

**New Jersey Court of Errors and Appeals.**

Between MARY E. SCHLICHER AND WIL- LIAM SCHLICHER HER HUS- BAND, Complainants, <div style="text-align: right; margin-right: 20px;">Appellants,</div> and CHARLES H. KEELER, ET AL., Defendants,                      Appellees.	}	ON APPEAL FROM CHANCERY.	10
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BRIEF OF CHARLES C. HOMMANN FOR DEFEN-  
DANTS GEORGE W. KEELER AND WIFE.

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The suit in Chancery was brought for the partition of certain lands in the township of Ewing, in the County of Mercer, of which Charles Keeler died seized intestate on the 21st day of October, 1900. The appeal is made from that part of the final decree wherein it is adjudged that certain lands and premises on Willow street in the City of Trenton conveyed by said Charles Keeler to his daughter, complainant, in July, 1899, was an advancement, under the statute of descent, and that said advancement should be charged against her undivided share in said lands of which her father died seized. (Final decree page 97.)

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The bill charged that the seven children of said intestate were equally entitled to the lands in question.

The defendants George W. Keeler and wife answered, setting up the fact of the conveyance of the Willow street property to the complainant, Mary E. Schlicher, then Mary E. Keeler, charging in general terms that it was intended by the grantor to be her share of all the lands which he had, or of which he might die seized or possessed, and denying her

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right to any interest in the lands in question. (Answer, page 9 et seq.)

Issue was joined on the answer and an order made referring the cause to Vice Chancellor Bergen to hear the same, &c. (Page 17.)

The hearing was had October 24, 1905. Witnesses examined. (Pages 21 to 66 inclusive.)

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The Vice Chancellor filed his conclusions October 31, 1905, finding that the conveyance to said complainant was an advancement, and ordering a reference to a Master to ascertain what amount should be charged to the complainant by reason thereof. (Pages 66 to 69.) And an order made as advised January 9, 1906. (Pages 71 and 72.)

20 The Master reported, September 16, 1906, that the value of the Willow street lot was \$8000 and that such sum should be charged against her share. (Page 78, line 20.)

The answer was amended to meet the case made out by the proofs and filed February 7, 1907. (Pages 90 to 94.)

Final decree made February 14, 1907. (Page 95, &c.)

The Vice Chancellor was right in his conclusions, and his opinion is the best brief we have.

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The complainant, Mary E. Schlicher, at the time the deed was made to her, was a single woman about 35 years of age, who had always lived at her father's house. She had no expectation of being preferred in his bounty over her married sister, or any of her brothers. She never talked with him concerning the disposition of his estate, and had no expectation other than that she would share equally with her brothers and sisters. (Her testimony, page 49 et seq.) Her father had in mind to bestow upon her, as her

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share of the estate, the property best suited to her needs,

and that which would be the most profitable and least care to her. (George W. Keeler's testimony, page 33.)

At the time her father made the deed to complainant he contemplated making a deed for the lands embraced in the bill in this cause to his son Henry, which he was about two years in preparing. (G. W. Keeler's testimony, page 35.) And finally, just before his death, made and executed a deed for the premises last mentioned to his son Henry. The father talked over the matter several times with Mr. Hamill, had a survey made by Mr. Weir, and it was some time before the deed was finally executed. (Mr. Hamill's testimony, page 63.) This conveyance was set aside in this court July 5, 1905, 10

Schlicher v. Keeler, 1 Robbins 635,

for the reason that it was not properly delivered.

It shows however, beyond question, that it was the father's intention to limit his daughter's, the complainant's, share to the Willow street property. 20

The presumption is that the conveyance to the complainant was an advancement under our statute (Section 1 of Descent,) no valuable consideration having been shown to have been given or expressed.

Gordon v. Barkeley, 2 Hal. Chan. 94.

Speer v. Speer, 1 McCarter 240.

Jakaleta v. Danielson, 13 Atl. Rep. 850.

Hattersley v. Bissett, 6 Dick. 597 (a case in this court.) 30

It is objected that the answer filed by these defendants expressly sets forth and declares, that at the time of the making of the said deed of conveyance by the said Charles Keeler, deceased, it was understood and agreed between the said Mary Schlicher and her said father, that the said conveyance to her was in full payment and discharge of certain services which she claimed to have rendered him dur- 40

ing his lifetime, and therefore by reason of the premises last aforesaid said decree is erroneous insomuch that it disregards the allegations on the part of both complainant and defendant.

It is respectfully insisted that there is a substantial correspondence between the allegations in said answer and proofs. The proofs show a conveyance of the land described in the answer at the time stated. The proofs fail to show that there was any agreement between her father and the complainant as a consideration for the deed, but that 10 the ~~lot~~ <sup>share</sup> was a good and not valuable one. The proofs showed that the conveyance was made to the complainant as an advancement and that it was to be all of the real estate of her father which the complainant was to receive, and the presumption is, in the absence of any proof to the contrary, that she accepted it in that manner.

It is respectfully insisted that the substance only of the issue need be proved, nor is it necessary that the same degree of accuracy should be observed in an answer as is required in a bill. It is true there must be a correspondence 20 between the *allegata* and *probata*. There is a substantial correspondence in this case.

