N. J. COURT OF ERRORS AND APPEALS,

IN THE LAST RESORT IN ALL CAUSES.

IN CHANCERY OF NEW JERSEY.

Between Samuel Fowler and Elias L'Hommedieu, Appellants. AND Samuel H. Pennington, Trustee of Julia Ann Biglow, Respondant.	*On Appeal from the Court of Chancery.*

The Bill of Complaint filed by the Respondant on the 20th September, 1845, is as follows:

To his Honor, Oliver Spencer Halsted, Esquire, Chancellor of the said State of New Jersey, and Ordinary and Surrogate General in the same:

Humbly complaining, sheweth unto your Honor, your Orator, Samuel H. Pennington, of the city of Newark, in the county of Essex, and the said State, that Samuel Fowler, late of the township of Hardyston, in the county of Sussex, and the said State, now deceased, in his lifetime duly made and published his last Will and 10 Testament in writing, bearing date on or about the fourth day of December, in the year one thousand eight hundred and forty-two, and thereby constituted and appointed his sons, Samuel Fowler, Henry Ogden Fowler, Robert Ogden Fowler, and John Fowler, together with Elias L'Hommedieu and Daniel Haines, the Executors thereof, as in and by the said last Will and Testament, or the probate thereof, when produced will appear.

And your Orator further sheweth unto your Honor, that the said Samuel Fowler deceased, departed this life on or about the twenty-sixth day of February, in the year one thousand eight hundred and 20 fourty-four, without revoking or altering the said last Will and Testament, and that thereupon the said Elias L'Hommedieu and Samuel Fowler, two of the Executors therein named, duly proved the same, before the Surrogate of the said county of Sussex, and took upon themselves the burthen of the execution of the said last Will and Testament, and possessed themselves of all of the personal estate, and effects of the said deceased, or so much thereof as they have been able to procure, to a very large amount.

And your Orator further sheweth unto your Honor, that at and upon the death of Jacob S. Thompson, who was an uncle of Julia Ann 30 Bigelow, hereinafter named, and who departed this life on or about

the first day of January, in the year one thousand eight hundred and thirty-two, intestate, the said Julia Ann Bigelow, as one of the heirs at law of the said deceased, and as a tenant in common with divers other persons, heirs at law of the said deceased, became entitled in fee simple absolute, to a large and valuable real estate, situate, lying and being in the county of Warren, in this State, that the share of the said Julia Ann Bigelow therein was the one equal undivided fifth part of the same, and was divided and set off to her in severalty, upon and in pursuance of proceedings had and taken for that purpose, in
10 due course of law on or about the first day of March, in the year one thousand eight hundred and thirty-two, and that the said Julia Ann Bigelow, as one of the next of kindred in equal degree with divers other persons of the said Jacob S. Thompson deceased, became entitled at and upon his death, to a distributive share of the surplusage of the personal estate and effects of the said deceased, after the payment of his debts, funeral charges, and other just expenses chargeable thereon, in the administration of the same, and that the distributive share of the said Julia Ann Bigelow therein, was the one equal fifth part of such surplusage.

20 And your Orator further sheweth unto your Honor, that at some time during the minority of the said Julia Ann Bigelow, and at or about the time of the death of the said Jacob S. Thompson, but when more particularly your Orator is not at present informed, the said Samuel Fowler deceased, was duly appointed and became the guardian of the estate real and personal of the said Julia Ann Bigelow, and as such took possession, charge and custody, of the real estate of the said Julia Ann Bigelow, and from time to time received large sums of money of the said personal estate of the said Julia Ann Bigelow.

30 And your Orator further sheweth unto your Honor, that in particular the said Samuel Fowler deceased, received at the hands of Jacob T. Sharp, the Administrator in the State of Pennsylvania, of the said Jacob S. Thompson deceased, on or about the eighth day of February, in the year one thousand eight hundred and thirty-three, the sum of one thousand three hundred and fifteen dollars, for the use of the said Julia Ann Bigelow, the same having been paid by the said Jacob T. Sharp, as such administrator as aforesaid, to the said Samuel Fowler deceased, in distribution of such surplusage, of the personal estate and effects of the said Jacob S. Thompson
40 deceased, and on account of the share of the said Julia Ann Bigelow in such surplusage, and that the said Samuel Fowler then and thereupon gave to the said Jacob T. Sharp, a receipt for the same in the words and figures following, to wit: "Rec'd Feb. 8th, 1833, of Jacob T. Sharp, Adm'r of the estate of Jacob S. Thompson dec. in Penn'a, the sum of thirteen hundred and fifteen dollars, for the use of Julia Ann Fowler my daughter and ward, one of the heirs of said estate," and signed "Samuel Fowler, Guardian of Julia Ann Fowler," or a receipt of like substance, purport and effect, which said receipt, as as your Orator is informed and believes is now in the possession of
50 the said Jacob T. Sharp.

And your Orator further sheweth unto your Honor, that in particular the said Samuel Fowler deceased, having taken possession, charge and custody, of the real estate of the said Julia Ann Bigelow, leased a large and valuable part and parcel thereof, to one Mark Thompson, from on or about the time of the death of the said Jacob S Thompson, until on or about the first day of April in the year one thousand eight hundred and thirty-four, and received from time to time the rent, reserved for the same, amounting in all to about five hundred dollars, or a large part of the same.

And your Orator further sheweth unto your Honor, that the said 10 Samuel Fowler deceased, having taken such possession, charge and custody, as aforesaid, leased divers other large and valuable parts and parcels of the real estate of the said Julia Ann Bigelow, to divers other persons and received from time to time the rent reserved for the same, or some part thereof amounting to a large sum of money, and used and occupied divers other large and valuable parts and parcels of the real estate of the said Julia Ann Bigelow, and derived and secured great gains therefrom for his own use and benefit.

And your Orator further sheweth unto your Honor, that if the said 20 Samuel Fowler deceased, failed to collect any part of the rents so reserved as aforesaid, such failure was entirely owing to and resulted from his neglect and inattention in the collection of the same, and from the want of due and proper diligence in seeking the recovery and collection thereof, and he submits that if the said Samuel Fowler deceased, has failed to collect any part of the said rent, his legal representatives are chargeable with, and are bound and ought in equity and good conscience, to account for the same to your Orator, and that they should be required so to do, by this Honorable Court.

And your Orator further sheweth unto your Honor, that he is 30 informed and believes and so charges, that a large part of the money so received as aforesaid, by the said Samuel Fowler deceased, and particularly the amount so received from the said Jacob T. Sharp, Administrator as aforesaid, was immediately after the receipt of the same, invested by the said Samuel Fowler deceased, for the use and benefit of the said Julia Ann Bigelow, upon good and sufficient bond and mortgage, but when or on what bond and mortgage more particularly, your Orator is not at present informed, and that the said Samuel Fowler deceased, received from time to time, divers large sums of money for and on account of interest upon such invest- 40 ments as aforesaid.

And your Orator further sheweth unto your Honor, that if the said Samuel Fowler deceased, did not so invest the monies received as aforesaid, or any part thereof, and so far as the same or any part thereof, was not so invested as aforesaid, he used the same, or such part thereof not invested in his own business and for his own use and benefit, and he submits that if the said Samuel Fowler deceased, omitted to invest the said monies or any part thereof, or used the same or any part thereof, in his own business for his own use and benefit, he neglected and violated his duty in that behalf, and that his legal 50 representatives are chargeable with, and ought and are bound in

equity and good conscience to account to your Orator for legal interest upon all such monies as were not so invested as aforesaid from the time of the receipt of the same, or some reasonable short time thereafter, and for the use and occupation of such parts and parcels of the said real estate so occupied by the said Samuel Fowler deceased, and interest on the amount of the value of such use and occupation from the time of such use and occupation as aforesaid, and that they should be required so to do, by this Honorable Court.

And your Orator further sheweth unto your Honor, that the said
10 Samuel Fowler deceased, in and by his said last Will and Testament (after bequeathing divers pecuniary and specific legacies, and devising divers of his real estate, and by directing the payment of his executors of divers annuities out of his personal estate, and which he charged upon the residue of his real estate, not specifically devised, in case of a want of sufficient personal estate, and authorizing his executors in that case to sell or set apart for such payment such part of the said residue of his real estate as they should deem proper,) bequeathed and devised as follows: "Item—All the rest and residue of my estate, real and personal, I give, devise and bequeath, unto my said
20 sons, Samuel, Henry Ogden, Robert Ogden, and John, and my said daughters, Julia, Mary Estelle, Rebecca, and Clarinda, to be equally divided between them, share and share alike, giving to my said executors nevertheless, power to sell such parts of my real estate, in this clause devised, as shall to them seem most advantageous to my estate."

And your Orator further sheweth unto your Honor, that the personal estate and effects of the said deceased, or so much thereof as the said Elias L'Hommedieu and Samuel Fowler, as such executors as aforesaid, have been able to procure, amounts in the whole to
30 greatly more than sufficient to pay and discharge all his funeral and testamentary expenses, and debts, and the said legacies, and to provide a sufficient fund for the payment of the said annuities and that a great part of such personal estate and effects or the produce thereof having been, during all or most of the time since the death of the said testator at interest, the said Elias L'Hommedieu and Samuel Fowler, have from time to time received sundry monies to a large amount, in the whole, for and in respect of the interest and dividend which have arisen therefrom since the death of the testator.

40 And your Orator further sheweth unto your Honor, that the said Julia Ann Bigelow, whose maiden name was Julia Ann Fowler, was the daughter of the said Testator, and is the person mentioned in the said receipt so given, as aforesaid, in his life time, and in the said last Will and Testament, and particularly in the bequest and devize herein before recited, that the said Julia Ann Bigelow attained her legal majority, on or about the seventeenth day of February, in the year one thousand eight hundred and thirty-four, and was duly joined in lawful wedlock, to, and with Moses Bigelow, of the City of Newark, in the county of Essex, and State of New-Jersey, as
50 husband and wife, on, or about the fourth day of February, in the year one thousand eight hundred and thirty-six.

And your Orator further sheweth unto your Honor, that on the seventh day of May, in the year one thousand eight hundred and forty-four, by an Indenture, made and executed, by, and between the said Moses Bigelow, and Julia Ann Bigelow, of the first part, and your Orator of the second part, and bearing date, the day and year last aforesaid, and sealed with the seals of the said Moses Bigelow, Julia Ann Bigelow, and your Orator reciting (among other things) that the said Samuel Fowler, deceased, had, in, and by his said last Will and Testament, bequeathed and devised, as is herein before recited, and that the said Julia Ann Bigelow, was entitled to have and 10 receive from the said Executors, a large sum of money as the balance due from the said Testator, as her Guardian, and that the said Moses Bigelow, by reason of his said marriage and his marital rights arising out of the same, had heretofore, from time to time, had, and received divers sums of money, derived from the estate of the said Julia Ann Bigelow, both real and personal, which she was seized of, and entitled to both before and after her said marriage, amounting to several thousands of dollars, the said Moses Bigelow and Julia Ann Bigelow, for the consideration therein named, bargained, sold, assigned, transfered and set over to your Orator, among other things, 20 all such sum, or sums of money, as the said Moses Bigelow, and Julia Ann Bigelow, or either of them, then was or might thereafter be entitled to, by, or under the said last Will and Testament, in any manner, by reason of any provision thereof, and all such sum and sums of money as might be due to the said Julia Ann Bigelow, from the said Testator, as her Guardian, together with full power and authority to ask, demand, sue for, recover and receive, and give effectual receipts and discharges for the same, and every part thereof respectively, in the names of the said Moses Bigelow and Julia Ann Bigelow, or either of them, or in any other proper name, or names, 30 or manner whatsoever, as might be necessary.

To have, hold, receive and take the same upon the trusts, and for the intents and purposes, and with, under and subject to the powers provisions, agreements and declarations therein contained and declared, of, and concerning the same, that is to say, to pay, transfer, assign, or otherwise dispose of, all and singular, the trust monies, and property assigned and transferred as aforesaid, and the interest, dividends and produce thereof, to such person or persons, for such intents and purposes, and in such manner as the said Julia Ann Bigelow, notwithstanding her coverture, should by any deed or deeds, 40 writing or writings, sealed and delivered as therein set forth, or by her last Will and Testament, or Codicil thereto, from time to time, direct or appoint, and in default of, and until such direction or appointment, and so far as any direction or appointment should not extend, to take all such measures in law and in equity as should be proper and necessary, to call in, collect and reduce, into money, all such of the trust property assigned and transferred as aforesaid, as should not consist of money, and with the consent of the said Julia Ann Bigelow, in writing, to lay out and invest the money which should come to his hands therefrom, and all sum, or sums of money therein men- 50

tioned, as, and when the same should be received in his name on Bond and Mortgage, good and sufficient within this State, and with such consent as aforesaid) alter, vary and transfer, all or any of such Bonds and Mortgages, as to him should seem meet, and to stand and to be possessed of, and interested, in all and singular, the trust property and the interest, dividends and produce thereof, upon and for the trusts intents and purposes, and with, under and subject to the power, provisions, agreements and declarations, therein contained and declared of and concerning the same; that is to say, to pay the in-
10 terest, and annual produce of the said trust property, as, and when the same should become due, and be received by your Orator, during the joint lives of the said Moses Bigelow, and Julia Ann Bigelow, into the proper hands of the said Julia Ann Bigelow, or into the hands of such person or persons, and for such intents and purposes, as she the said Julia Ann Bigelow, notwithstanding her coverture, shall by any note in writing, under her hand and seal, from time to time, direct and appoint, to her in trust, that the same might be for her separate and sole use and at the absolute and uncontrolled disposal of the said Julia Ann Bigelow, and
20 not liable to the debts, contracts, forfeiture, or engagements of the said Moses Bigelow, and in case the said Julia Ann Bigelow, should survive the said Moses Bigelow, to pay, transfer and assign, immediately on the death of the said Moses Bigelow, the said trust property, unto the said Julia Ann Bigelow, her Executors, Administrators and assigns, and in case, the said Julia Ann Bigelow should depart this life before the said Moses Bigelow, then, and from, and after the death of the said Julia Ann Bigelow, to pay the interest and annual produce thereof, as, and when the same shall become due, and be received, into the proper hands of the said Moses Bigelow, or into the
30 hands of such person or persons, and for such intents and purposes, as the said Moses Bigelow, by any order in writing, under his hand should, from time to time, but not by way of anticipation, direct, and upon the death of the said Moses Bigelow, and Julia Ann Bigelow, or the survivor of them, to pay, assign and transfer, the said trust, property to the person or persons, who under the Statutes made for the distribution of the estates of intestates would be entitled to the personal estate of the said Julia Ann Bigelow, in case she should die intestate, that the said Moses Bigelow, did, in and by the said Indenture (among other things) covenant and agree to, and with your
40 Orator, that he would or should not at any time, or times, prevent or obstruct the said Julia Ann Bigelow, her heirs, appointees, administrators or assigns, or your Orator from holding, enjoying, or receiving, taking and disposing of the said trust, property so assigned and transferred, as aforesaid, or the interest, produce, or profits of the same, or any part thereof, in the manner herein before expressed, and according to the true intent and meaning of the said Indenture, and that he would and should in case the said Julia Ann Bigelow should depart this life before him, permit the Will and Codicils of the said Julia Ann Bigelow, if any,
50 to be proved by the Executor or Executors thereof, and that your Orator thereby and thereupon assumed and took

upon himself the execution of the said trusts, and became, and was as such trusteee, entitled to have and receive the sum, or sums of money so due to the said Julia Ann Bigelow, from the said Samuel Fowler, deceased, as her Guardian, and all such sum, or sums of money as the said Moses Bigelow and Julia Ann Bigelow, or either of them, then was or might be entitled to, by or under the said Will in any manner by reason of any provision thereof, and all the right, title, interest, property, claim and demand whatsoever, both at law and in equity, of them the said Moses Bigelow and Julia Ann Bigelow, or either of them, in and to the monies and property 10 so assigned, and transferred thereby, with full power and authority, to ask, demand, sue for, recover and receive, and give effectual receipts and discharges for the same, and every part of the same, respectively in the names of the said Moses Bigelow and Julia Ann Bigelow, or either of them, or in any other proper name or names, or manner whatsoever, as might be necessary, as in and by the said Indenture, now in possession of your Orator, and ready to be produced and proven, as the Honorable Court shall direct, reference being thereunto had, will more fully, and at large appear.

