Appeals.

Dated November 30, 1855.

JACOB VANATTA, Sol. of Complainant.

E. W. WHELPLEY, of Counsel.

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

E. W. WHELPLEY, of Counsel.

I acknowledge service upon me of a true copy of the above appeal.

1 Dec. 1855.

JOS. ANNIN, Sol'r. of Defendants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between Ebenezer S. Williams, Administrator of } Sarah Williams, deceased, Appellant, and Daniel } Carle, Administrator of Ann Carle, dec'd., Dan- } iel C. Williams, Theodore Williams and Sarah } Ann Williams, Appellees. }	On Bill, &c. } Petition of Appeal. }
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To the Honorable, the Court of Errors and Appeals of the
State of New Jersey :

The humble Petition of Ebenezer S. Williams, the Appellant in the above stated cause respectfully shows that your Petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Benjamin Williamson, Chancellor of the State of New Jersey, bearing date the seventeenth day of October, eighteen hundred and fifty-five, in a suit wherein the said Ebenezer S. Williams, administrator of Sarah Williams, deceased, was complainant, and the said Daniel Carle, administrator of Ann Carle, deceased, Daniel C. Williams, Theodore Williams, and Sarah Ann Williams, were defendants in this respect, to-wit: That the said decree adjudges that your Petitioner is not entitled to the relief sought and prayed for by him by his bill of complaint in this cause, and that his said bill should be and was thereby dismissed with costs. 10

And your Petitioner humbly appeals from the said final decree upon the ground that the same is erroneous, for that your Petitioner is entitled to the relief sought and prayed for by him in his said bill of complaint, and that his said bill should not have been dismissed with costs nor dismissed at all.

Your Petitioner therefore prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that your Petitioner may have such relief in the premises as to this Honorable Court shall seem meet. 20

Dated November 30, 1855.

JACOB VANATTA, Sol. of Appellant.
E. W. WHELPLEY, of Counsel.

December 1st, 1855, I received a copy of a Petition of appeal of which the above is a true copy. JOS. ANNIN, Sol'r of Defendants.

POINTS OF THE APPELLANT.

1. The evidence contained in the pleadings and proofs is sufficient to establish the facts that Sarah, the former wife of the appellant, shortly before and in contemplation of her marriage with the appellant and without his privity, assent, or knowledge, placed under the control of Ann Carle money, or choses in action, to the value, or amount of seven hundred dollars, for the use of any children of the said complainant, which she, the said Sarah, after her said marriage, might bear. 30

2. The facts thus established, make the trust thus created, as against the appellant, illegal and void.

3. The appellant is entitled to recover and receive for his own use the said seven hundred dollars and the increase thereof. 40

4. The said Daniel Carle having on the 13th of December, 1853, admitted to the said appellant that Sarah, the said appellant's first wife, before her marriage, had left in the hands of her sister Ann the sum of seven hundred dollars, to be held in trust for the future children of the said Sarah, in case she should have any, and that the said seven hundred dollars at the death of the said Ann amounted to fifteen hundred dollars or over, and the said appellant having acted upon that admission by instituting his suit in the Court of Chancery for the recovery of the money so admitted to have been left with said Ann by said Sarah, the said Daniel Carle is and should be estopped from denying or attempting to disprove the fact that the said Sarah before her marriage with the appellant did leave with said Ann the said sum of seven hundred dollars, and also from denying the fact 50

that the said Ann at her death still held the said seven hundred dollars and the increments thereof, making in all over fifteen hundred dollars.

5. It being proved that the said Sarah, before her marriage with the appellant did leave with said Ann the sum of seven hundred dollars for the use of the children of the said Sarah, and the said children having solemnly disclaimed all title to, or interest in the said seven hundred dollars and the increase thereof, the said appellant is entitled to recover and receive the same, as administrator of the said Sarah, although the said Sarah may have created the said trust and left the said seven hundred dollars with the said Ann prior to the commencement of the treaty of marriage between the said Sarah and the said appellant.

6. It being proved that the said Sarah did at some time leave with said Ann money or choses in action which said Ann held and retained until her death, and which at the period last mentioned, amounted to over fifteen hundred dollars, if the said money or choses in action were left with said Ann at any time after the marriage between said Sarah and the said appellant, the said appellant is entitled to recover the same in this suit.