King v. King, 1 Stockton, page 44 and page 53.

The answer was amended to conform to the proofs. This was correct for the reasons given by the Vice Chancellor.

Arnett v. Welsh, 1 Dick, 543.

The state of the case failing to show the value of each distributive share, and the proof before the master as to 30 the value of the Willow Street lots, it is understood and agreed that the proof before the master showed that the Willow Street lots were worth \$8,000, at the time that the deed was made and at the time of Charles Keeler's death; and that the value of each distributive share is something less than \$3,000.

It is respectfully submitted that said decree in the matters complained of should be affirmed with costs.

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CHARLES C. HOMMANN,  
of Counsel.

# New Jersey Court of Errors and Appeals.

Between,

MARY E. SCHLICHER AND HER  
HUSBAND,

(Complainants), *Appellants.*

and

CHARLES H. KEELER, et al.,  
(Defendants), *Respondents.*

On Appeal  
from Chancery.

## BRIEF FOR APPELLANTS.

The bill of complaint in this cause filed by the present appellants was in the usual form of a bill for partition, the premises of which partition was sought consisting of a farm in the township of Ewing, Mercer County, of which the bill alleges that Charles Keeler died seized intestate October 21, 1900, leaving surviving him seven children of whom the complainant Mary E. Schlicher is one (p. 3, l. 25).

The bill alleges that by the death of Charles Keeler intestate, the said premises descended to his said children who became seized thereof and each entitled to one equal seventh part of said premises (p. 5, l. 4).

George W. Keeler, one of the children of Charles Keeler deceased, and his wife answered setting up that the said Charles Keeler in his lifetime made a conveyance to the said Mary Schlicher, his daughter, of certain lands on Willow street in Trenton, and that at the time of making said conveyance it was understood and agreed between the said Mary Schlicher and her said father that said conveyance to her was in full payment and discharge of certain services which she claimed to have rendered to him during his lifetime, and in full discharge from any claim or claims which she might make against his estate after his death, and

as her share of any and all real estate of which he might be seized and possessed and of which she might be entitled to as one of his heirs at law, and that her claim to any part or share in the lands in said bill mentioned is fraudulent inequitable and unjust (p. 12, l. 7-20).

The only other answer was that of Charles Keeler (another son and co-tenant) and his wife, which admits (p. 5, l. 5) the death of the common ancestor intestate and seized of the premises described in the bill and that by his death said lands descended to his seven children who became seized thereof as tenants in common in fee. This answer sets up no defence to the partition, but joins in the prayer of the bill for a partition or sale.

Decrees pro confesso were taken against all of the defendants except those who had answered as above stated, and the case having been referred to Vice-Chancellor Bergen was brought to hearing before him on the answer of George Keeler.

The issue thus presented was not whether there had been an advancement to Mrs. Schlicher but whether she had barred herself from participation as an heir by an express agreement made at the time of the delivery of the deed. It appears by the conclusions of the Vice-Chancellor (p. 67) that upon the argument the defendants shifted their position by claiming that the conveyance to Mrs. Schlicher was an advancement within the meaning of the second proviso of the first section of the act directing the descent of real estates.

*1 General Statutes, 1193.*

The Vice Chancellor found that the conveyance was an advancement and that Mrs. Schlicher had thereby received ten thousand dollars, whereas the entire value of the real estate of the grantor including the portion conveyed to complainant was twenty-five thousand dollars, so that she had received a substantial excess over the one seventh share to which ordinarily she would have been entitled. An order was made January, 1906 (p. 71) following the decision of the Vice

Chancellor whereby it was referred to a Special Master to ascertain and report the interests of the parties and whether the real estate was so situate that a partition thereof could be made without great prejudice &c. and that he also report what amount should be charged against the share of the complainant on account of the advancement to her of the Willow street property, and that he also take an account of the rents, issues and profits derived from the lands sought to be partitioned by the tenants in common who had been in possession &c.

The Master having made his report and exceptions having been filed by George W. Keeler, an order was made February 5, 1907 (p. 89) disposing of the exceptions and confirming the report, and thereupon on the sixth of February the final decree was made (p. 95) from which the present appeal was taken March 5, 1907, (p. 98) by the complainants.

On the seventh of February, the day after the decree was made, an order was made permitting George W. Keeler and wife to file an amendment to their answer and on the same date an amended answer was filed (p. 90 &c.) by George W. Keeler and wife setting up that the conveyance to the complainant Mary E. Schlicher "was intended to be and was in fact an advancement to her of a portion of the real estate of the said Charles Keeler; that the said lands and real estate so conveyed and intended to be advanced were of the value of ten thousand dollars or thereabouts and that the value thereof exceeded the share, portion or interest of the complainant, Mary E. Schlicher, in the lands and premises of which the said Charles Keeler died seized, and that by reason thereof the said complainant Mary E. Schlicher is not entitled to any share, portion or interest in the lands and premises described in the said bill of complaint" (p. 93, l. 25 &c.).