And your Orator further sheweth unto your Honor, that the said 20 Moses Bigelow and Julia Ann Bigelow are now living, that the said Julia Ann Bigelow hath not at any time directed the payment, transfer, or any other disposition by your Orator as such Trustee as aforesaid, of the said sum or sums of money so due to her as aforesaid, from the said Samuel Fowler deceased, as her guardian, or the sum or sums of money to which she became, was and is entitled under, and by virtue of the bequest and devise of the last Will and Testament of the said Samuel Fowler, deceased, herein before recited, in relation to the rest and residue of his estate real and personal.

And your Orator further sheweth unto your Honor, that the said 30 Samuel Fowler deceased, in his life time, or his legal representatives since his death, never accounted to the said Julia Ann Bigelow, before her said marriage, or to the said Moses Bigelow and Julia Ann Bigelow, or either of them since their said marriage or to your Orator since the date and the making of the said Indenture aforesaid, for or on account of the said monies so received, by the said Samuel Fowler dec'd, for the use of the said Julia Ann Bigelow, as aforesaid, or any part thereof, or for, or on account of the distributive share of the said Julia Ann Bigelow, in the rest and residue of his estate real and personal, so bequeathed and devised as aforesaid, or paid the 40 said Julia Ann Bigelow, before her said marriage, or the said Moses Bigelow and Julia Ann Bigelow, or either of them, since their said marriage up to the time of the date and making of the said Indenture as aforesaid, or to your Orator since, anything on account of the said monies or distributive share or any part thereof.

And your Orator further sheweth unto your Honor, that the said Elias L'Hommedieu and Samuel Fowler, executors as aforesaid, were forthwith, after the making of the said Indenture, notified and informed of the making thereof, and that your Orator by reason thereof, was entitled to have and reduce into his possession, the said 50

monies and distributive share in the execution of the trust directed by the said Indenture.

And your Orator, further sheweth unto your Honor, that he or some other person in his behalf hath repeatedly applied to the said Elias L'Hommedieu and Samuel Fowler, as such executors as aforesaid, for a statement of the account of the said Samuel Fowler deceased, as such guardian as aforesaid, to the end that such balance as might be due to the said Julia Ann Bigelow, might be paid over to your Orator as soon as practicable, and for an account of the personal estate and effects of the said deceased, and the interest thereof, 10 and the payment to your Orator of the distributive share of the said Julia Ann Bigelow, in the rest and residue thereof, so bequeathed as aforesaid, and of the balance due to the said Julia Ann Bigelow upon the account of the said Samuel Fowler deceased, as such guardian as aforesaid; and your Orator well hoped that they would have complied with such reasonable request, as he contends that they ought to have done; but now so it is, may it please your Honor, that the said Elias L'Hommedieu and Samuel Fowler, executors as aforesaid, combining and confederating with divers other persons, at present unknown to your Orator, but whose names when discovered, he prays leave to 20 insert herein with apt words, to charge them as defendants, hereto, how to injure and agrieve your Orator in the premises, have wholly neglected and refused to respond to or comply with such reasonable request, and give out and pretend that the said Samuel Fowler deceased, in his lifetime never received any monies to or for the use of the said Julia Ann Bigelow, as herein before set forth, and that if he ever did, he has accounted for and paid the same to her; whereas, your Orator charges the contrary to be true; and that the said Samuel Fowler deceased, did receive large sums of money as herein before set forth, to and for the use of the said Julia Ann Bigelow, and 30 that he never accounted for or paid the same or any part thereof, and sometimes they give out and pretend, that there is no rest and residue of the personal estate and effects of the said Samuel Fowler deceased, to distribute under the bequest of such rest and residue in the said last Will and Testament contained; whereas, your Orator charges the contrary to be true; and that there is a large amount of personal estate and effects over and above the payment of and provision for the debts, funeral expenses, and testamentary expenses, legacies, and annuities, chargeable upon the personal estate and effects of the said deceased, and that the distributive share of the said Julia Ann Bige- 40 low, out of such rest and residue of the personal estate and effects of the said deceased amounts to four thousand dollars and upwards, as your Orator is informed and verily believes. And sometimes they give out and pretend, that before the making of the said Indenture whereby the said trust was created, or before they had notice or information thereof, the said Julia Ann Bigelow and Moses Bigelow, received the distributive share to which the said Julia Ann Bigelow was entitled, out of the rest and residue of the said personal estate and effects, and gave their receipt for the same, and made, executed and delivered, under their hands and seals, to the said Elias L'Hom- 50

medieu and Samuel Fowler, as such executors as aforesaid, a release of and from the distributive share of the personal estate and effects of the said Samuel Fowler deceased; whereas, your Orator charges the contrary to be true; and that the said Moses Bigelow and Julia Ann Bigelow or either of them, did not either before the making the said Indenture, or before the said executors had notice or information thereof, or ever receive the distributive share or any part thereof, to which the said Julia Ann Bigelow was entitled out of such rest and residue, or give a receipt for the same, or make, execute and deliver such release as is so pretended to have been made, executed 10 and delivered, as aforesaid; that if the said Julia Ann Bigelow and Moses Bigelow, ever did receive any part of the distributive share, it was but a small part thereof, and not to exceed the sum of seven hundred dollars, and was received after the making of the said Indenture, and after the said Elias L'Hommedieu and Samuel Fowler, as such executors as aforesaid, had notice thereof, and after the creation of the said trust, that the receipt thereof was the act, and ought to be considered by this Honorable Court, as the act of the said Moses Bigelow exclusively, and not of the said Julia Ann Bigelow; that if the said Moses Bigelow and Julia Ann Bigelow, gave a 20 receipt and made, executed and delivered, under their hands and seals, to the said Elias L'Hommedieu and Samuel Fowler, a release for the said distributive share, such receipt and release were given, made, executed and delivered, after the making of the said Indenture, and the creation of the said trust, and after they, the said executors, were notified and informed thereof, and upon the payment to the said Moses Bigelow of a sum not exceeding seven hundred dollars, which was greatly and more than three thousand dollars less than the distributive share to which the said Julia Ann Bigelow was justly entitled, and upon and by reason of representations to the said Moses Bigelow as 30 to the amount of the rest and residue of the personal estate and effects of the said deceased, and espectially of particular items thereof to be distributed, made by the said Elias L'Hommedieu and Samuel Fowler, greatly deceptive and untrue, and of wrongful and fraudulent concealments by them of divers large and important items of personal property and effects of the said deceased, whereby the said Moses Bigelow was intentionally, by them, misled and deceived, as to the amount of the distributive share, to which the said Julia Ann Bigelow was justly entitled, and of threats and intimidations made to and practised upon the said Moses Bigelow by the said Elias 40 L'Hommedieu and Samuel Fowler, whereby they threatened and made him apprehensive that they would buy up claims against him then outstanding, and attempt to set off the same, against the distributive share to which the said Julia Ann Bigelow was entitled, as aforesaid, and of attempts made by them to buy up such outstanding debts for that purpose, and of unreasonable and oppressive delay in the settlement of the estate, and not filing an inventory thereof which has been withheld to this time, as your Orator is informed and believes, the said Moses Bigelow being then greatly embarrassed in his pecuniary affairs, and in need of money; that the signing, making, 50

execution and delivery of the said receipt and release, were, and ought to be, considered by this Honorable Court, as the acts of the said Moses Bigelow exclusively, and not of the said Julia Ann Bigelow, that in particular, among other things, the said Elias L'Hommedieu and Samuel Fowler, or one of them, executors as aforesaid, untruly and intentionally, to mislead the said Moses Bigelow, represented to him that the indebtedness of one Joseph E. Edsall to the estate of the said testator was only about four thousand dollars, and that it could not be collected because of the defence of usury, which could
10 be set up against the same, and that the amount due upon a Bond and Mortgage on certain property called the Franklin Furnace property, constituting a part of the personal estate of the said testator did not amount to ten thousand dollars; whereas your Orator charges that the amount due from the said Joseph E. Edsall, was not less than six thousand dollars; that the defence of usury could not be successfully pleaded thereto, and that the amount of the said Bond and Mortgage was not less than thirteen thousand dollars. And your Orator submits that if any payment was made to the said Moses Bigelow and Julia Ann Bigelow, on account of the said distributive
20 share in whole or part, and a receipt or release therefor in whole or part was given, made, executed and delivered, by the said Moses Bigelow and Julia Ann Bigelow, after the making of the said Indenture and the creation of the said trust, such payment, receipt or release, will not and ought not, to avail them as against the rights of your Orator, under the said Indenture, and that your Orator notwithstanding such payment, receipt and release, is entitled to have and receive the whole amount of such distributive share, without deduction or abatement, or that if your Honor shall be of opinion in case it shall appear that such payment, receipt and release, if any
30 were made, given, executed and delivered, after the said Indenture was made, and the said trust created, but without notice or information thereof to the said Elias L'Hommedieu and Samuel Fowler, or either of them, that such payment, receipt and release, shall have effect as against your Orator, they can and ought in equity, to have no other effect under any circumstances than to entitle the said Elias L'Hommenieu and Samuel Fowler, to deduct and retain out of the distributive share to which the said Julia Ann Bigelow is entitled. the amount of such payment, and under the circumstances herein before set forth of misrepresentations, deception and fraud, oppressive delay
40 and injustice, they can have no greater effect than to allow the said Elias L'Hommedieu and Samuel Fowler, to make such deduction and retention as aforesaid; that the payment by the said Elias L'Hommedieu and Samuel Fowler as such executors as aforesaid, if any, to the said Moses Bigelow, and Julia Ann Bigelow, of a sum of money less, and especially so much less, than the amount to which the said Julia Ann Bigelow was entitled as her distributive share as aforesaid, and the taking of a receipt and release, for the same, if any, in full of such distributive share, whensoever done, was against the policy of the law, and unjustifiable, and ought not
50 to receive the sanction of this Honorable Court, but ought to be held

to be of no effect, except to the amount of such payment in reduction of the amount of such distributive share to which the said Julia Ann Bigelow was so entitled as aforesaid, all which acting, doings and pretences of the said Elias L'Hommedieu and Samuel Fowler, and their confederates are contrary to equity and good conscience, and tend to the injury of your Orator; in consideration whereof, and forasmuch as your Orator has no adequate remedy in the premises without the assistance of this Honorable Court, where matters of this sort are properly cognizable and relievable, to the end, therefore, that the said Elias L'Hommedieu and Samuel Fowler, or 10 their confederates, when discovered, may severally on their oath, according to the best and utmost of their respective knowledge, remememberance, information and belief, full, true and perfect answers make to all and every the matters aforesaid, and that as fully, as if the same were here again repeated, and they particularly interrogated thereto; and that your Orator may reduce into his possession the monies and distributive share so assigned, transferred and set over to him, as aforesaid, and have the complete execution of the said trust in his own power, and that an account may be taken by and under the direction of this Honorable Court, of the monies received 20 by the said Samuel Fowler deceased, to and for the use of the said Julia Ann Bigelow as aforesaid, and of such other monies as ought to be charged, on account his said guardianship against his estate as herein before set forth, and also of the personal estate and effects of the said testator, possessed by or come to the hands of the said Elias L'Hommedieu and Samuel Fowler, or either of them, or to the hands of any other person or persons, to their or either of their use, or by their or either of their order, and also an account of the said testators debts and funeral and testamentary expenses, and that the said testators personal estate may be applied in due course of admin- 30 istration, and that the clear residue thereof may be ascertained, and that your Orator may be paid and satisfied the full amount of such balance as shall be found due from the estate of the said testator on account of monies received by him to and for the use of the said Julia Ann Bigelow, and the amount of the distributive share of such clear residue, being one eighth part thereof, and that your Orator may have such other and further relief, as to your Honor shall seem most equitable. May it please your Honor, the premises considered, to grant unto your Orator, the State's most gracious writ or writs of Subpœna, to be directed to the said Elias L'Hommedieu and Samuel 40 Fowler, and their confederates, when discovered, thereby commanding them and every of them, at a certain day and under a certain penalty to be therein limited, personally to be and appear before your Honor, in this Honorable Court, and then and there full, true, direct and perfect answers make to all and singular the premises, and further to stand, to perform, and abide, such further order, direction, and decree therein, as to your Honor shall seem meet. And your Orator will ever pray.

A. C. M. PENNINGTON, Solic'r,
and of Counsel with the Complainant. 50

The several answer of Samuel Fowler, one of the Defendants to the Bill of Complaint of Samuel H. Pennington, the Complainant:

This defendant now and all times saving and reserving to himself all, and all manner of exceptions to the many errors, untruths, uncertainties and other imperfections in the said Bill of Complaint contained for answer thereunto, or unto so much thereof, as this defendant is advised, is material for him to make answer unto, he answers and says that he admits it to be true, as set forth in the said Bill of Complaint, that the said Samuel Fowler, late of Hardyston, 10 in the county of Sussex, now deceased, did in his life time make and publish his last Will and Testament, bearing date on or about the fourth day of December, in the year of our Lord one thousand eight hundred and forty-two, and thereby did constitute and appoint his sons, Samuel Fowler, the defendant, Henry Ogden Fowler, Robert Ogden Fowler, and John Fowler, together with Elias L'Hommedieu and Daniel Haines, the Executors thereof.

And this defendant further admits that the said Samuel Fowler departed this life on or about the twenty-sixth day of February, in the year one thousand eight hundred and forty-four, without having 20 altered or revoked his said Will, except as hereinafter mentioned, and that the said Elias L'Hommedieu and this defendant, duly proved the said Will before the Surrogate of the said county of Sussex, on or about the 14th day of March, A. D. 1844, and took upon themselves the burthen of the execution of the same, and that this defendant possessed himself of so much of the personal estate and effects of the said testator as came to his knowledge, within the State of New Jersey, a true and perfect inventory and appraisement whereof is now nearly complete and ready to be filed in the office 30 of the said Surrogate of the said county of Sussex, amounting to the sum of Forty Thousand Dollars, subject to deductions for bad debts and unsettled accounts, as by reference to the same or a copy thereof, when produced before this Honorable Court, will appear.

And this defendant further answering says, that he is informed and believes, and admits it to be true, that Jacob S. Thompson, in the Bill of Complaint named, departed this life on or about the first day of January, in the year eighteen hundred and thirty-two, intestate, and that the said Julia Ann Bigelow, in the said Bill of Complaint named, as his neice and one of the heirs at law at his death, became 40 entitled to the one equal fifth part of the real estate of the said Jacob S. Thompson deceased, and that several tracts of land, parcel of the said real estate, in the said county of Warren, were set off and assigned to her in severalty, as her share and part thereof, but the value of the said real estate, or the extent thereof, or the time when the same was set off and assigned, this defendant does not know and can not state, and therefore leaves it to the complainant to prove as he may be able, and advised that it is material to do.

And this defendant says, he is informed and believes and there- 50 fore admits, that the said Julia Ann Bigelow as one of the next of

kin, was also entitled to the equal one fifth part of the surplus of the personal estate of the said Jacob S. Thompson, after payment of his debts, funeral expenses and expenses of administration; but how much the same amounted to, this defendant has no knowledge or means of ascertaining and therefore cannot state; and he further admits that the said testator, Samuel Fowler, acted as the guardian of the person and estate of the said Julia Ann Bigelow, and as such took charge of the real estate, after the same was set off to her; but at what precise time the defendant does not know, nor does he know or believe, that the said testator ever occupied or used the said lands; but he is informed and believes, that he rented some part of the said real estate, to one Mark Thompson, for the sum of two hundred dollars per year, and afterwards to one Richard Coursen; but for what rent he does not know; and this defendant further says that he does not know how long the said Mark Thompson and Richard Coursen, or either of them, occupied the said real estate, nor how much rent they paid for the same, except that in the books of the said testator he finds a credit of forty-five dollars to said Richard Coursen, for rent, of the twenty-second of September, in the year of our Lord eighteen hundred and thirty-three, and this defendant, afterwards, but at what precise time he does not recollect and therefore cannot state, received of said Coursen, forty dollars, which he paid over to the said Julia.