The final decree adjudges that the complainant Mary E. Schlicher is seized in fee of and entitled to one equal undivided seventh part of the premises; that the conveyance of the Willow street property was intended to be and was in fact an advancement to her

and that the sum of eight thousand dollars which the Master reported as the value thereof, be and was thereby constituted a charge against her undivided one-seventh part in the real estate described in the bill (p. 97).

The appeal is from the portions of the decree declaring the conveyance to have been an advancement and directing the charge of eight thousand dollars against her undivided one-seventh part of the premises sought to be partitioned (p. 98).

## I.

### THE DECREE IS ERRONEOUS IN THAT IT ESTABLISHES A DISPUTED LEGAL TITLE.

The answer originally filed by George Keeler who alone raised any question as to the complainant's title, presented an equitable defence, namely, that the complainant in consideration of the conveyance to her of the Willow street property, had agreed that the same should be in satisfaction of her claim for services rendered and of her share in her father's real estate.

This was a matter of equitable cognizance which could not be availed of elsewhere, although it ought to have been set up by crossbill. The amended answer, however, presents a defence not of an equitable but of a strictly legal character.

The Statute relied upon by the answering defendant provides that if any such ancestor shall in his lifetime have given or advanced any part of his or her lands &c. to any of his or her issue, such issue *shall not be entitled to any part or share of said ancestor's real state descending* under or by virtue of this act, *unless* the real estate so given or advanced shall not be equal in value to the respective shares of the other issue in the same degree of affinity, and then no more than will be sufficient to make such share equal in value to the respective shares of the other issue in the same degree of consanguinity.

The answer alleges that the lands conveyed considerably exceed the share of the complainant and so the Vice Chancellor found.

Such being the case the Statute declares that the person so advanced shall not be entitled to any part or share. The statute affords a complete defence at law under such circumstances.

The Supreme Court so held just one hundred years ago in the case of *Den, McGinnis vs. McPeake, Pennington* 211, (\*290), where it was held in an action of ejectment brought by one of several heirs to recover her share of the lands of which her father died intestate, that evidence should have been admitted in defence to show that the plaintiff had been advanced by a conveyance in tail of land from the ancestor which was worth more than her share.

The decision seems never to have been questioned and merely carries out the plain words of the statute.

It has frequently been held in the Court of Chancery and in this Court that the Court of Chancery upon a bill for partition of lands, if the legal title is brought into dispute, will not proceed to settle the title but will either dismiss the bill or retain it in order to allow the legal title to be settled in an action at law. This was decided by this court in *Slockbower v. Kanouse*, 5 *Dickinson*, 481, citing previous cases.

It may be that where there has been an advancement less in value than the share of the child advanced, a court of equity is the only tribunal which can adjust the matter, and that this may be done in equity by means of a charge as was attempted in the present case. But this can only be proper where the advancement does not equal the share of the person advanced. Where the conveyance to be an advancement indisputably exceeds in value the share of the grantee it constitutes (in case it shall be determined to have been an advancement) a positive legal bar by the express language of the statute to any share by such child, and the question whether it was an advancement or not is one to be tried in an action of ejectment.

It follows therefore that in this case the Court of

Chancery ought not to have proceeded to determine the question of advancement upon which the legal title depended, but should have stayed the suit for the purpose of a trial at law.

## II.

IF THE COURT MIGHT PROPERLY DETERMINE THE QUESTION OF ADVANCEMENT, ANY CHARGE AGAINST THE SHARE WAS ERRONEOUS.

The decree adjudges that Mrs. Schlicher is seized in fee of one-seventh share. This disposes of the entire matter to be determined, it being alleged by the amended answer (p. 93, l. 30), and having been previously determined by the Court (p. 69 top), that the value of the land conveyed exceeded the share of the grantee. There was no dispute upon this point. Consequently, the only question was whether it was an advancement or not, the statute declaring that if it was an advancement she was not seized of any share, while if it was not an advancement she was seized of her equal share.

The adjudication that Mrs. Schlicher was seized of her share has not been appealed from by anybody. It is binding upon all the parties, and we say that under the evidence it was right, *provided* only that it was within the cognizance of the Court of Chancery to adjudicate that question.

In view of the fact on all hands admitted that the land conveyed exceeded the share of the grantee, it was not a case for a charge in any aspect of the case.

## III.

IF ANY CHARGE WAS PROPER THE CHARGE OF EIGHT THOUSAND DOLLARS WAS ERRONEOUS.

Eight thousand dollars is determined by the decree (p. 97, l. 5 &c.) to have been the value of the property conveyed by Charles Keeler to his daughter Mrs. Schlicher in July, 1899, and the charge is of the entire value against the share of Mrs. Schlicher in the land

to be partitioned. It should have been against her share in the entire real estate of Charles Keeler as of the time of the conveyance and including the part conveyed.

Moreover the charge is against the share as existing at the time of the partition. It should have regard to that value of the partitioned land at the time of the conveyance of the other parcel.

Moreover the clear weight of the evidence is that the grantor expressed the intention to give to this daughter *something more than the others would get*. This decree however violates that intention and deprives Mrs. Schlicher of the benefit intended by putting her upon the same footing with the others,—in effect, giving her nothing unless her equal share in the land partitioned exceeds the value of the land conveyed.

The charge is further erroneous in giving to the heirs of Henry Keeler (he having died pending the suit) the benefit of the charge, regardless of the fact that Henry himself had received a similar conveyance at the same time with Mrs. Schlicher. If the deed to her was an advancement so also was the deed to Henry.

#### IV.

##### THE CONVEYANCE WAS NOT IN FACT AN ADVANCEMENT.

The complainant for fifteen years had been house-keeper for her father, the other children having left home. Both the complainant and Mr. Hamill say that the grantor expressed the intention at the time of the conveyance to pay for her services. The complainant says: (p. 44, l. 25).

“Mr. Hamill, when he was out there, asked my father in what way he wanted to give it to me. He asked him if it was for his division of his estate, and whether this deed was to be for my share of his estate, or whether it was to be extra, and he made a speech,

you know; I cannot tell you nearly half what he said, but when he got through my father, he said, "*No, it is extra; they deserve to have it,*" and he said, "*I want Henry and Mary to have an extra share; for their share of my estate, I want them to have this extra, because,*" he said, "all the others went away and they were the only ones that staid home and took care of me," and he said that he was doing that so as to make sure of it, and he didn't care for the rest of the family to know anything of it."

Mr. Hamill says (p. 59) that by reason of the fact that Mary had nursed him and been his housekeeper and cared for him he intended to give the Willow street property to her as something additional to what she was to get.

The testimony of M. Hamill should be of controlling weight. The only other testimony as to what occurred at the time of making the conveyance is from Mrs. Schlicher on one side and George Keeler on the other. Under such circumstances, the testimony of a disinterested witness of the irreproachable character borne by Mr. Hamill is of the utmost weight.

Mr. Hamill does not say that the conveyance was to be in part for her share or was to be taken into account at all in determining her share. He says (p. 59, l. 25) that the intention expressed by Charles Keeler was "*to give the Willow street property to her as something additional to what she was yet to get,*" that is to say, the Willow street property *in its entirety* was additional to her proper share.

## V.

THE DECREE IS ERRONEOUS IN GIVING TO ALL THE SHARES THE BENEFIT OF THE DEFENCE SET UP ONLY BY GEORGE KEELER.

The decree therefore, should be reversed with costs.

ALAN H. STRONG,  
Of Counsel with Appellants.

NEW JERSEY

*Court of Errors and Appeals.*

Between

MARY E. SCHLICHER AND WIL-  
LIAM SCHLICHER, Her Husband,  
Complainants-Appellants,

and

CHARLES KEELER ET AL.,

Defendants-Respondents.

} On Appeal  
from  
Chancery.

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POINTS BY JOHN V. B. WICOFF FOR RESPOND-  
ENT, CHARLES KEELER.

The appellants have appealed from a decree of the Court of Chancery, wherein it was decreed that the value of premises on Willow street, in Trenton, which were conveyed by Charles Keeler, the ancestor, to his daughter, the said Mary E. Schlicher, as an advancement, should be and the same was constituted a charge against her undivided one-seventh part in the real estate sought to be partitioned by said action.

The ancestor, Charles Keeler, according to the evidence, owned three tracts of land, viz: the Willow street property, in Trenton; a thirty-eight acre farm known as the John Keeler or homestead farm, and the Hill farm, which is the farm sought to be partitioned by this action. In July, 1899, he deeded the Willow street property to the appellant, Mary E. Schlicher, and the thirty-eight acre farm, known as the John Keeler or homestead farm, to his son, Henry H. Keeler.

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In October, 1900, he executed a deed for the Hill farm, which constituted the residue of his estate, and which was partitioned by this action, to his son, Henry H. Keeler. He was about two years preparing this deed (pp. 34, 36, 57, 58, 61-63). The last deed to Henry was, however, set aside by this court as not having been properly delivered, and the ancestor held to have died intestate as to premises described therein. Mary kept house for the ancestor and Henry worked the farms for him, but the other children married and left home several years before his death (pp. 43, 51).

10 The appellant expressly disclaimed that the conveyance of the Willow street property was made to her in consideration of services rendered to her father, and testified that her services to her father were given without expectation of payment (pp. 50, 18-38).

20 Shortly after the deed to Henry for the Hill farm, which was set aside by this court, the appellant, together with her husband, filed a bill in chancery, making defendants thereto the remaining children, to wit: this respondent and George W. Keeler, Henry H. Keeler, Louis Keeler, Jennie Muir, John Keeler and their respective wives or husbands, alleging that "they are desirous that a partition or division of the said tracts of land and premises should be made among your oratrix and several parties seized and entitled thereto, according to their several and respective rights, estate and interests therein, or, in case, as your oratrix and orator believe and aver the fact to be, that said tracts of land and premises cannot be divided among the owners thereof without great prejudice to their interests, then, in that case, that the same may be sold and the proceeds thereof divided among your oratrix and the other parties entitled thereto as aforesaid, according to their respective rights and interest," and praying for a fair partition and division of said tracts of lands and premises among the appellants and the other persons entitled to shares of said tracts of lands and premises according to their respective rights and interests therein, and that a lien, if any, on the undivided estate or interest of any of the parties thereto be decreed only on the share assigned to such part. And if it should appear that an actual partition could not be made without great prejudice to the