And this defendant admits that the said testator in his life time, received divers sums of money of the personal estate of said Jacob S. Thompson deceased, for the use of the said Julia, but how much or at what time, or what disposition he made of the same, he has no knowledge, except from the books of account of the said testator, by which it appears, and therefore this defendant admits that the said testator, received of the said Jacob T. Sharp, administrator, &c., of the said Jacob S. Thompson, in Pennsylvania, on the eighth day of February, in the year eighteen hundred and thirty-three, the sum of one thousand three hundred and fifteen dollars; and of one Henry J. Butterworth, on the nineteenth day of April, in the year eighteen hundred and forty-three, the sum of nine dollars: besides the said sums, he has no knowledge that the said testator received any other moneys of the said personal estate.

And this defendant states that by the said books of account, it also appears that the said testator has charged the said Julia Ann with divers sums of money by him paid to and for the said Julia Ann, for expenses of the partition of the said real estate, and of a controversey respecting the same, before the prerogative Court of this State, and for board, and tuition in music, travelling expenses, and necessary and suitable things furnished to the said Julia after she attained the age of twenty-one years, amounting in the whole to the sum of three thousand one hundred and seventy-six dollars and twenty-eight cents, and shewing a balance against her of one thousand five hundred and five dollars and thirty-two cents, as by reference to the said books now in the custody of the said defendant, and ready to be produced, as this Honorable Court shall direct, will appear.

And this defendant further states that he is informed and believes, and therefore charges that the said testator paid out divers other large sums of money for the said Julia not mentioned in the said books of account, amounting to the sum of about one thousand dollars, which is a just charge against the said Julia.

And this defendant further answering says, that from the knowledge he has of the transactions of the said Testator, in relation to the property of the said Julia Ann, and from the understanding in the family while she still lived there before her said marriage, and from
10 conversations between the said Testator and the said Julia, he believes and therefore states that the whole amount of money received by the said Testator for her was paid out and expended by him for her use and benefit, or paid to her; and this defendant recollects on one occasion, when this defendant and the said Testator were conversing in the presence and hearing of the said Julia, about her property, that the said Testator said, "she," (the said Julia) was spending too much money, and had already spent more than was due to her, and at another time after the said Julia had been spending some time at the City of Washington she mentioned to this defendant that the said
20 Testator would not let her have as much money as she wanted, and has told her that she had spent all the money that he had received for her from the Estate of her said Uncle.

And this said defendant further states that he verily believes that when the said Julia left the house of her father, the said Testator, after her said marriage, she was largely indebted to him for moneys paid to her and for her use and benefit, and that it was so understood by her and her said husband.

And this defendant further says he is informed and believes that the said Julia after her said marriage was the constant ob-
30 ject of the bounty of her father, the said Testator, and that he paid to and for the said Julia, and to the said Moses Bigelow, on her account, diverse large sums of money, but at what times and in what sums this defendant does not know and cannot state, and also gave to her and her said husband soon after her said marriage, and up to the time of his death, the possession a large and valuable farm in the said county of Warren, in a part of which the said Testator had a life estate, and in the residue the fee simple, and suffered them to receive the rents and proffits thereof to the amount annually of at least three hundred dollars.

40 And this defendant further says that from sundry letters of the said Moses Bigelow addressed to the said Testator, and from sundry accounts and statements in the hand writing of the said Testator and the said Moses Bigelow, it appears and this defendant believes and therefore states, that the said Testator paid and advanced large sums of money to the said Moses Bigelow, partly to the individual use of the said Moses Bigelow, and partly for the use of the firm and partnership of Bigelow, Canfield & Ingraham, with which he was connected, but as this defendant believes, all at the particular request of the said Moses Bigelow, and to assist him in his business and affairs
50 amounting in the whole to a very large sum of money, but to what

sums the defendant does not know, but he heard the said Testator say a short time before his death that he had advanced for the said Moses Bigelow in money and property, seventy five thousand dollars and would loose that amount by him, all which this defendant humbly submits is inconsistent with the idea of any indebtedness of the said Testator to the said Julia as set forth and claimed in the said Bill of Complaint.

And this defendant denies that he has ever been requested to render any statement of the account of the said Testator as Guardian of the said Julia, or otherwise, either by the said complainant or any 1 person on his behalf, and he also denies that he ever had any notice or knowledge whatsoever, except by the said Bill of Complaint, of the execution by the said Moses Bigelow and Julia his wife, to the said Complainant of the said Deed of Trust as set forth in the said bill.

And this defendant further says, that he would at any proper time at the request of the said Moses Bigelow, and Julia his wife, or either of them, have exhibited to them, or either of them, the said books of account of the said Testator, and given them all the information he possessed concerning the same, but that neither the said Moses Bigelow or the said Julia, ever applied to, or said anything on that sub- 20 ject to this defendant nor has any application been made to this defendant for that purpose, on behalf of either of them, except it be by a letter from Alexander C. M. Pennington, Esq, the solicitor in this cause, dated March the 13th, in the year of our Lord eighteen hundred and forty-five, long after the execution of the said deed of trust purporting to be written in behalf of the said Julia.

And this defendant further says that the said Samuel Fowler, deceased, by his said last Will and Testament in the said Bill of Complaint mentioned, devised a tract of land and premises in the township of Mansfield, in the county of Warren, containing twenty-eight acres, 30 with valuble buildings and improvements thereon, in trust for the said Julia during her life, and after her death to her children, and did also give and bequeath unto his executors whatsoever sum or sums of moneys should at the time of his death be due to him from the firm of Bigelow, Canfield and Ingraham, or from any of the individuals of that firm, in trust to and for the exclusive use and benefit of the said Julia to be paid upon her order and receipt. And did also give and divise to the said Julia, in fee the equal undivided eighth part of his real estate, not therein before devised.

And this defendant says that the value of the real estate so devised 40 to the said Julia greatly exceeds the whole amount of money which the said Testator ever received or ought to have received and collected as the Guardian of the said Julia, and that the amount of the money due to the said Testator at the time of his death from the said Bigelow, Canfield & Company, and some of the individuals of that firm, also greatly exceeds any sum or sums of money which the said Testator ever received or ought to have received as the Guardian of the said Julia, and that the securities for the said debts have been and were paid and transferred to the Complainant before the filing of the said Bill to Complaint upon the order and receipt of the said Julia. And this 50

defendant humbly submits to this Honorable Court, and respectfully insists that the said devises and bequests are and should be taken in satisfaction of any demand which the said Julia might have had against the said Testator in his life time, and that neither the said Julia nor any person on her behalf have any right against the Executors of the said Testator to have an account of the said Guardianship.

And this defendant further answering says that he admits that the said Testator by his said last Will and Testament, after bequeathing divers specific and pecuniary legacies, and directing the payment of
10 divers annuities and devising certain parts of his real estate, did by the residuary clause of the said Will bequeath and devise to his said sons, Samuel, Henry Ogden, Robert Ogden, and John, and to his daughters, Julia, Mary Estelle, Rebecca and Clarinda, all the rest and residue of his estate real and personal, to be equally divided between them, and give power to his said Executors to sell such parts of the real estate in that clause devised as to them should seem most advantageous to his estate as is in the said Bill of Complaint set forth.

And this defendant also admits that the said Julia Ann Bigelow in the said Bill of Complaint named, was the daughter of the said
20 Testator, and the person called Julia, in the said Will, and that she attained the age of twenty-one years, on or about the seventeenth day of February, in the year of our Lord eighteen hundred and thirty-four, and intermarried with the said Moses Bigelow, on, or about the fourth day of February, in the year of our Lord eighteen hundred and thirty-six, as is in the said Bill of Complaint mentioned.

And this defendant further answering, states that the said Testator, at the time of his death, left a paper in his own hand writing, purporting to be a Codicil to his said last Will and Testament, in the words and figures following, that is to say:

30 "This is a Codicil to be added to the last Will and Testament of me Samuel Fowler, of Franklin Furnace, New-Jersey; which bears date, on, or about the fourth day of December, 1842. 1st. I do hereby ratify and confirm my said Will, in all respects, so far as any part thereof shall be revoked or altered, or additions *therto* by this present Codicil, and first, the first bequest in said Will made to my wife Rebecca, wherein I have bequeathed to her so much of my household furniture as she may require for her own use, it is my will and intention hereby to alter and revoke the same, so far in this Codicil as to say, that I give and bequeath to her so much of my household
40 furniture as she may require for her own use, and so much as may be required for the use of our children that may wish to reside with her, and at her decease, all the aforesaid furniture to be equally divided among my four daughters, Julia, Estelle, Rebecca and Clarinda."

"In the last bequest, in the aforesaid Will, I hereby revoke that part of the same, so far as relates to my daughter Julia" as by reference to the same when produced will appear. And this defendant says that he was advised by Counsel, and believes that he would have been able to prove that the said Codicil was made and intended by
50 the said Testator, as, and for a Codicil to his said last Will and Tes-

tament, and that the same was sufficiently signed and published to make it effectual to pass personal estate, and that the defendant and his Co-Executor, soon after the death of the said Testator, were about to prove the said Codicil when the said Moses Bigelow, filed, or caused to be filed, in the Office of the Surrogate of the said County of Sussex, a caveat against the proving thereof; in consequence of which, such proceedings were thereupon had in due course of law, that the matter of proving said Codicil was set down for hearing before the Judges of the Orphan's Court, of the said County of Sussex at a special term of said Court, held on the ninth day of April, A. D. 10 eighteen hundred and forty-four, and afterwards continued to another Term ; that while the said matter was so pending in the said Court the said Moses Bigelow, proposed to this defendant and to his co-legatees an arrangement of the said matter, and after various propositions, and conversations proposed, that if the other residuary legatees would transfer to him, or to some person whom he should name, certain notes and claims which the said Moses Bigelow, had before then transferred to the said Testator, as a payment of the amount thereof, upon his claims upon the said Moses Bigelow, and the firm of Bigelow, Canfield and Co., and which are particularly mentioned in a 20 certain article of appointment, or order of the said Julia, hereinafter set forth, amounting in the whole to the sum of five thousand one hundred and seventy-nine dollars and seventy-one cents, besides interest then accrued thereon, and which were then held by this defendant as assets of the said estate, and would pay to him the said Moses Bigelow, the sum of seven hundred dollars, he and his said wife would take the same in full satisfaction of all claim and demand upon the personal estate of the said Testator, except that portion of the same which was bequeathed, in trust, for her the said wife of the said Moses Bigelow. And upon this defendant's declining this proposi- 30 tion, the said Moses Bigelow urged the same with great importunity and among other reasons to induce the said legatees to assent thereto, he stated that if those notes and claims were placed within his control, he could with them, and the money he asked compromise and pay all the debts outstanding against him, and be able to resume business and thus provide for, and benefit his family more than in any other way, while, if the said notes and claims remained in the hands of the Executors, their efforts to collect them would probably be ineffectual, as the debtors on the said notes and claims were of doubtful ability to pay, and that a very considerable loss would be 40 sustained, and after consultation and reflection, the said legatees, including this defendant, considering that probably the said notes and claims could be turned to good account by the said Moses Bigelow, and be of great service to him and his family, and that they might be in whole or in part, lost to the estate if retained by the Executors, and considering that the sum of seven hundred dollars was a mere gratuity, and not due to the said Moses Bigelow and his wife, but that it might and probably would, be the means of preserving the friendship and harmony of the family, agreed to the said proposition of the said Moses Bigelow, and it was then supposed that all 50

controversy about the said estate was settled between the said parties; and this defendant further says, that the said Moses Bigelow then produced a draft of a receipt which he proposed to give upon the payment of the said seven hundred dollars; but the same was excepted to by this defendant, because by the agreement between the parties, a release from all claims against the personal estate was to be given, and thereupon a form of such release was furnished to the said Moses Bigelow, to be executed by himself and wife, in such manner that it might be duly recorded as an acquittance of the said
10 Executors.

And this defendant further states that at a subsequent day the said Moses Bigelow presented to this defendant, a release, which he believes was copied from the draft furnished as aforesaid, or was to the same effect, purporting to be executed by the said Moses Bigelow, and his said wife, in the presence of a female wholly unknown to any of the Executors or Legatees, and whom he said was the nurse of his said wife, and upon this defendant excepting to the execution of the said release because of the obscurity of the subscribing witness, but more particularly for want of a proper acknowledgement
20 of his said wife, the said Moses Bigelow pretended to be offended at what he suggested was a want of confidence in him, and a reflection upon the integrity of himself and wife, and an insinuation that they would be guilty of repudiating their contract, but this defendant insisted upon a release duly signed and acknowledged by the said Julia before a proper officer, and afterwards, on or about the sixteenth of May in the year of our Lord eighteen hundred and forty-four, the said Moses Bigelow produced a release executed by the said Moses Bigelow, and Julia his wife, and duly acknowledged by the said Julia, before one of the Masters of this Court, which said release is
30 to the tenor and effect following, that is to say:—" Know all men by these presents, that we, Moses Bigelow, and Julia Ann Bigelow his wife, both of the city of Newark, and County of Essex, and State of New Jersey, the said Julia Ann Bigelow being the daughter of Samuel Fowler, late of Hardyston, in the County of Sussex, in the said State deceased, and called Julia, in and by his last Will and Testament do hereby confess and acknowledge that we have had and received of and from Elias L'Homedieu and Samuel Fowler, of the said township of Hardyston, acting Executors of the said last Will and Testament of the said deceased, the sum of seven hundred dollars in full pay-
40 ment and satisfaction of all legacy and legacies distributive share and shares, of the personal estate of the said deceased, to which we or either of us are, or is, or may be entitled by law under the said last Will and Testament, save and except, nevertheless, the legacy and bequest in the said last Will and Testament contained, whereby the deceased, gave and bequeathed unto the Executors thereof, whatever sum or sums of money might at the time of his decease be due to him from Bigelow, Canfield & Ingraham, or from any of the individuals of that firm, in trust, and to, and for the exclusive use and benefit of his said daughter Julia, to be paid upon her own
50 order or receipt, and save and except, also, all the estate, right, interest,

produce and profits which we the said Moses Bigelow and Julia Ann Bigelow, or either of us, have. or has, or may have in the real estate of the said deceased, or any part thereof, which may be sold by the said Executors, under, and by virtue of the said last Will and Testament. In Witness whereof, we have hereunto set our hands and seals, this the thirteenth day of May, in the year one thousand eight hundred and forty-four.

Signed, Sealed and delivered in the presence of *J. P. Pennington.* } Sg'd. MOSES BIGELOW. Sg'd. JULIA ANN BIGELOW. 10

And this defendant further says, that upon the delivery to him of the said release he delivered to the said Moses Bigelow, in the presence of the said Complainant, the note of this Defendant for the said sum of seven hundred dollars, which was received as payment of the said sum of money and has since been paid by this defendant, and at the request of the said Moses Bigelow, transfered and delivered the said notes and claims pursuant to the proposition of the said Moses Bigelow and the said agreement, and also by the appointment and direction of the said Julia, hereinafter recited, and this defendant further states that as the said Codicil related only to the interests of 20 the said Julia in the residue of the said personal estate, and to the household property, and that having adjusted the claim of the said Julia, in the manner aforesaid, and obtained a full release and discharge of the said interest, and having also made a satisfactory arrangement with their mother, about the said household property, the said residuary legatees were advised and believed that it was unnecessary to prove the said Codicil, and accordingly proof of the same was not attempted.