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owners thereof, then it be decreed that said tracts of land be sold and the proceeds thereof, after paying costs and charges of this suit, be divided among your orators and the several parties interested therein *according to their respective rights, shares and interest.*

This respondent filed a formal answer, joining in the prayer of the complainants for an actual partition, and if that be not practicable, that the premises be sold and the proceeds thereof divided among this respondent and the several parties to said suit *according to their respective interests.*

The other answering defendant, George W. Keeler, in his original and amended answer denies that Mary E. Schlicher is entitled to a share in said premises sought to be partitioned by said bill, and charges that Charles Keeler, this respondent, and George W. Keeler, Henry H. Keeler, Lewis Keeler, Jennie Keeler, now Muir, and John Keeler, are each entitled to one equal sixth part of said premises. The said George W. Keeler, in his original answer, alleges that certain lots known as the Willow street property were conveyed to appellant by the ancestor, "as her share," among other things, "of any and all real estate of which he might be seized and possessed and of which she might be entitled to as one of his heirs at law."

Testimony was taken before Vice Chancellor Bergen, who in his conclusions (pp. 66-69) held that the conveyance of the Willow street property to appellant by the ancestor was an advancement, and that the same should be charged against her share. The matter was referred to a master, who, among other things, was to ascertain and report the amount appellant should be charged on account of advancement to her of the Willow street lot. This was done and a decree entered, which is now the subject of this appeal.

Four reasons are alleged by appellants in their petition of appeal why this court should reverse said decree in certain particulars.

The first reason given is that the Court should not have decreed that the said Willow street property was conveyed by said Charles Keeler to his daughter, Mary E. Schlicher as an advancement.

The Vice Chancellor in his conclusions (Case, pp. 66-69) discusses the evidence bearing on the question of advancement, and in support of the affirmance of the decree, I beg only to call the court's attention to said conclusions.

10 The second reason alleged for reversal is that the decree is erroneous in that the defendants, Charles Keeler, Henry H. Keeler, now deceased, John Keeler, Louis Keeler and Jennie Muir, have, by permitting the complainants to enter a decree pro confesso against them, admitted that the said Mary E. Schlicher was entitled to her equal undivided one-seventh share of the premises described in the complainant's bill, without any diminution for or on account of any charge, matter or thing whatever.

This reason for reversal does not affect the rights of this respondent under said decree, as no decree *pro confesso* was ever taken or entered against this respondent, Charles Keeler. (See decrees pro con, Case, p. 8 and p. 19.)

20 The court will also notice that if the contention of the appellant were true the decree pro confesso would not be the broad admission against the defendants alleged, because it is nowhere charged in her bill that she was entitled to her equal undivided one-seventh share of the premises described therein, without *any diminution for or on account of any charge, matter or thing whatever*. A decree *pro confesso* is not what the complainant chooses to make it and thinks he can abide by, but what the court thinks equitable and just. (*Building Loan v. Lord*, 21 Dick. 344, 348; Laws 1902, p. 519, §23.) It is submitted that it would be most inequitable and unjust to deprive a defendant of his just share in a partition suit because he had failed to assert his rights by a proper pleading. In this action, George W. Keeler, by his original answer sufficiently raised the issue of advancement. He, in any event, has raised that issue by his amended answer. The appellants and respondents have tried the matter before the Vice Chancellor on that theory.

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The fact that this respondent filed only a formal answer submitting the matter of just partition to the court, and

that Henry, Louis, John and Jennie Muir suffered a decree pro confesso to be entered against them is easily understood when the testimony shows that they had left home several years before (p. 43, l. 10). George and Mary were the only persons present on the occasion of the deeding of the Willow street property, and as the father had expressed a wish that the rest of the family should not know of the conveyance of the Willow street property (p. 44, l. 35), it is natural that the other children should not know of the matter and were not able to set it up in their answer. Furthermore, *"the practice in partition cases does not require that each party should assert his rights by a separate pleading. To require them to do so would greatly increase the costs of the proceedings."*

*McKaig v. McKaig*, 5 Dickinson 325, 328.

It is submitted, therefore, that all the defendants, even though a decree pro confesso was entered against them, or they had failed to raise by a proper pleading the question of advancement, are entitled to the benefit of the issue raised by George in his answer.

**The third reason alleged for reversing the decree is that it disregards the allegations on the part of both the complainant and defendant.**

The appellant in asserting this reason for reversal had in mind only the original answer filed by George. There can be no doubt but that the amended answer filed by George, by virtue of the order of the court, raises squarely the question of advancement. But the original answer of George W. Keeler, while it does not plead advancement in the usual manner, yet we think it sufficiently apprised the appellant of the issue she should have to meet. In any event, the evidence offered by the appellant as well as respondents was on the question whether the conveyance of the Willow street property was an advancement (p. 48, l. 1-20; pp. 60, 61). The appellants were not surprised, as all the living persons who were present at the time of the delivery of the deed for the Willow street property were called as witnesses, either by appellants or respondents, the only possible exception

being Mr. Chamberlain, but the presence of whom on that occasion there is not positive evidence. The appellants had an opportunity of calling Mr. Chamberlain, if they had so desired (p. 65).

10 In *Moore v. Moore*, 1 C. E. Green 275-278, it was said: "But it is not suggested that the introduction of the evidence in this case operated in anywise as a surprise upon complainant. It was not objected to before the master. The complainant had a full opportunity of meeting it. No evidence on his part was withheld on the ground that the facts proved were not within the issue. Under these circumstances I am unwilling to deprive the defendant of her defence upon a mere technicality. This would not be in accordance with the practice of the court. *Chandler v. Herrick*, 3 Stockton, 499. As the evidence is fully before the court, it is for the interest of both parties that an opinion should now be expressed upon its merits."

20 The fourth and last reason assigned for reversal is that the Court should have decreed that the complainants have the relief prayed for in their said bill of complaint, to wit: That the said complainant, Mary E. Schlicher, was entitled to an equal one-seventh part of the land and premises described in the bill of complaint filed in this cause, without any charge against her by or on any account whatever.

The bill of complaint does not ask for any such relief, but seeks a partition among the respective parties *according to their respective rights, shares and interest*.

30 It would be inequitable to the defendants to enter such a decree, when facts constituting an advancement within the provisions of the descent act (Gen. Stat. 1193, §1) were proven to the court without objection from appellant.

We insist, therefore, that this reason is unsound.

It is submitted that the decree should be affirmed with costs.

J. V. B. WICOFF,

Of Counsel with Respondent, Charles Keeler.

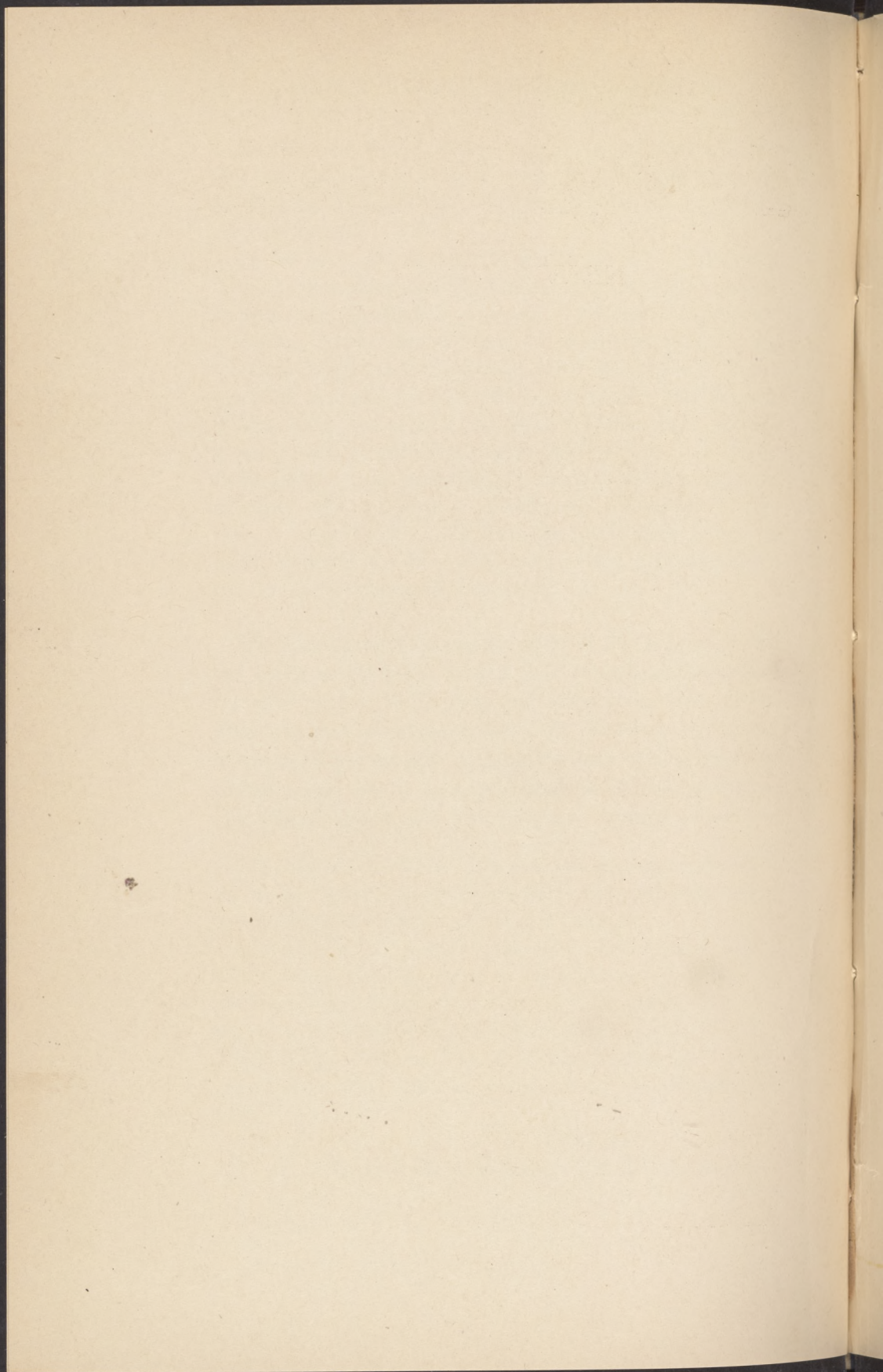
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The second part of the book is devoted to a detailed history of the United States from the year 1776 to the present time. It covers the American Revolution, the War of 1812, the Civil War, and the Reconstruction period.