Andthis defendant further answering says, that the said release of the said Moses Bigelow and Julia his wife, was given by them with 30 full knowledge of said Moses Bigelow, and as this defendant was informed by him, and believes with the full knowledge and consent of his said wife, and this defendant denies that the said release was procured by any threats or misrepresentations, concealment or deception of any kind, by him, to, or upon, the said Moses Bigelow, either directly or indirectly, or that he ever withheld from the said Moses Bigelow, or his said wife, any information which he possessed, or which either of them desired to receive of him respecting the said estate, but he expressly states that he informed the said Moses Bigelow before the execution of the said release, truly, of the amount of 40 the personal estate of the said Testator, to the best of his knowledge and belief, and this defendant denies that he represented to the said Moses Bigelow, or any other person that the indebtedness of the said Joseph E. Edsall (in the complainants bill of complaint mentioned) to the estate could not be collected because of the defence of usury which could be set up against the same, or any thing to that effect.

And this defendant further says, that he may and probably did tell the said Moses Bigelow, as in truth he might, that the indebtedness of the said Joseph E. Edsall to the said estate, was of very long standing and might probably be defeated by the plea of the statute of limi- 50

tations, and that the transactions concerning the same were very loose and might be difficult to prove, and the amount uncertain, if the said claim should be resisted.

And this defendant further denies, that he ever made any misrepresentation to the said Moses Bigelow, respecting the Bond and Mortgage, upon the property called the Franklin Furnace property, but he says he believes he did state to the said Moses Bigelow, truly what he supposed to be the amount due thereon, since which time a claim for an allowance upon the said Bond and Mortgage has been 10 made by the owners of the equity of redemption of the said property for an alledged deficiency in the quantity of lands conveyed by the said Testator to the Mortgagors, and to secure a part of the purchase money, of which land the said Mortgage was given.

And this defendant humbly submits to this Honorable Court, whether the attempt of the complainant, and of the said Moses Bigelow and of Julia his wife, through the said complainant to repudiate the said lease, and to avoid the fair and legal effect thereof, is not a fraud upon the said Executors, and upon the said legatees, and whether the conduct of the said Moses Bigelow, in procuring the arrange- 20 ment of the controversy about the said Codicil, has not the appearance of settled design and practice upon the said Executors and legatees, to deceive and defraud them, and whether such conduct and practice will be countenanced by this Honorable Court; and he prays that the said release may be declared by this honorable court, to be valid and a good and effectual acquittance of the said Executors from any claim of the said Moses Bigelow and Julia his wife, or of any person under them to the personal estate of the said Testator therein mentioned.

And this defendant further answering states, that, although the 30 said complainant was present at the time this defendant delivered to the said Moses Bigelow, his note for the said sum of seven hundred dollars, as aforesaid, and saw, and knew, as the defendant believes the nature of the whole transaction, yet he gave no notice to this defendant, nor said a word to him about the said trust deed, or that he was the trustee or representative of the said Julia, nor was any intimation of that kind given to this defendant, except what was to be gathered from the said appointment, order, or receipt made by the said Julia, in the words and figures following: "Whereas, Samuel Fowler, late of the township of Hardyston, in the county of Sussex, in the 40 State of New-Jersey, deceased, duly made, signed, published his last Will and Testament,and thereby gave, and bequeathed as follows, (that is to say:) Item: I give and bequeath unto my said Executors whatsoever sum or sums of money may at the time of my decease, be due to me from Bigelow, Canfield and Ingraham, or from any of the individuals of that firm, in trust, and to; and for the exclusive use and benefit of my said daughter Julia, to be paid upon her own order and receipt, and whereas Moses Bigelow, one of the individuals of the said firm was individually indebted to the said deceased, in a large amount of money, at the time of his decease, for which a Judgment 50 had been obtained in the Supreme Court of Judicature, in the State

of New-Jersey, aforesaid, and as collateral security for the said money so due as aforesaid, from him to the said Samuel Fowler, did assign and transfer, and set over to the said Samuel Fowler, on the twenty-second day of March, in the year one thousand eight hundred and forty-three, sundry promissory notes, six in number, drawn by Benjamin Terry, payable at the State Bank, at Newark, to the order of the said Moses Bigelow, and by him endorsed, one dated Newark, November 12th, 1842, payable in six months after date, for $208 08; and the remaining five dated March 18th, 1843: one payable in four months after date for $306 15; another six months 10 dfter date for $592 87; another eight months after date for $592 87; another ten months after date for $592 87; and the remaining note payable twelve months after date for $592 87; for which the said Moses Bigelow now holds the receipt of the said Samuel Fowler, expressing the purpose for which the same were so assigned as aforesaid, and whereas the said firm of Bigelow, Canfield and Ingraham, was also indebted to the said deceased, at the time of his decease, in a large amount of money, and as collateral security for the said money as due as aforesaid from the said firm of Bigelow, Canfield and Ingraham, to the said Samuel Fowler, Moses Bigelow, 20 one of the individuals of said firm did assign, transfer and set over on the 24th of April, 1843, the proceeds of S. S. Merriman's note, due on or about June 16, 1842, payable to the order of Bigelow, Canfield, and Ingraham, for $518 95, then in the hands of Bliss and Baldwin, of Gainsville, Alabama, for collection, and did assign, transfer and set over on the twenty-fourth of April, 1843. for the purpose last aforesaid, a note of Barrou & Wilson, dated St. Francisville, May 21st, 1842, payable to the order of Bigelow, Canfield, and Ingraham, on the sixth day of February 1843, for four hundred and twenty-two sixteen hundredths dollars, and also 30 did assign, transfer and set over to the said Samuel Fowler, on or about the 24th day of April, 1843 for the purpose last aforesaid, by an order on J. W. Brunote, the monies he might collect on Collins' and Baldwin's two notes, endorsed by M. L Meeker, of about seven hundred and eight dollars each: and whereas the said notes and claims are now held by the said Executors as the legal representatives of the said deceased, and for the purposes for which the same were so assigned, as aforesnid, as per the receipts now held by the said Moses Bigelow, and whereas by the force operation and legal effect of the said bequest hereinbefore recited, the said Julia, the daughter 40 of the said deceased, has become entitled to the said notes as collaterals to the indebtedness bequeathed to her as aforesaid, now I, Julia Ann Bigelow, the wife of Moses Bigelow, the daughter of the said Samuel Fowler and the legatee in the said Will mentioned, do hereby authorize, empower and order and direct the Executors of said deceased, to assign and transfer all of the aforesaid notes, claims and demands, to Samuel H. Pennigton, of the city of Newark, in the county of Essex, and State aforesaid, and I do hereby declare that upon such delivery of the same or transfer legally made, this writing shall be a full and effectual receipt for the same from me, and a full 50

and effectual discharge of the said Executors therefrom. Witness my hand and seal this thirteenth day of May, one thousand eight hundred and forty-four.

Signed, sealed and delivered in presence of } JULIA ANN BIGELOW. { L. S. }

Signed, J. P. PPENNINGTON.

Upon which said appointment is endorsed the receipt of the said complainant, in the following words, that is to say: "Received Newark, May 16th, 1844, of Samuel Fowler, of the township of
10 Hardyston, in the County of Sussex, in the State of New Jersey, one of the Executors of Samuel Fowler, an assignment of all of the notes claims and demands mentioned and described in the within order. Signed, SAMUEL H. PENNINGTON.

And from two other orders or receipts respecting the claims of the said testator against the said firm of Bigelow, Canfield and Ingraham, or some of them, which had been bequeathed in trust to the said Julia, by which said orders or receipts, signed by the said Julia, and bearing date the seventh day of May, A. D. 1844, and now in the custody of this defendant, and to which he refers
20 will more fully appear.

And this defendant further says, that the said Moses Bigelow had, pending the negotiation about the said codicil, stated that the notes and claims by him transfered to the said Testator, on account of his claims against the said Moses Bigelow, and his said partners, were collateral security for so much of the said claims, and as such constituted a part of the said trust property bequeathed to the said Julia, and at the time of the payment of the said sum of seven hundred dollars, as aforesaid, to the said Moses Bigelow, it was also so insisted, but this defendant then claimed and still claims that the said
30 notes and claims so transferred to the said Testator were not collateral to the claim of the said Testator, but were taken as a payment of so much thereof, but this defendant believes and was so advised, that if the said notes and claims were transfered according to the order of the said Julia, and the request and desire of the said Moses Bigelow, and a proper release and acquittance was executed to the said executors, it was of no consequence to them, nor to the said legatees, whether the said notes and claims were considered as collateral security for, or a payment on the said claims against the said Moses Bigelow, and his said partnership firm, and therefore only he
40 assented to the recitals contained in the said receipts or orders; but this defendant expressly states that the said notes and claims constituted a part of the consideration of the said release: although at the particular desire of the said Moses Bigelow it was not so expressed in the said release; and this defendant in further answering says that after the settlement of the said claims of the said Moses Bigelow, and Julia his wife, to the residuary part of the personal estate, upon consultation with the said residuary legatees, it was by them thought advisable not to complete and file the inventory of the said personal estate until they should ascertain the amount of money due from the said Joseph E. Edsall, and the amount of money due upon the said
50 Bond and Mortgage upon the said Franklin Furnace property, and

several other large and unsettled claims; but the said inventory anc appraisement, so far as the same could be made with certainty, anc a schedule of all the assetts and personal property which had come to the knowledge of this defendant, were kept among the papers o' the said estate, and at all times accessible to and subject to the exam inat ion of all the said legatees, and other persons interested in saic estate, and no concealment of any kind was made or attempted in reference to any of the assets, or property of the said estate; but this defendant submits to this Honorable Court, and respectfully insists that the said Moses Bigelow, and Julia his wife, having received all the share or part of the said personal property due to them and given their acquitance and release for the same, have now no right by themselves, or any other person for them, to call in question the acts and conduct of the said executors respecting the same, or respecting the inventory thereof, or any proceedings relating thereto; but, if, in the opinion of this Honorable Court, the said deed of release should not be construed and taken to be an absolute bar of any further claim of the said Moses Bigelow, and his said wife, to the said personal estate, that then this defendant may be permitted to prove the said codicil, and that due and legal effect may be given to the same, and that the said notes and claims transferred in pursuance of the said agreement, may be restored to this defendant, to the end that the same may be applied in due course of administration, according to the directions of the said Will, and that the said sum of seven hundred dollars, paid to the said Moses Bigelow and his wife, may be refunded to this defendant, or made a charge to the said Julia, to be paid and allowed out of the said claims bequeathed to her in trust as aforesaid, or that your Honor would make such other order and decree respecting the said notes and claims transfered, and money paid, as shall be equitable and just.

And this defendant denies all unlawful combination or confederacy in the said Bill charged without that, that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant.

All of which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct: and he humbly prays to be hence dismissed with his reasonable costs and charges by him in this behalf most wrongfully sustained.

DANIEL HAINES, Solicitor,
And of Counsel with Defendant.

New Jersey, ss:

Samuel Fowler, the above defendant, being duly sworn, on his oath saith, that the acts, matters and things set forth in the foregoing answer, so far as they relate to his own acts are true, and so far as they relate to the acts of others he believes them to be true.

SAMUEL FOWLER.

Sworn to and subscribed at Hamburgh, in the County of Sussex, this 26th day of January, A. D. 1846.

WALTER L. SHEE, Judge, &c.

The several answer of Elias L'Hommedieu, one of the defendants to the Bill of Complaint of Samuel H. Pennington, the Complainant :—

This defendant now and at all times saving and reserving to himself all, and all manner of advantage of exceptions to the many errors, untruths, uncertainties and other imperfections in the said Bill of Complaint contained, for answer thereto, or unto so much thereof as this defendant is advised is material for him to make answer unto, he answers and says, that he admits it to be true as set forth in the
10 the Bill of Complaint, that the said Samuel Fowler, late of Hardyston, in the County of Sussex, now deceased, did, in his life time, make and publish his last Will and Testament, bearing date on or about the fourth day of December, in the year of our Lord one thousand eight hundred and forty two, and thereby constitute and appoint his sons, Samuel, Henry Ogden, Robert Ogden, and John, together with Daniel Haines, and this defendant, the Executors thereof. And this defendant further admits that the said Samuel Fowler departed this life on or about the twenty-sixth day of February, in the year of our Lord one thousand eight hundred and forty-
20 four, without having altered or revoked his said Will, excepting as hereinafter mentioned, and that he, this defendant, and the said Samuel Fowler, son of the said testator, duly proved the said Will before the Surrogate of the said County of Sussex, on or about the fourteenth day of March, in the year last aforesaid, and took upon themselves the burthen of the execution thereof.

And this defendant states that he believes that the said testator in appointing other persons besides his own sons Executors, was influenced by the consideration that those other persons would act as the advisers and counsellors of his sons, and that they would not be
30 required to take an active part in the management and settlement of the said estate. And this defendant after the proof of the said Will was informed and believed that such also were the views of the family of the said testator, and that they were willing and desirous that the Co-Executor, Samuel Fowler, should be the acting Executor, and attend to the management and settlement of the said estate.

And this defendant further states that this Co-Executor resided with the family at the late residence of the said testator, where the books and papers were kept, and where it was suitable and proper that the business of settling the said estate should be transacted, but this
40 defendant lived some three and a half miles therefrom. For which reasons this defendant has never taken possession of or received any of the property or assetts of the said estate, or in any wise intermeddled therewith, except to consult with and advise the said co-executor and the legatees in relation thereto, and excepting that he was present and aided in making the inventory of the goods and chattles of the said testator. But this defendant states that he is informed and believes that the said Samuel Fowler did possess himself of the personal estate of the said testator in the State of New Jersey, but has not to the knowledge or belief of this defendant filed any inventory
50 thereof; but he is informed and believes that an inventory has been

made of nearly all the said personal estate, but is yet incomplete. And this defendant further states that he has no knowledge of the exact amount of the appraisement of the said personal estate, but from the best information he has, he believes it to be about the sum of forty thousand dollars.

And this defendant further answering says, that he was personally acquainted with the said Jacob S Thompson, named in the said Bill of Complaint, and recollects hearing of his death, but at what time he has no recollection, and therefore cannot state: and this defendant has been informed and believes, and therefore admits that the said Jacob S. Thompson died intestate, and that the said Julia Ann Bigelow as his niece and one of his heirs at law, became entitled at his death, to a share of his estate real and personal, but to what share or what amount this defendant does not know and cannot state. 10

And this defendant further answering states, that he has heard from the said Testator and believes and therefore admits, that a part of the said real estate of the said Jacob S. Thompson, was set off to the said Julia, but when it was set off or what part or how much land or the value of the annual rents and profits thereof, this defendant does not know. 20

And this defendant in further answering admits, that the said Samuel Fowler deceased, acted as the Guardian of the person and estate of the said Julia and, took the charge of her real estate after the same was set off to her, but he has no knowledge of what disposition he made thereof, nor whether he received any rent or profits from the same, except from the books of account of the said Testator, in which there is a charge to one Mark Thompson for one year's rent, two hundred dollars, under date of April first, eighteen hundred and thirty-four, and a like charge for rent, two hundred dollars, under date of April first, eighteen hundred thirty-five, and a further charge of one hundred dollars, for property rented in the year eighteen hundred and thirty three, but on credits to the said Mark Thompson for the same, but the said Testator has credited to the said Julia, on the tenth day of April, in the year one thousand eight hundred and thirty-five, the sum of one hundred and eight dollars and thirty-four cents, for rent received of the said Mark Thompson. There is also, on the said book, a charge to one Richard Coursen of ninety dollars, for rent of a farm under date of December, nineteenth, eighteen hundred and thirty-two, and a credit to the said Richard Coursen, of forty-five dollars, on the twenty second September, eighteen hundred and thirty-three, and of the sum of forty-five dollars without date, for money by him paid to the said Julia. There is also on the said books, a credit to the said Julia, of the sum of forty-five dollars, under the date of twenty-second September, eighteen hundred and thirty-two. 30 40

And this defendant further answering says, that he also finds upon the said books a credit to the said Julia, of the sum of thirteen hundred and fifteen dollars, received on the eighth day of February, eighteen hundred and thirty-two, of Jacob T. Sharp, Administrator, &c., in Pennsylvania, of the said Jacob S. Thompson, and this defendant therefore admits that the said Testator received the last said sum of 50

money at the date of the said credit, but he has no knowledge or information of his having received any other monies of the estate of the said Jacob S. Thompson, for the said Julia: nor does the defendant know what disposition was made of the monies above stated, except from the said books upon which are sundry charges for money paid to and for the said Julia, at sundry times, and exhibiting a large balance against her.

And this defendant further answering says, he has no knowledge or information of the said Testator being indebted at the time of his 10 decease, to the said Julia, but on the contrary he is informed and believes that he had advanced to her more money than he had received, for her or on her account, or ought to have received.

And this defendant denies that he has ever been requested to render any account of the said testator as Guardian of the said Julia, or otherwise, either by the said Complainant, or any person on his behalf, or by any other person, except by a letter received from Alexander C. M. Pennington, Esq., the Solicitor in the suit, dated March 13, 1845, purporting to be written in behalf of the said Julia Ann Bigelow, in which an account is requested, as by reference to the same, will more 20 fully appear; and he also denies that he ever had any notice or knowledge whatsoever, except by the said Bill of Complaint of the execution, by the said Moses Bigelow and Julia his wife, to the said Complainant, of the said deed of trust, as set forth in the said Bill.

And this defendant further says, that the said Testator by his said last Will and Testament, bequeathed and devised to the said Julia both real and personal estate, to an amount and value greatly exceeding the amount of monies which the said Testator could or ought to have received as the Guardian of the said Julia, and he submits to this Honorable Court whether he is bound to render any 30 account ef the receipts and disbursements of the said Testator, as Guardian of the said Julia.

And this defendant further answering admits, that the said Testator by his said last Will and Testament, after bequeathing divers specific and pecuniary legacies, and directing the payment of divers annuities and devising certain parts of his real estate, did by the residuary clause of the same, bequeath and devise to his sons Samuel, Henry Ogden, Robert Ogden, and John, and to his daughters, Julia, Mary Estelle, Rebecca, and Clarinda, all the rest and residue of his estate real and personal, to be equally divided between them, and give 40 power to his said Executors to sell such parts of the real eatate in that clause devised, as to them should seem most advantageous to his estate, as in the said Bill of Complaint, is set forth.

And this defendant also admits, that the said Julia Ann Bigelow was the daughter of the said Testator, and the person called Julia in the said Will; and that he is informed and believes and therefore admits that she attained the age of twenty-one years on or about the seventeenth day of February, in the year of our Lord eighteen hundred and thirty four, as in the said Bill of Compiaint is set forth.

And this defendant further answering states, that the said Testator 50 at the time of his death, left a paper in his own hand writing, pur-

porting to be a Codicil to his said last Will and Testament, in and by which he revoked such part of the said residuary clause or last bequest of the said Will, as relates to his said daughter, Julia, as in and by the said Codicil, when produced before this Honorable Court will more fully appear.

And this defendant further says, that he was advised and believed that the said Codicil was properly signed and published to pass personal estate, and that it could legally be admitted to probate, as a Codicil to the last Will and Testament; and this defendant and his Co Executor were about to prove the said Codicil, when the said Moses Bigelow caused a Caveat to be filed in the office of the Surrogate of the said county of Sussex, against proving the same; by reason whereof, such proceedings were had in due course of law, that the matter of proving the said Codicil, was set down for hearing, and the parties in interest duly cited to appear before the Orphans' Court, of the said county of Sussex, held at Newton, in said county, on the ninth day of April, in the year of our Lord one thousand eight hundred and forty-four, and continued to another term of said Court, as in and by the said Caveat and the minutes and proceedings of the said Court, or certified copies thereof, will, when produced, more fully appear.

And this defendant further says, that while the said matter of proving the said Codicil was pending in the said Court, he was consulted about a proposition which he was informed and believes was made by the said Moses Bigelow to his Co-Executor, for an arrangement of the matter in controversy therein; by which the said Moses Bigelow proposed that he would make no further opposition to the proof of the said Codicil, but would, with his wife, the said Julia, release all their right interest and claim to the personal estate mentioned in the said residuary clause of the said Will—if the other legatees would pay them, the said Moses Bigelow and Julia his wife, the sum of seven hundred dollars, and procure the transfer to such person as they should name, of certain notes and claims which had before then been transferred to the said Testator in part payment of his claims against the said Moses Bigelow and his partners in trade.

And this defendant further says, that the said notes and claims were alledged to be doubtful, and some of them in controversy in the Courts of the States of Virginia and Alabama, and might be in part or in whole lost to the said estate, but that they could be advantageously applied by the said Moses Bigelow in payment of his debts and be of great service to him and his family, & in view of all the circumstances, this defendant was satisfied with the proposition, and advised that the legatees should accept it.

And this defendant further says, that he has no recollection of ever having any conversation with the said Moses Bigelow about the said estate, or about the said Will or Codicil, but he was informed, and believes, that the said proposition was made and acceded to, and supposed that all difficulty and dispute about the said personal estate had ceased until he was served with process in this suit.

And this defendant further says, that he is informed by the said Co-

Executor,and believes that he paid to the said Moses Bigelow the said sum of seven hundred dollars,and transferred and delivered at his request, and according to the order, and appointment of his said wife the said notes and claims according to the terms of the proposition, and that the said Moses Bigelow, delivered to the said co-executor the deed of release of himself and wife to all the residue of the said personal estate mentioned in the said last clause of the said Will, executed in due form of the law, and also the said receipt of the complainant in this suit, as the appointee of the said Julia, for the said notes aud claims, 10 as in and by the said deed of release and the said order or appointment and the said receipt thereon, and to which for greater certainty this defendant refers, will, when produced before this Honorable Court, more fully appear.

And this defendant further answering denies that he ever made any threats misrepresentations or concealments whatsoever, respecting the said estate, either to the said Moses Bigelow or any other person; or that the said deed of release was, to the knowledge, information or belief of this defendant procured by any fraud or undue means, and he humbly submits to this Honorable Court, and in- 20 sists that the said Moses Bigelow and Julia his wife, and all and every person or persons claiming for or under them or either of them are estopped by the said deed of release, and barred of any further claim in or to the said personal estate, and that they have no right to an account for any part thereof, nor to call this defendant before this Honorable Court in relation thereto.

And this defendant further says, that he was informed and believes that the other matters mentioned in the said Codicil, were adjusted by and between the said legatees and their mother, and that there was consequently no necessity of incurring the expense of proving the said 30 Codicil, and that therefore it was not proved, but this defendant prays that if in the opinion of this Honorable Court the said deed of release shall not be taken and construed to be an absolute bar to the claim of the said Moses Bigelow and his wife, and of every other person claiming under them to the said personal estate, that then the said Executors may still be allowed to prove the said Codicil, and that due and legal effect may be given to the same.

And this defendant denies all unlawful combination and confederacy in the said bill charged, without that, that any other matter or thing material for this defendant to make, answer unto, and not herein 40 or hereby well and sufficiently answer, confessed or avoided, traversed or denied is true, to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver maintain and prove, as this Honorable Court shall direct, and humbly prays, to be hence dismissed with his reasonable costs and charges in this behalf sustained.

DANIEL HAINES, Solicitor,
And of Counsel with Defendant.

New-Jersey, ss :

Elias L'Hommedieu, the above defendant, being duly sworn, on 50 his oath saith, that the matters and things set forth in the above an-

swer, so far as relates to his own acts, and matters within his own knowledge are true, and so far as they relate to the acts of others he believes them to be true. ELIAS L'HOMMEDIEU.

Sworn to, and subscribed this 17th day of March, A. D. 1846.

WALTER L. SHEE, Judge, &c.

Deposition of Witnesses:

August 20, 1846.

Jabez P. Pennington, Esquire, a witness produced on the part of the Complainant, being duly sworn, according to law, doth depose and say, (a paper writing purporting to be a deed of trust, executed 10 by Moses Bigelow, Julia Ann Bigelow, and Samuel H. Pennington, bearing date the seventh day of May, A. D. 1844, and marked by me exhibit, P. No. 1, being shown to the witness,)—I am a subscribing witness to that paper; the same was executed in my presence and I subscribed my name thereto as such witness.

And being cross examined, I saw them sign that paper, and informed them of the contents: this was on the twenty-first day of May, 1844.

And being re-examined, the 21st day of May, 1844, was the day the paper was acknowledged before me, whether it was executed be- 20 fore, or not, I cannot say. I recollect of being there twice, but not the date, except the date of the acknowledgment.

And being re-cross examined, I dated the acknowledment on the day it was taken. I have no distinct recollection of any other execution than at the time of the acknowledgment; but I have an impression that it was previously executed before me, and that the acknowledgment was subsequently taken, so that the paper might be put on record, if necessary, and that the suggestion of having it acknowledged for the purpose of putting it on record, was made by Mr. Bigelow. 30

Under these circumstances, I should not have dated the acknowledgmedt on the day it was first executed, but on the day I wrote the acknowledgment.

Moses Bigelow, a witness produced on the part of the Complainant, being duly sworn, according to law, doth depose and say, (the Counsel with the Defendants first objecting to the examination of this witness, upon the ground that he is the same Moses Bigelow named in the Bill, the husband of Julia Ann Bigelow, whose separate estate is the subject of this controversy, and that he is interested in the event of this suit:) Exhibit P, No. 1, being shown to the 40 witness, I am a party to that paper which was executed on the day it bears date, I believe, (Exhibit P, No. 2, being now shown to the witness,) I have seen that paper before, and was present at the delivery of it; it was delivered, I believe on the day it bears date, the 16th day of May, 1844: the deed of trust (Exhibit P, No. 1,) was executed prior to the date of Exhibt P, No. 2; (Exhibits P, No's. 7, 8, and 9, being now shown to the witness.) I have seen these papers before; the bodies of these papers are in my handwriting; these papers were executed in pursuance of the deed of trust; (Exhibit P. No. 1;) I was present when three several re- 50

ceipts, forming part of Exhibits P, No's. 7, 8, and 9, were given ; those receipts are in my own hand-writing, and were given on the days they bear date, in my presence : (Exhibit P. No. 2, being now shown to the witness ;) this is the assignment mentioned in these receipts, and was delivered at the same time the receipts were given. Samuel H. Pennington, and Samuel Fowler, two of the parties in this suit, were present at the time the receipts were given, and the assignment delivered ; these papers were executed at the office of Alex. C. M. Pennington, at the interview between the parties I have
10 just mentioned. I had notified prior to the date of the assignment, and of the transaction which I have just mentioned, in the first place, Mr. Haines, one of the Executors named in the Will of the Testator, of the existence of the trust created by the deed of trust, exhibit P, No. 1, or rather I notified Mr. Haines that we had appointed Dr. Pennington, Trustee. In conversation with Mr. Haines, relative to the estate of Dr. Fowler, I told him that we (meaning myself and my wife,) had appointed Dr. Pennington, Trustee of all the interest in the estate of Dr. Fowler, in either of us, arising under the will. The date of this conversation was some four or five days prior to
20 the execution of the assignment given by Samuel Fowler ; this conversation took place the day before the execution of those papers ; it was prior to the execution, and I think the day before, I informed Mr. Samuel Fowler, one of the other Executors of the deed of trust, at Trenton. My wife and I together executed a deed of release to, I think, Samuel Fowler, and Dr. L'Hommedieu ; there was only one delivered ; that deed was executed after the execution of the deed of trust, and after the notice to Mr. Haines and Mr. Fowler, that I have mentioned, of the deed of trust. The arrangement which resulted in the giving of that deed of release, I negotiated with Messeurs
30 Haines and Samuel Fowler. I believe I did not negotiate that arrangement with any person than in the character of Executor. Mr. Haines had not actually proved the Will, but by his appointment as Executor in the Will, I treated with him in that character ; I did not act as the agent of the trustee, or with his knowledge in any respect in making that arrangement ; the trustee did not, to my knowledge, at the time of making this arrangement, know of its existence, nor did he have the avails after it was made. I received seven hundred dollars, as the consideration of that arrangement, which I used on my own account, for my own purposes. At the
40 time I made that arrangement, I did not know what was the extent of the Testator's personal property, nor did Mrs. Bigelow. I had previously asked Mr. Samuel Fowler what was the extent of the Testator's personal estate, and could get no information from him, except as I enumerated, as to certain claims, to which he would make some reply. I undertook to enumerate before him, and to him, claims of which I had some knowledge, and I enumerated about twenty-four thousand dollars ; he said the personal estate would not amount to that ; the amount enumerated by me embraced a claim against Joseph E. Edsall to about four or five thousand
50 dollars ; to that he said it could not be collected, as the statute of

limitations would or could be pleaded. I named a claim against the Franklin Furnace as about twelve thousand dollars; he replied it it would'nt be ten, as he understood from Mr. Ames there would be a large credit for a large payment that had not been credited. I do not know what is the amount of the claim against the Franklin Furnace. I had spoken to Mr. Samuel Fowler about filing an Inventory of the personal estate; I do not distinctly recollect what reply was made; I had applied a number of times before that time, at the Surrogate's office, for the purpose of ascertaining whether an Inventory had been filed. (I was informed by a creditor in New York, (Mr. 10 Fairman, of the firm of Cleaveland, Lewis, & Co.,) that Mr. Samuel Fowler had been to him endeavoring to purchase a claim against the late firm of Robinson, Bigelow, & Co., held by that firm, to somewhere about five thousand dollars; that he, (Fairman,) asked Mr. Fowler his name, and that he wrote his name down on a piece of paper, which Mr. Fairman showed to me, in the hand-writing of Samuel Fowler. I was one of the firm of Robinson, Bigelow, & Co.] This application was aot made by my knowledge or consent. This conversation between Mr. Fairman and me, was in April, prior to the arrangement before spoken of. As soon as I heard 20 this, I immediately took measures to have this deed of trust executed, conferred with Counsel on the subject. At the time of the decease of the Testator, and of this arrangement, there was subsisting a judgment against me in favor of the Testator, mentioned in the paper marked Exhibit P, No. 2. Mr. Haines spoke to me some two or three times about the Executors selling my life-interest in the real estate inherited by my wife, under this judgment. There was such a suggestion as this made at the commencement of this arrangement, and, I thought, rather urged by him, and on the part of the other Executors. This idea did not meet with my concurrence. 30 He suggested that it should be bought by the Executors under the trust power in the Will, this judgment having been left in trust to the Executors. I objected to it; told them that I would get some friend to buy it in, pay the money into their hands, and then my wife would give an order upon them for the money back again, so that they could not get possession of my life-interest. Prior, and at the time of this arrangement, proceedings had been commenced, and were in progress for the proving of a pretended Codicil to the Will; a copy of this Codicil is set forth in the answer of Samuel Fowler, filed in this cause. It was insisted by the Executors, that 40 the effect of this Codicil, if proved, would be to cut off my wife from any interest in the personal estate. At the time of that arrangement, I was was much embarrassed by my connexion with the firm of Bigelow, Canfield, and Ingraham; their liabilities were at that time about twenty thousand dollars, exclusive of Dr. Fowler's claims. I was at that time in want of money to effect a settlement of those liabilities, and to fulfil some prior engagements in reference to them. I don't know of any direct application made by me to the Executors for funds to arrange these liabilities; but I urged a speedy settlement of the estate with a view to that end. The Exec- 50