The third part of the book is devoted to a detailed history of the United States from the year 1865 to the present time. It covers the Reconstruction period, the Civil War, and the Reconstruction period.

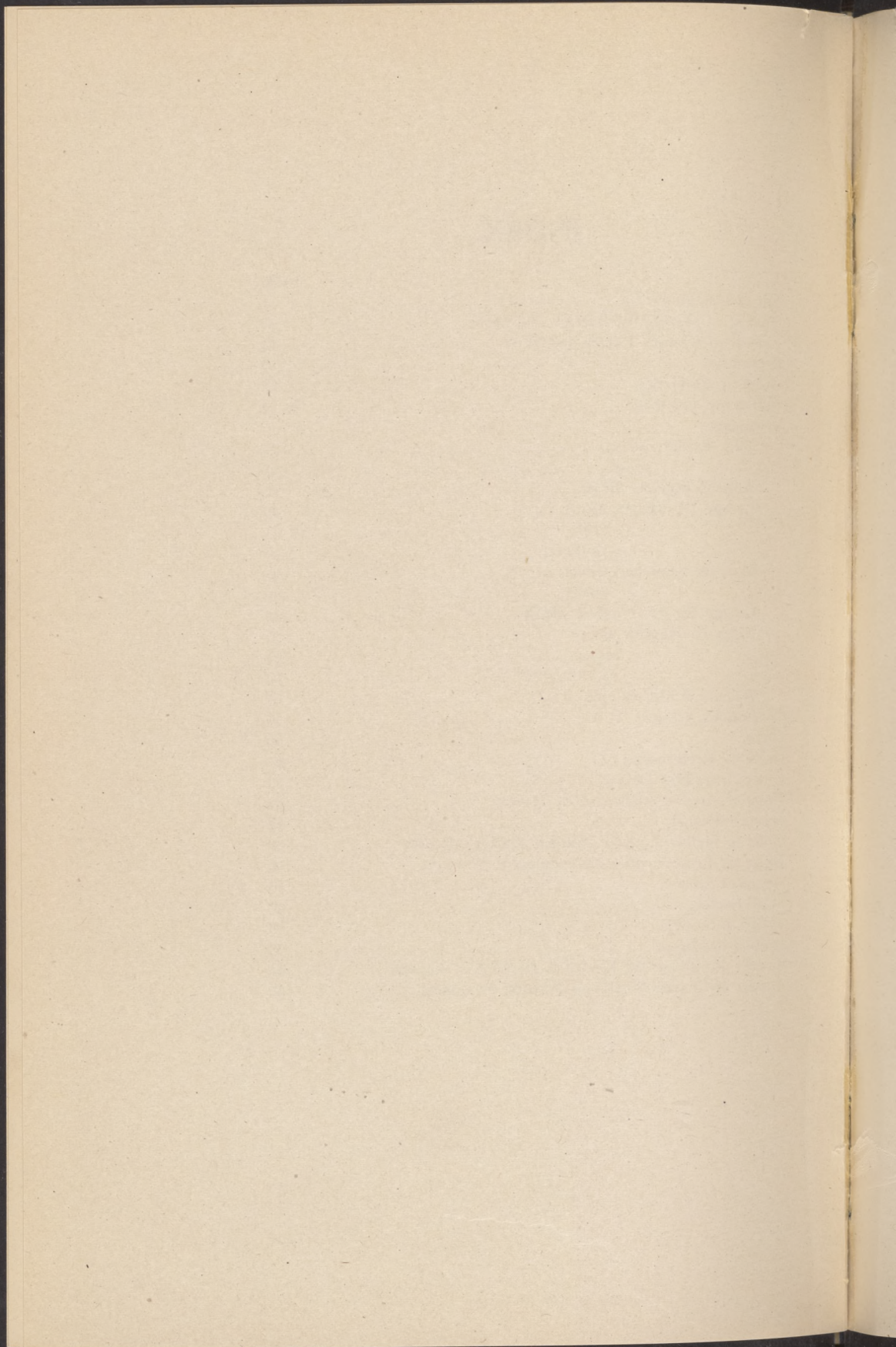
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NEW JERSEY  
Court of Errors and Appeals.

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Between

MARY E. SCHLICHER AND WILLIAM  
SCHLICHER, HER HUSBAND

*Complainants—Appellants,*  
*and*

CHARLES H. KEELER ET AL.,

*Defendants—Appellees.*

} On Appeal  
from  
Chancery.

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BILL OF COMPLAINT.