utors were informed of the embarrassed state of my circumstances. My object in making this arrangement, and executing this deed of release, was to get some money. I also wanted to get that judgment out of the hands of the Executors, which they had declined assigning upon the order of my wife, until some satisfactory arrangement had been made in regard to the Codicil, and some other matters in regard to the estate. Prior to that time, I had applied to the Executors, upon an order from my wife, for an assignment of the notes and other securities mentioned
10 in the receipts; they declined doing it until a release was procured, or some settlement made of her interest in the personal estate. My principal inducements in making this arrangement were to get some money, to get out of the power of the Executors, and the control they had over me by that Judgment; to get the estate of my wife out of the control of the Executors, so as not to be compelled to their measures, and to prevent their buying up claims against me. Dr. Fowler, during his life time, made no advances for my individual use whatever; his Judgment for $5000 and upwards, and mentioned in exhibit, (P. No. 2, therein specified,) grew out of the
20 dissolution of a special partnership between him and myself and others—Albert W. Canfield and Henry K. Ingraham. The Testator advanced about $3000, for the use of Bigelow, Canfield & Ingraham, of which he was a special partner; and no other advances were made, except as a special partner of this firm, with a cash capital of $20,000; that special partnership was formed, I think, the seventeenth day of April, 1839; no other advances were made by Dr. Fowler, for my use, either individually, or as a partner, except those I have mentioned. He endorsed for me, but made no advances on account of those indorsements; this special partnership was
30 entered into by Dr. Fowler at his suggestions and not at mine; nor did I encourage him in it, until after I received a letter from him, for fear, eventually, losses might accrue in our business, although prospects were then fair. (A paper writing purporting to be a letter from Samuel Fowler, dated March 17, 1839, and directed to Moses Bigelow, being now shown to the witness, which letter I have marked, exhibit, P. No. 10, for Compl't) I received this letter about the time it bears date from the Testator, whose signature it bears, and in consequence of this letter, I mentioned the matter of a special partnership to my then, partners; and the arrangement was consequent
40 upon that. The notes of Bigelow, Canfield & Ingraham, mentioned in exhibit, P. No. 2, were given for the amount of the cash advanced by Dr. Fowler, as a special partner, the $3000, or thereabouts, loaned by him to the special partnership, and his proportion of the apparent profits, and were liable to a deduction of his share of the losses arising under the special partnership firm. The firm of Bigelow, Canfield & Ingraham, or the special partnership of which he was a member, owed Dr. Fowler, $27,676, 85. This was for capital invested $20,000, about $3000 loaned to the Company, and the balance was for his share of the apparent profits of two years
50 business and interest on capital and advances; settling that amount I

gave my note for $5,535, 37, and the firms notes for $22,141 48, all of which are mentioned in the assignment, Exhibit, P. No. 2; these notes were subject, mine as well as the others, to a deduction of his share of the losses of the firm, which, I suppose, (his share of the losses, I mean.) would amount to about $5000. (A book containing a writing, purporting to be an agreement executed by Moses Bigelow, A. W. Canfield, Henry K. Ingraham, & Samuel Fowler, and 10 dated May first, 1841, and which book I have marked, Exhibit, P. No. 11, being now shown to the witness.) George R. Smith, the subscribing witness to the agreement in that book resides now out of this State, and I believe, in the State of New-York.; this agreement was executed by the parties whose names are to it, and is the agreement for the dissolution of the special partnership before spoken of, none of the notes or securities mentioned in the receipts, (Exhibits, P. No's. 3, 4, 5, & 6.) were collected at the time of Dr. Fowler's death, and only one since. Those notes were transferred to Dr. Fowler to prevent their being attached; he told me that at any time 20 I wanted them he would hand them to me.

And being cross examined, the witnesses says, I did not cause a caveat to be filed against the proving of the Codicil, which I have mentioned; there was none filed to my knowledge; I employed Counsel to see to it, as I understand it, Samuel Fowler applied to the Surrogate, to obtain probate of the Codicil, which the Surrogate refused, and he then applied for a special term of the Orphan's Court and served me with a rule to show cause why it should not be proved; I employed Counsel to see to it; to watch the progress of the case, and if the probate was attempted, to resist it. The matter was 30 never postponed at my request; it was postponed three or four times, but never at my request, as I recollect of. While this matter was pending before the Court, I proposed an arrangement with the Executors for the claim of my wife in the personal property; I did not state to them that I wished a settlement to save any controversy on the Codicil; I think I expressly stated to Mr Haines that I had no compromise to make in regard to the Codicil; I had a conversation with Mr. Haines early in March, 1844, with regard to the estate and my situation in regard to it, on board of a steamboat between New York and Jersey City; the Codicil was mentioned in this con- 40 versation; Mr. Haines said there was a paper found purporting to be a Codicil, but he supposed it would have no effect, as it was neither signed or dated, evidently an unfinished paper; in that conversation Mr. Haines said that Samuel said, that he had no wish for that Codicil to be proved, as he wished my wife to have her share of the personal estate.

This negotiation in reference to the seven hundred dollars was, I think, at Mr. Haines' office in Hamburgh; come to recollect, I think it was at Samuel's office at Franklin, near the residence of the family; I am inclined to think that Mr. Haines conferred with the heirs relative to the seven hundred dollars, that he said that he intended to do so; but I have no personal knowledge that he did confer with them; I recollect of seeing two or three of the heirs on the stoop; I don't recollect of Mr. Haines saying that he would go and confer 50

with the heirs; I recollect of Mr. Haines saying something about conferring with the heirs, but the particulars I do not recollect. The terms of the agreement were concluded in Sussex, either at Mr. Haines' office, or at Franklin; whatever terms were agreed upon there were not fully understood, for we had a new agreement at Trenton, and the matter fully talked over again. The costs in the suit and judgment againstme, were one of the difficulties at Trenton; but there were other difficulties; I do not distinctly remember what the other difficulties were the whole matter was talked over again.
10 I have no recollection that Samuel Fowler objected to an assignment to a trustee, of the Terry notes. I have no recollection of Samuel's objecting to the regarding those notes as part of the trust fund; or of his insisting that they were received by the Testator as a payment but I recollect of Mr. Haines stating that there might be a doubt, or a question, whether they might be considered as a part of the trust fund or assets of the estate. This conversation was at the Government House in Trenton; Martin Ryerson, Samuel Fowler, Mr. Haines, and I think some other persons, were present. At the negotiation in Sussex, I urged the payment of a sum of money and the
20 transfer of these notes and the assignment of the judgment. The notes and judgement I always considered and insisted, passed by the special bequest, in the Will in trust; the sum of money I proposed was two thousand dollars, and I think Mr. Haines replied they wouldn't give that. I do not remember who proposed the seven hundred dollars, but think it came from Mr. Haines, it was so talked of and understood, that that sum was in satisfaction of my wife's claim; I don't recollect whether I stated that my wife assented to it; I recollect of carrying up a receipt signed by myself and wife, which the Executors did not accept; I do not remember whether at
30 the time I presented that receipt that I said that my wife assented to the arrangement; I remember that the Executors wanted a receipt or release that was properly acknowledged so that it might be recorded; It was about the 11th or 12th of May, 1844, I suppose that this occurred; I have no means of ascertaining the day. This seven hundred dollars that was paid to me, was in pursuance of the arrangement at Trenton; the matter was talked over at Sussex, and completed at Trenton; there was no final agreement at Sussex; there was an agreement made at Sussex; not understood between us; the matter was not finally completed under
40 that agreement; the agreement was made at Sussex, and supposed to be understood by the parties; but on meeting at Trenton some of the detailswere found to be misunderstood; those details were finally arranged between us; and in pursuance of this arrangement the seven hundred dollars were paid: (a paper writing purporting to be a note made by Samuel Fowler, Jr., dated May 1, 1844, for $700, payable three months after date, to the order of Moses Bigelow, being now shown to the witness;) this is the note given for the seven hundred dollars, and upon which I received the seven hundred dollars, before spoken of. This note was given at the same time of the execution of the assignment, P. No. 2; and of the
50 orders and receipts, (Exhibits P. Nos. 7, 8, and 9.) Dr. Pennington

was present and took part in the transaction, he received the notes and the papers mentioned in the assignment; it was all done, I believe, at the same table.

The Deed of trust had been executed at the time of the negotiation, the last negociation I mean, which took place at Sussex; I don't think I mentioned to Samuel at that time that there had been a deed of trust executed, but I mentioned it to him at Trenton, I think it was made a subject of conversation in the room at the Government House, when Mr. Ryerson and Mr. Haines were present; I have no reccollection of mentioning it to him at any other time; during 10 the negotiation at Sussex I stated that these notes would not be of much avail in the hands of the Exectors, on account of the inability of the makers to pay, but that I could use them advantageously to myself, if they were transferred to me, or some one whom I should name; I stated to Mr. Haines in his office in Hamburgh (just before the negociation at Trenton,) about the Deed of trust; I don't think I mentioned the terms of the Deed any further than that it transferred all my wife's interest in the estate of Dr. Fowler; my impression is, that I spoke generally, saying that we had transferred all my wife's interest under the Will, without specifying whether special or residu- 20 ary; in a prior conversation Mr. Haines stated to me that Samuel had stated to him that he did not wish me to have any control over this property of my wife's, but that he was willing that she should have her share of the residue, and I then said that if that was his object, I wanted him to make a writing binding him to pay over her claim, or I would appoint Mr. Haines and Dr. L'Hommedieu her Trustees; and afterwards in the negotiation at Sussex, I told Mr. Haines that we had appointed Dr. Pennington Trustee; I don't remember that any body else was present at that conversation between Mr. Haines and myself; I did not understand that this con- 30 versation related only to the trust property mentioned in the Will; I don't know that I understood what was said by Mr. Haines about my life interest in my wife's property being sold under the judgment in favor of Doctor Fowler as mentioned in my principal examination, as being used as a threat to induce me to accept of the arrangement, but I supposed, and still do suppose that it was the intention of the Executors to get possession of my life interest in my wife's property and oblige her to go to them for the rents; I attribute no such motive to Mr. Haines. Twenty-eight acres, I think, it is in Warren County, were devised to my wife under the Will, this adjoined a 40 farm there, which she held in her own right. For some three or four or five years before the death of Dr. Fowler I had been in receipt of the rents of that farm and of the twenty-eight acres, it paid from two hundred and twenty dollars, to two hundred and sixty and seventy dollars a year, an average of about two hundred and fifty dollars a year; I did not account to Dr. Fowler for the rents; he told me I might receive the rents of the farm and I might collect them, that farm was the same which she inherited from her mother, and upon which Dr. Fowler had a life estate. In the conversation with Samuel about the estate he did not mention the amount of the personal estate to my recollection. The conversation about the Franklin 50

Furnace debt, mentioned in my principal examination took place at Hamburgh at Mr. Haines' office, or near there; I do not remember that any one was present. I transferred one half of the Terry notes to Messrs Brown, Jones and Gawty, in New York, in payment of a certain claim they held against Bigelow, Canfield and Ingraham, the amount of which I don't recollect, four thousand and upwards I think, it was for our direct liabilities and endorsements; Dr, Pennington delivered these notes to me upon an order from my wife under the trust; the judgment was cancelled, and I gave Dr. Pen-
10 nington my note for it under like order. In the conversation with Mr. Furman, he stated that Samuel offered him so much money for the claim, it might have been Lewis, another member of the firm, who participated in the conversation, who told me that Samuel offered so much money for their claim.

And being re-examined the witness says, there was about 100 acres in the farm and 80 acres of the woodland in the property my wife, inherited from her mother, and which was given up to me by the Testator as before mentioned. When I say that Dr. Pennington participated in the transaction referred to in the cross-examination, I
20 do not mean to say that he had anything to do with, or that he knew of the delivery of the release or of the giving of the seven hundred dollar note. I do not reccollect that any thing was said in regard to the release or the seven hundred dollar note in his presence; I do not recollect of the release or the note being handed to him or any opportunity being afforded him of reading the release or the note; I do not know that he read either, or that he was informed of the contents of either; I think he was present when they were exchanged, he was sent for and was there but a short time.

And being re-cross-examined; at the time these papers were ex-
30 changed the Deed of trust was not mentioned that I know of, I don't remember of its being shown. The execution of that Deed of trust was not studiously concealed from Samuel; at the time and before the execution of the Deed of release my wife knew that I was going to receive the seven hundred dollars and assented to it.

And being re-examined in chief: the consent of my wife to the execution of that Deed of release was against her inclination and strong wishes, and was obtained at my urgent solicitations,—she went for the whole or none.

Sworn and subscribed befere me at Newark, this 20th day of August
40 A. D. 1846. (Signed,) MOSES BIGELOW,
JOHN WITEHEAD, Master and Examiner in Chancery.

January 7, 1847.

Daniel Haines, a witness produced on the part of the Defendants, being duly sworn, according to law, doth depose and say, while the proof of the Codicil, to the Will of Dr. Fowler was pending in the Orphan's Court of Sussex, there was a negotiation between Mr. Bigelow, and some of the Executors of the Will, about the claim of Mrs. Bigelow, to a part of the personal property. I met Mr. Bigelow at Samuel Fowler's office, near the late residence of Dr. Fowler, and as a friend of the family, and mediator between the parties, I

undertook to negotiate between them. I did not act as Counsel, for I was not practising law then, nor as Executor, for I had not proved the Will, and did not intend to. Since then, however, I have proved the Will, in New York, but not in New Jersey. Mr. Bigelow proposed that the Executors should transfer to him certain notes, which, before then, had been transferred to Dr. Fowler, and which, I believe, are particularly mentioned in Exhibits P, No's. 7, 8, and 9, on the part of the Complainant, and also a certain sum, I believe, two thousand dollars, in full discharge of their claim to the personal property. I communicated with the heirs, and Executors, and the negotiation resulted in their agreeing to give him seven hundred dollars, and those notes. *Pending that negotiation, Mr. Bigelow mentioned that he did not wish these notes transferred to him directly, but to some person whom he should name.* There was a receipt subsequently presented by him to the Executors, to which they objected, for want of form and proper execution; and, I think, at that time, Mr. Bigelow mentioned that they had concluded to have the notes before mentioned assigned to Dr. Pennington, the Complainant, and *that is the only knowledge or information that I had of the appointment of a trustee, or execution of a trust deed, until I read it in a copy of the Complainant's Bill.* After this last interview in Sussex, Samuel Fowler and Mr. Bigelow met here, in Trenton, at my room in the Government House; it was about the time that the State Convention, for forming the Constitution, met. The parties met, as I supposed, to consummate the agreement made in Sussex. Some difference there arose as to the details of the agreement. One point of difference was about the costs of the judgment which Dr. Fowler had obtained against Mr. Bigelow, and some other costs which Samuel insisted Mr. Bigelow should pay, and which he refused to pay. Another point of difference, and the only other one that I remember, was, in reference to the recitals in the orders of Mrs. Bigelow, in which these notes were mentioned as collaterals to the claim of Dr. Fowler against Mr. Bigelow, and Bigelow, Canfield, & Co. Samuel insisted that they were not collaterals, but a part of the assetts of the estate. I think Mr. Martin Ryerson, who was present as the Counsel of Mr. Fowler, advised him, that if he got a sufficient release of the claim to the personal estate, the recitals would be of little consequence. At that time I heard nothing said by any one about the Complainant, Dr. Pennington, being the Trustee of Mrs. Bigelow, or of any trust deed. My understanding was that the payment of the seven hundred dollars, and the transfer of those notes was to be in full discharge of their claim to the personal estate.

And being cross examined, the Witness says: I think I first saw Mr. Bigelow, in reference to this claim, at my office at Hamburgh, two and a half miles distant from Samuel Fowler's residence. I do not recollect distinctly the date of this meeting; it was in April, or in the forepart of May, 1844; my impression is that it was in April; Dr. L'Hommedieu and Samuel Fowler, two of the Executors had then proved the will, and, I suppose, letters testamentary had been

delivered at that time. I don't know whether Mr. Bigelow knew at that time who had proved the Will, and taken upon themselves the burthen of the execution thereof, but I suppose he did ; I think I informed him that I did not intend to prove the will ; I am not certain that I told him so ; but I think I did ; I cannot state when. Mr. Bigelow claimed, in behalf of his wife, under the Will, one eighth part of the personal estate, after payment of debts and expenses, and specific legacies. He at one time remarked, in reference to those notes, he supposed they were a part of the trust fund, and as such 10 belonged to his wife, under the trust of personal property created in the Will. These are the claims about which the negotiation was had. This remark that was made in reference to those notes, was made to me when Mr. Fowler was not present ; I don't know that it was ever made to him ; I don't know that Mr. Fowler knew any thing about Mr. Bigelow's claiming these notes as a part of the trust fund until we met at Trenton ; I suppose I conducted the entire negotiation between the parties. Samuel, and Mr. Bigelow, were sometimes together in my presence, and conversed about it. When Mr. Bigelow mentioned that those notes belonged to the trust fund, 20 I think I said that that was at least questionable ; and but little was said on that subject until we met here at Trenton. I did not understand him as yielding that point, nor as very strenuously insisting upon it. I have no knowledge of his applying to have those notes delivered up under the trust fund specifically apart from the distribution of a part of the personal property. I think I communicated with Ogden, Robert and John, and Estelle, as heirs, relative to the negotiation. These heirs were all named as Executors in the Will except Estelle, but had not proved the will. I did not confer with the heirs during Mr. Bigelow's first visit, I think, unless with Sam- 30 uel. The conference with the heirs was during one of Mr. Bigelow's visits there ; but whether first or second, I do not remember. I was not present at any interview between the parties, after they met at my room at the Government House in Trenton ; the matter was not then finally consummated by reason, I suppose, of the differences already referred to. I don't know that the amount of the personal property, was mentioned. I did not hear in any conversation between Samuel Fowler and Mr. Bigelow, a suggestion that he, Bigelow, should sell out his life estate in the real estate of his wife, but I suggested the propriety of its being sold, with a view of benefitting 40 Mrs. Bigelow. I don't remember that I had any conference with Mrs. Bigelow, relative to the terms of the agreement during the continuance of the negotiation ; or that I have more than seen her at any time since the death of Dr. Fowler. Mr. Bigelow mentioned that his wife would be very much gratified to have a part of the minerals and some of the books ; and on my mentioning that to one of the boys, I think Samuel, he said she might have a part of the books, and Ogden, who was the mineralogist of the family, promised to put up some minerals, but I did not understand this as being any part of the negotiation before mentioned. I have not heard Samuel 60 Fowler insist that Mr. Bigelow should create a trust for the distrib-

utive share of his wife, but I have heard him say that he had no objection to her having her share, but that he did'nt want Mr. Bigelow to have it; and on my mentioning this to Mr. Bigelow, he said he was willing to appoint Trustees, and I think named Dr. L'Homedieu and myself. I don't know but that Mr. Bigelow complained to me that he could not ascertain the amount of the personal property of the deceased, and I can't say that he did. There was an Inventory of the personal property commenced, early I think, as March 1844, embracing the goods and chattels; but I don't know whether it was ever completed. I never knew the amount of this Inventory. 10 All I know now about the amount of the personal property is what I have learned from Samuel: that is, about forty thousand dollars, including bad debts. There is a claim by the present owners of the Franklin property of a deduction from a mortgage upon the property, of the price of 385 acres of land, at five dollars per acre. I have no farther knowledge of bad debts; I never have examined the papers, neither do I know the amount they have distributed; I have never heard of any other Codicil to the Will than the one before the Surrogate. I don't know as in this negotiation I represented either of the parties; I acted as a mediator, as I thought; I 20 suppose they depended upon me for advice as to the construction of the Will, but they did not apply to me as counsel, as they had counsel. It was about a fortnight after Dr. Fowler's death, that I first saw the codicil; it was in the hands of the family. I don't know that I heard under what circumstances that codicil was found; the Executors did not depend upon me for advice as to the validity of that codicil; I don't think I said any thing to them about the validity or effect of the codicil; I don't recollect of telling Asa Whitehead Esq., that I had told the heirs I thought they could not do any thing with the codicil; but I recollect of stating to him and Mr. Bigelow, 30 that the codicil had the appearance of an unfinished paper. The Executors were prosecuting their application for probate of the codicil up to the time of the negotiation and of the delivery of the deed of release, marked Exhibit H, No. 2, on the part of the defendants.

Sworn and subscribed before me, at Trenton, this 7th day of January, A. D. 1847. } DANIEL HAINES.

JOHN WHITEHEAD, Master, &c.

Martin Ryerson, a witness produced on the part of the defendants being duly sworn according to law, doth depose and say: soon after 40 the death of Dr. Fowler, Samuel Fowler employed me as Council in behalf of the Execcutors, brought to me the Will of his father and a Codicil for my opinion, I advised him to have the Will and codicil proved and I think I left them both with the Surrogate of Sussex for that purpose. There were objections on the part of the Surrogate to proving the codicil, and I informed Samuel Fowler that it could not be proved without issuing citations to all the parties in interest.— The ninth of April 1844 was first fixed for the hearing. Theodore Little, Esq., appeared before the Court on that day as Council for

Mr. Bigelow, and on his application the cause was adjourned by consent of parties, to the ninth day of May, 1844, on the ground that Mr. Bigelow, owing to his wife's sickness, could not attend at the day first appointed for the hearing: Mr. Bigelow was not present on the 9th day of April. On the ninth of May 1844, the hearing was again adjourned to the eleventh of June following, in order, as I understood it, to give the parties an opportunity to complete a negotiation then pending. The following week, and I think, on Tuesday of that week, the fourteenth day of May, 1844, Mr. Bige-
10 low, Samuel Fowler, Governor Haines and myself had an interview at Mr. Haines' room, in the Government House at Trenton, I was in Trenton at that time as a member of the Constitutional Convention, and Governor Haines was here for the purpose of organizing the Convention. During that interview the negotiation between Mr. Bigelow and Mr. Fowler was talked over, there was no difference betwen the parties, except about some costs of a suit or suits brought by Dr. Fowler against Mr. Bigelow, or the firm of which he was a partner, and also about some notes, Mr. Fowler insisted that Mr. Bigelow should pay the costs, which he refused, and the difference
20 about the costs would have broken off the negotiation, as I supposed, if I had not advised Mr. Fowler to pay them; Mr. Fowler also objected to those notes being described in certain orders as a part of the trust fund or collatterals, Mr. Fowler insisted that those notes were part the assets of the estate, and my understanding was that the delivery of them formed a part ot the considertion of the release to be executed by Mr. and Mrs. Bigelow, I told Mr Fowler that it would make no difference how the notes were described in the order, if he got a sufficient release, and I think the release or a form of it was there exhibited, to which I assented as being proper. I have ao recollection
30 during that interview of anything having been said on the subject of Mr. Biglow and his wife's having appointed a Trustee or executed a Deed of trust for his wife's interest in property dsvised to her by her father's Will, or of any other Deed of trust; no recollection of hearing anything on the subject; I was in a situation to hear, and did hear all the conversation that took place at that interview. If I had heard of the axecution of a Deed of trust, I should certainly, as Mr. Fowler's Council, have instituted an inquiry concerning it; I would have advised him not to complete the negotiation except the Trustees were a party to the release.

40 Being cross-examined, he saith: Mr. Fowler and Mr. Bigelow came together and went away together; the negociation was not completed on that day and was left to be completed at Newark, with the understanding that the papers were to be there exchanged; I am not certain, but my impressien is, that the forms of certain orders were shown at this meeting; I am certain they were spoken of, the tenor of them I do not recollect, except that the notes were to be delivered to some one, whom I do not recollect; I was consulted by Samuel as to whether under the Will, those notes were a part of the trust fund or not, of Mrs. Bigelow, and advised him that they were not
50 but had not seen the receipts given by Dr. Fowler to Mr. Bigelow

when he recieved the notes, or know the contents of those receipts; I suppose he acted on that advice, and in that view he objected to the recitals in the orders.

Being re-cxamined in chief: I informed Samuel that there were objections made to proving the Codicil, but have no recollection of informing him who made objections, he might have inferred from my language that a caveat had been filed.

MARTIN RYERSON.

Sworn and subscribed before me, at Tranton, this seventh day of January, A. D. 1847. 10

JOHN WHITEHEAD, Master and Examiner in Chancery.

March 12, 1847.

Grant Fitch, a witness produced on the part of the Complainant, being duly sworn according to law doth depose and say, I reside at Newton, in the county of Sussex, and am the Surrogate of that county; have been Surrogate since November, 1843. I know Elias L'Hommedieu and Samuel Fowler, the Executors of Samuel Fowler, dec'd., and I also knew the Testator himself, in his life time. I recollect the fact of the last Will and Testament of Dr. Fowler being brought to my office for probate. It was on the fourteenth of 20 March, 1844. It was produced by Dr. Elias L'Hommedieu and Samuel Fowler, two of the Executors named in the Will in person. The Will was proved on that day, by these two Executors and two of the subscribing witnesses, I think, the will was handed in on that day; it may possibly have been given to me the day before for safe keeping. There was another paper which these Executors produced at the same time which they offered as a Codicil to the Will. This paper was not admitted to probate with the Will; there appeared to me informalities about it; and I told them I could not admit it to probate, without direction from other sources. This state- 30 ment was made by me at the time, to these Executors; citations were issued the next day, to all the persons named in the Will; i. e. all the legatees named in the Will; citations to appear at a certain day, before the Orphan's Court, to shew cause why this paper should not be admitted to probate. These citations were issued under the directions of the Executors, as I believe, one of them having been signed by Martin Ryerson as their proctor; I think no caveat was filed to the probate of that paper; I had had no communications with any person except with these two Executsrs, at the time I refused to admit this paper to probate; the refusal was my own official act as 40 Surrogate; I had had no communication with Mr. or Mrs. Bigelow, or any person in their behalf; the Codicil was not ultimately admitted to probate, nor adjudicated upon, by the Orphan's Court; Mr. Samuel Fowler, himself, one of these two Executors came to me and withdrew it; it was withdrawn the seventeenth day of July, 1844; the citations were returnable the ninth of April, 1844; issued on the fifteenth of March, 1844; the hearing on those citations was postponed several times; to the ninth of May, the first; and to the eleventh of June; and then the Court adjourned for two days, to the

thirteenth of June, and then appointed a special term, on the seventeenth of July; all these adjournments were to a special term, but the adjournment to the ninth day of May, happened to fall on a day during a regular term; these appointments were all made for this business; I think they were; there might have been other business.

Mr. Fowler, in withdrawing this Codicil explained his reasons, that there had been an arrangement between him and Mr. Bigelow; that Mr. Bigelow had consented that the property given to Mrs. Bigelow, in the original Will should go into the hands of Trus-
10 tees; gave as a reason then for withdrawing the Codicil, that he had no objection to his sisters enjoying the property through the hands of Trustees, but he did not want it to go into Mr. Bigelows hands to spend it.

And being cross-examined by Mr. Haines—I have no recollection of being requested not to admit the Codicil to probate, before it was offered; I don't think I was; the Executors did not press the matter of having the Codicil proved strenuously, at first, when the Will was offered; I stated to them, that I felt it my duty to submit the paper to the Orphan's Court, and thereupon they yielded at once; I
20 told the Executors that citations must be issued, and they concluded to have it done immediately.

And being re-examined in chief—Dr. L'Hommedieu told me when they presented the Codicil and Will, that the evening before he died, he was at Dr. Fowler's, and Dr. Fowler told him that his Will was in a pocket book and directed him where to find it, and that he found it in the designated place, i. e. the pocket book; and he shewed it to Dr. Fowler, who told him that it was right; I did not understand him to say, that he shewed any of the papers that were in it to Dr. Fowler; Dr. L'Hommedieu said that the Will and
30 Codicil were in that pocket book; I think he did not state when he opened the pocket book, but that he kept possession of it from that time until the time he presented the Will and Codicil to me for probate; Dr. L'Hommedieu made no mention of Dr. Fowler's saying any thing to him about a Codicil being in that pocket book; I did not understand him as saying that Dr. Fowler had referred to a Codicil.

And being re-cross examined—Dr. L'Hommedieu called my attention to the fact that that Codicil was in the hand writing of Dr. Fowler. GRANT FITCH.

40 Sworn and subscribed before me at Newark, this 12th day of March, A. D. 1847.
JOHN WHITEHEAD, Master and Examiner in Chancery.

Alexander C. M. Pennington, a witness produced on the part of the Complainant, being duly sworn according to law, doth depose and say; the paper marked Exhibit, P. No 2, on the part of the Complainant, was executed on the day it bears date, the sixteenth day of May, 1844, at my office, and in my presence, and then and
50 there delivered by Samuel Fowler, one of the Executors of Samuel

Fowler, deceased, to Dr. Samuel H. Pennington, the Complainant, who was there present; the paper marked Exhibit, P. No. 1, on the part of the Complainant, had been previously executed and delivered between the parties thereto, and was in my possesssion as the legal adviser of the Trustee therein named; the Complainant was sent for on the occasion first referred to, on the sixteenth of May, 1844, to meet Samuel Fowler the Executor at my office, the Executor being first there, and the Complainant was sent for at his suggestion; the Complainant was there but a few moments, only long enough to execute and exchange the paper, in respect to which no explanations were made further than to state the nature of the papers 10 which he was to execute and receive; he executed them, stating that he should trust to me that they were all right and proper; I knew nothing of the delivery of the paper marked Exhibit, H. No. 2, on the part of the Defendants, until after the delivery of the paper marked Exhibit, P. No. 2, on the part of the Complainant, nor until after the Complainant and the Executor, Samuel Fowler, had separated and left my office, on the occasion when they met there, as referred to above; it was not alluded to or exhibited in the conversation which took place on that occasion, nor did the Complainant in that conversation, or otherwise, to my knowledge, derive any information 20 or knowledge of the existence of thai paper, until a short time before the filing of the bill of complaint in this cause; the fact of the delivery of that paper and the acceptance by Mr. Bigelow and his wife, of the sum of seven hundred dollars in payment and satisfaction of the legacies and distributive share mentioned in that paper came to my knowledge first, after the transaction of the business on the occasion referred to, and after the separation of the Complainant and the Executor; during the transaction of the business between the Complainant and Executor, Mr. Bigelow and the Executor drew together into a small apartment in my office, and there held some 30 conversation at a table, behind the door which was partly shut, and after the withdrawal of the Complainant and Executor, upon inquiry, by me, from Mr. Bigelow, he showed me a note signed by Samuel Fowler, the Executor for seven hundred dollars, or thereabouts according to the best of my recollection having some time to run; *Mr. Bigelow stated to me it was received by him as a compromise and in full of the share of his wife in the distribution of the personal estate;* [This part of the testimony, in italic, objected to.] There had been negotiations on foot between Mr. Bigelow on the behalf of his wife and the Executors in which, I had in some measure 40 participated in behalf of Mrs. Bigelow, in regard to her distributive share and as affected by the paper set up by the Executors as a Codicil to the Will; I was the legal adviser of the Trustee after the execution of the trust deed, and objected to Mr. Bigelow as such in regard to the transaction in reference to the note referred to, insisting that under the trust deed, the Complainant was entitled to Mrs. Bigelow's distributive share of the personal estate, and that any release or compromise by them, i. e. Mr. Bigelow and his wife, to which the Complainant was not a party was null.

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And being cross examined by Mr. Haines, I think, I prepared the draft of the paper marked H. No. 2, on the part of the Defendants, in conjunction or conference with Gov. Haines, at Hamburgh, sometime in the early part of May, 1844, I think, at any rate at some considerable time before the day it bears date; I do not know the time of its execution, the first time I saw it after its execution was when it was exhibited as an exhibit in this cause, or at all events until after I understood it had been delivered; it was prepared in pursuance and during the progress of the negotiation between Mr. Bigelow and the Executors and before the delivery of the trust deed; 10 I understood at the time of its preparation that the Executors and Mr. Bigelow had come to terms, measurably, but that they were differing as to some minor details; I did not nor do I now understand that those details were or ever have been settled to the satisfaction of Mr. Bigelow; the first time I ever understood that a release had been executed was in the conversation to which I have referred relative to the note; there was not a word said at the time of the execution and delivery of the trust deed, of the arrangement with the Executors, it is possible there was, but I think not; what had been said in regard to the nature and duties of the trust was in a previous con- 20 versation when Dr. Pennington had agreed to receive the trust; the nature of the trust and the duties it would impose and the property embraced in it were stated to the Trustee prior to the delivery of the deed; there was not a word said at the time of the delivery of the assignment, of the arrangement with the Executors; I had understood a few days before the delivery of the assignment that Mr Bigelow and the Executors were unable to come to terms in consequence of difficulties as to minor details, and was under that impression when the assignment was delivered, at least I had no knowledge to the contrary; that note of seven hundred dollars, was not delivered by Mr. 30 Fowler to Mr. Bigelow, in the presence of Dr. Pennington, or in my presence to my knowledge; I am more confident of this fact from the circumstance that I came first, to the knowledge of it by my inquiry from Mr. Bigelow what he was doing behind the door with the Executor, and from the fact that Dr. Pennington was in but a short time, only long enough to execute the papers; I never informed Mr. Fowler that this agreement with Mr. Bigelow was null, and that therefore he need not pay the note; I never saw Mr. Fowler afterwards or had any communication with him until after the filing of the Bill in this cause; the Bill was filed at the instance, in part 40 of Mr. and Mrs. Bigelow, and in part at my own instance as Counsel of the Trustee; the Trustee has not taken a particularly active part in the prosecution of this suit; the Bill was filed at his direction, and he has given so much attention to it as was necessary and no more; Mr. Bigelow has been active in aiding the prosecution and taken an interest in it; he has given me no direction or instruction as to the prosecution of it; I have advised with him repeatedly relative to it.

And being re-examined in chief; the draft of that release was prepared before the creation of a trust was decided upon, and that when

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the assignment was delivered I took it for granted, and understood that the existence of the trust was known to the Executors.

And being re-cross examined, nothing was said about the trust or any thing done implying the existence of any, other than the nature of the transaction itself.

A. C. M. PENNINGTON.

Sworn and subscribed before me at Newark, this 12th day of March, A. D. 1847.

JOHN WHITEHEAD, Master and Examiner in Chancery. 10

In Chancery of New Jersey.

Samuel H. Pennington, Trustee, &c., Complainant. and Samuel Fowler and Elias L'Hommedieu, Executors, Defendants. } *On Bill for Account &c.*

This cause coming on to be heard and argued in the presence of 20 Alexander C. M. Pennington and Asa Whitehead of council with the complainant, and of Daniel Haines and Peter D. Vroom of council with the defendants in the term of September in the year one thousand eight hundred and forty-eight, before his Honor Oliver S. Halsted Esq., Chancellor; whereupon and upon reading the pleadings and proofs therein, and hearing the arguments of counsel thereon and having taken time to advise thereon until this day, and now having given due examination and deliberation thereto and thereon, his Honor the Chancellor doth by virtue of the power and authority of this Court on this twenty-sixth day of December, in the year one 30 thousand eight hundred and forty eight, declare, order, direct, adjudge and decree, and it is hereby declared, ordered, directed adjudged and decreed that the said complainant as the Trustee of Julia Ann Bigelow one of the daughters and residuary legatees of Samuel Fowler, deceased, and under the Deed of trust in the said bill of complaint, mentioned and made an Exhibit in this cause, is entitled to recover, have and receive against, of and from the said defendants, Executors of the last Will and Testament of the said Samuel Fowler deceased, and according to, and under the said last Will and Testament of the said Samuel Fowler deceased, the one equal eighth 4 part of all the rest and residue of the personal estate of the said Testator after the payment of the debts and funeral and testamentary expenses and specific legacies of the said Testator in the due course of administration, and subject to the charge of the annuities bequeathed in and by the said last Will and Testament, first deducting from the said one equal eighth part of the same, the sum of seven hundred dollars heretofore paid to the said Moses Bigelow, and mentioned in the Deed of release hereinafter more particularly described, the counsel for the complainant having consented at the hearing, to such deductions; that the Deed of release made and executed by Moses 50

Bigelow and Julia Ann Bigelow his wife, to the said Samuel Fowler and Elias L'Hommedieu the said Executors the defendants herein, bearing date on the thirteenth day of May, in the year one thousand eight hundred and forty-four, mentioned and set forth in the answer in this cause, and marked an Exhibit herein, is and was from the time of the making execution, and delivery of the same, fraudulent, null and void and of no force or effect whatsoever either at law or in equity as against either the complinant herein, or the said Moses Bigelow or Julia Ann Bigelow his wife, and that the said Samuel 10 Fowler and Elias L'Hommedieu on the service upon them of a copy of this decree do deliver up the said Deed of release to the complainant to be cancelled.

And it is further declared, ordered, directed, adjudged and decreed that the said defendants do account in this Court for the goods, chattles, rights, credits, moneys, effects and other personal estate of the said Testator, and for the produce and income thereof, which have been received by them, or either of them, or by any other person or persons to their use or to the use of either of them respectively, or for which they or either of them is or are or ought to be chargeable re-20 spectively, and that it be referred to William M. Scudder, Esq., one of the Masters of this Honorable Court, to take an account of the same, and also of the debts and funeral and testamentary expenses paid or chargeable thereon in due course of administration, and of the specific bequests and legacies and annuties of the said testator, in the said last will and testament bequeathed, which are to be satisfied out of the testamentary part of his estate, that the debts and funeral and testamentary expenses and legacies shall be paid and satisfied out of the said personal estates in due course of administration, that the several debts demands, claims and securities assigned to the said testator by the 30 firm of Bigelow, Canfield & Ingraham, or any or any one of the said firm, on account of the indebtedness of the said firm, to the said Testator and specified in Exhibits P, Nos. 45 and 46, on the part of the complainant in this cause, and by the said Moses Bigelow on account of his individual indebtedness to the said testator and specified in Exhibit P, No. 3, on the part of the complainant in this cause, and for which the said testator gave his receipts, marked as such exhibits as aforesaid, were assigned and transferred, the former specified in said Exhibits P, No. 45 and 6, as collatteral security for the indebtedness of the said firm, and the latter specified in said exhibit P. No. 3, a collatteral 40 security for the individual indebtedness of the said Moses Bigelow to the said testator, which said indebtedness respectively were bequeathed by the said Testator to the saidexecutors in trust to, and for the exclusive use and benefit of the said Julia Ann Bigelow, to be paid on her own order and receipt, and were by the said Julia Ann Bigelow by the consent of her said husband Moses Bigelow, assigned and ordered to be delivered to the complainant in trust, under and according to the said Deed of trust, and that the same were and are such collaterals as aforesaid, and were bequeathed by operation of law under and by the said last Will and Testament to the said Executors as such col-50 laterals together with the said principal indebtednesses respectively,

in trust to and for the exclusive use and benefit of the said Julia Ann Bigelow, to be paid on her own order and receipt, and were by the said Julia ann Bigelow by the consent of her said husband and by the operation of the assignment of the principal indebtednesses assigned and ordered to be delivered to the complainant, in trust, under and according to the said Deed of trust, and that the said collaterals having been assigned and transferred to the complainant under the said order of the said Julia Ann Bigelow, the complainant, is entitled to have and hold the same in trust under and according to the said Deed of trust, and that the same shall be, and are so deemed, 10 held and taken, and that in taking an account of the specific bequests and legacies the same shall be regarded and taken by the said Master, as collateral and belonging to and following the principal indebtednesses so specifically bequeathed to the said Julia Ann Bigelow as aforesaid; that the said Master do cause an advertisement to be published in the Sussex Register a newspaper published in the said County of Sussex, and the Newark Daily Advertiser, a paper published in the City of Newark, for the creditors of the said Testator to come in before him and produce and prove their debts, and he is to fix a peremptory day for that purpose, not more than three months 20 from the publication of such advertisements, and in default of their coming in to produce and prove their debts by the time so to be appointed they are all to be excluded from the benefit of the decree.

And it is further ordered, adjudged and decreed that it be also referred to the said Master to take an account of the goods, chattles, moneys, effects, rights, credits, and personal estate of the said Julia Ann Bigelow and of the rents issues and proffits of the real estate of the said Julia Ann Bigelow, and of the interests, dividends, income and other produce of all and singular the same, which the said Testator received, had took and enjoyed during his life, acting as the 30 Guardian of the said Julia Ann Bigelow and charged to him, and of his payments and disbursments out of the same, or on account of the said Julia Ann Bigelow, that the parties shall be at liberty to take further testimony before the said Master, touching, concerning or bearing upon the questions involved in this cause, in regard to the account of the said Guardianship, so to be taken by the said Master as they shall see fit, and that the said Master shall report his opinion thereon, and for the better taking of the said account and the discovery of the matters aforesaid, the parties are to produce before the said Master and leave with him upon oath, all deeds, papers, books and 40 writings in their custody or power relating thereto, and are to be examined upon interrogatories or otherwise, as the said Master shall direct, and that the said Master shall be at liberty to make separate reports of the said matters at the request of either party, and from time to time as he shall think expedient, and that the consideration of the costs and of all further equity and directions be reserved until the said Master shall have made his report, and that any of the said parties shall be at liberty to apply to the Court as occasion shall require.

O. S. HALSTED, C.

A True Copy, Samuel R. Gummere, Clerk. 50

Court of Errors and Appeals in the last resort in all causes of Law

Between Samuel Fowler and Elias L'Hommedieu, Executors, &c. Appellants, AND Samuel H. Pennington, Trustee &c. Appellee.	*On Bill and Petition of Appeal.*

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

The Humble Petition of Samuel Fowler and Elias L'Homme dieu, Executors of the last Will and Testament of Samuel Fowler, deceased, the Appellants in the above stated cause respectfully shows, that your petitioners find themselves aggrieved by an interlocutory decree made in the Court of Chancery, by the Honorable Oliver S. Halsted, Chancellor of the State of New Jersey, bearing date the twenty-sixth day of December, in the year of our Lord eighteen hundred and forty-eight, in a suit whorein the said Samuel H. Pennington, Trustee of Julia Ann Bigelow, was complainant; and the said
20 Samuel Fowler and Elias L'Hommedieu, Executors of the last Will and Testament of Samuel Fowler deceased, were defendants; in these respects, to wit:

First. That the said decree adjudges, that the said complainant as Trustee of Julia Ann Bigelow, under the deed of trust, in his said Bill of Complaint mentioned, and made an Exhibit in the said cause, is entitled to recover, have, and receive, against of and from the defendants, Executors of the last Will and Testament of Samuel Fowler deceased, and according to and under the last Will and Testament of the said Samuel Fowler deceased, the one equal eighth part of all
30 the rest and residue of the personal estate of the said Testator, after paying the debts and funeral and testamentary expenses, and specific legacies of the said Testator in the due course of administration, and subject to the charge of the annuities bequeathed in and by the said last Will and Testament, first deducting from the said one equal eighth part of the same, the sum of seven hundred dollars theretofore paid to Moses Bigelow, the husband of the said Julia Ann Bigelow.

Secondly. That the said decree adjudges that a certain deed of release made and executed by the said Moses Bigelow and Julia Ann Bigelow his wife, to the said Samuel Fowler and Elias L'Homme-
40 medieu the said Executors bearing date the thirteenth day of May in the year of our Lord eighteen hundred and forty-four, and set forth in the answer in the said cause, and marked an Exhibit therein, is and was from the time of the making, execution and delivery of the same fraudulent null and void, and of no force and effect whatever, in law or equity, as against either the said complainant, or the said Moses Bigelow, or Julia his wife; and that the said defendants, on the service of a copy of the said decree, shall deliver up the said deed of release to be cancelled.

Thirdly. That the said decree adjudges that the said defendants
50 shall account in the said Court of Chancery, for the goods and chat-

tles, rights and credits, monies, effects and other personal estate of the said Testator, and for the produce and income thereof which have been received by them or either of them, or by any other person or persons, to their use or to the use of either of them respectively, or for what they or either of them is, or are, or ought to be accountable respectively; and that it be referred to one of the Masters of the said Court, to take an account of the same; and also of the debts expenses, legacies and specific bequests aforesaid.

Fourthly. That the said decree adjudges that the several debts, demands, claims and securities, assigned to the said Testator by the firm of Bigelow, Canfield & Ingraham, or any one of the said firm, on account of the indebtedness of the said firm to the aaid Testator, and specifiied in Exhibit P, No's. 4, 5, and 6, on the part of the said complainant, and by the said Moses Bigelow, on account of his indebtedness to the said Tertator, and specified in Exhibit P, No. 3, on the part of the complainant in the said cause, were assigned and transferred, the former specified in Exhibit P, No's. 4, 5, and 6, as collateral security for the indebtedness of the said firm, and the latter specified in the said Exhibit P, No. 3, as collateral security, for the individual indebtedness of the said Moses Bigelow, to the said Testator, and as such collaterals were bequeathed by operation of law, uuder and by the said last Will and Testament, to the said Executors, together with the said principal indebtedness respectively, to and for the exclusive use and benefit of the said Julia Ann Bigelow, to be paid on her order and receipt; and that the said complainant is entitled to have and hold the same in trust, and according to the said deed of trust, and that the same should be so deemed, and held and taken, and that in taking an account of the specific bequests and legacies, the same shall be regarded and taken by the Master, as following the principal indebtedness, so specifically bequeathed to the said Julia Ann Bigelow.

Fifthly. That the said decree adjudges that it be referred to a Master to take an account of the goods, chattels, monies, and effects, rights, credits, and personal estate, of the said Julia Ann Bigelow, and of the rents, issues and profits, of the real estate of the said Julia Ann Bigelow, and of the interest, dividends, income, and other produce of the same, which the said Testator had took and received in his life time, acting as the Guardian of the said Julia Ann Bigelow, and charged to him; and of his payments and disbursements out of the same on her account; and that the said parties produce before the said Master, and leave with him upon oath all deeds, papers, books and writings, in their custody or power, relating thereto, and are to be examined upon interrogatories, or otherwise, as the said Master shall direct.

And your petitioners humbly appeal from the said several parts of the said decree of the said Chancellor, by which it is decreed as aforesaid, upon the ground that the same is erroneous, for that the said complainant as Trustee of the said Julia Ann Bigelow, is not entitled to recover, have and receive against of and from the said defendants, Executors of the said last Will and Testament of the said

Samuel Fowler deceased, and under the said last Will and Testament or otherwise, the one equal eighth part of the rest and residue of the said personal estate of the said Testator, after paying the debts and funeral and testamentary expenses and specific legacies, of the said Testator, in the due course of administration, and subject to the charge of the annuities bequeathed by the said last Will and Testament, first deducting from the said equal eighth part, the sum of seven hundred dollars, paid to the said Moses Bigelow, the husband of the said Julia Ann Bigelow.

10 And for that the said deed of release made and executed by the said Moses Bigelow and Julia Ann his wife, to the said defendants, is not and was not from the time of the execution therof, fraudulent, null and void, and of no force and effect whatever, either in law or equity, as against either the said complainant or the said Moses Bigelow, or Julia Ann his wife, and ought not to be deliverd up to be cancelled, but that the same was made upon a valuable and sufficient consideration, and in good faith on the part of the said defendants, and is a lawful and valid deed of release and ought to have full force and effect both at law and in equity, against the said com-
20 plainant, and the said Moses Bigelow and Julia Ann his wife.

And for that the said defendants ought not to account to the said complainant, or to the said Moses Bigelow and Julia Ann his wife, for the goods, chattels and effects, and other personal estate of the said Testator, and that it ought not to be referred to a Master to take an account of the same.

And for that the said several debts, demands, claims and securities, assigned to the said Testator by the firm of Bigelow, Canfield & Ingraham, or any one of the said firm, on account of the indebtedness of the said firm, to the said Testator; and by the said Moses
30 Bigelow on account of his indebtedness to the said Testator, were not assigned and transferred as collateral securities to the said indebtedness respectively, and were not as such collaterals bequeathed by operation of law, or otherwise, under the said last Will and Testament to the said Executors, together with the said principal indebtedness respectively, in trust to and for the exclusive use and benefit of the said Julia Ann Bigelow to be paid on her order and receipt; and that the said complainant is not entitled to have and hold the same in trust, and according to the said deed of trust or otherwise; and that the same should not be so held, deemed, and taken, nor regarded
40 as following the principal indebtedness specifically bequeathed to the said Julia Ann Bigelow.

And for that the said defendants are not bound and ought not to be required to account for the goods, chattels and effects, rights, credits and personal estate of the said Julia Ann Bigelow, and for the rents, issues and profits, of the real estate of the said Julia Ann Bigelow, alledged to have been received by the said Testator, in his life time, acting as her Guardian, and that it ought not to be referred to a Master, to take an account of the same.

And for that the said parties ought not to be required to produce
50 before the said Master, and leave with him upon oath or otherwise,