(Filed July 11, 1905.)

IN CHANCERY OF NEW JERSEY. 10

To his Honor William J. Magie, Chancellor of the State of New Jersey, humbly complaining, shows unto your Honor your oratrix, Mary E. Schlicher and William Schlicher, her husband, of the city of Trenton and State of New Jersey; that Charles Keeler, late of the township of Ewing, county of Mercer and State of New Jersey, was, at the time of his death, seized in fee simple of certain farms or tracts of lands situate, lying and being in the township of Ewing, in the county of Mercer and State of New Jersey, bounded and described 20

as follows, to wit: Beginning at a point in the river Delaware at low-water mark, which point is opposite the center line of the Birmingham road if continued in a southwesterly direction into the river Delaware, and running from said beginning point (1) north, twenty-nine degrees east, to a point in the middle of the Birmingham road, which point is intersected by the northerly line of the river Delaware; thence (2) south, fifty-three and one-half degrees east, one chain and  
10 thirty-seven links to a point; thence (3) north, thirty-seven and one-quarter degrees east, seven chains and sixty links to a point in the line of land now or late of James C. Green; thence (4) south, fifty-seven and three-quarter degrees east, along the line of said Green's lands, seventeen chains and twelve links to a stone for a corner; thence (5) north, thirty-one and one-quarter degrees east, thirteen chains and thirteen links, more or less, to the southerly line of land of the feeder of the Delaware and Raritan Canal Company; thence (6)  
20 south, forty-three and one-half degrees east, along the line of said feeder, five chains and fifty-two links; thence (7) north, thirty-three degrees east, crossing the feeder of the Delaware and Raritan Canal Company to a point in the easterly line of the feeder of the said canal company; thence (8) north, eighteen degrees west, three chains and nineteen links to a point; thence (9) north, seventeen and one-quarter degrees west, five chains; thence (10) north, thirty-one and one-half degrees east, two chains and forty-three links; thence (11)  
30 south, ten and one-half degrees east, five chains and thirty-nine links to a point; thence (12) south, five degrees east, three chains to a point; thence (13) north, thirty-three degrees east, eighteen chains and seventy links to a point in the line of land now or late of George Hunt; thence (14) south, fifty-six degrees east, along said Hunt's land, three chains and thirty-seven links; thence (15) still along said Hunt's land north, thirty-two and one-half degrees east, seven chains and seventy-

six links; thence (16) south, forty-one degrees and eleven minutes east, thirty chains and ninety-two links to a point in the line of land of the Bound Brook Division of the Philadelphia and Reading Railroad Company; thence (17) along their land south, thirty-one and one-quarter degrees west, twenty-two chains and five links, crossing the said feeder to the southerly line of land of the Delaware and Raritan Canal Company; thence (18) south, sixty-two degrees east, twelve chains and seven links along the line of said feeder to a point; 10  
thence (19) south, thirty-one and three-quarter degrees west, five chains and fifteen links to the stone bridge in the Old Ferry road; thence (20) south, fifty-two degrees west, four chains and thirty-five links down the middle of the said road to a point; thence (21) southeasterly, one hundred and seventy-three feet and seven inches to a point; thence (22) south, sixty-three and three-quarter degrees east, twenty-six chains, more or less, to the line of land of the late Colonel Dickinson Woodruff, known as Oaklands; thence (23) south, 20  
thirty-one and one-half degrees west, six chains and forty-three links to a low-water mark in the river Delaware; thence (24) up the river Delaware, the several courses thereof, to the place of beginning.

And your oratrix and orator further show that the said Charles Keeler, being so seized of said tracts of land and premises hereinbefore described, departed this life intestate on the twenty-first day of October, nineteen hundred, leaving him surviving seven children, to wit, Charles Keeler, George W. Keeler, Henry H. 30  
Keeler, Lewis Keeler, Jennie Muir, John Keeler and Mary E. Schlicher, your oratrix.

And your orators further show that by the death of the said Charles Keeler, intestate as aforesaid, the said tracts of land and premises hereinbefore described descended to the said children, who became seized thereof as tenants in common in fee simple.

And your orators further show that Charles Keeler is a married man and that his wife's name is Lena Keeler, and that she claims an inchoate right of dower in the share of the said tracts of land and premises of which her said husband is seized.

And your orators further show that George W. Keeler is a married man and that his wife's name is Elizabeth Keeler, and that she claims an inchoate right of dower in the share of the said tracts of land and  
10 premises of which her said husband is seized.

And that Henry H. Keeler is a married man and his wife's name is Elizabeth Keeler, and that she claims an inchoate right of dower in the said tracts of land and premises of which her said husband is seized.

And that Lewis Keeler is a married man and that his wife's name is Minnie Keeler, and that she claims an inchoate right of dower in the share of the said tracts of land and premises of which her said husband is seized.

20 And your orators further show that the defendants Henry H. Keeler and George W. Keeler, on or about the twenty-second day of October, nineteen hundred, took possession of the lands and premises hereinbefore described, which consist of valuable farm lands, and also of a large quarry for stone used for building and other purposes, from which the said Henry and George Keeler have mined out and sold large amounts of valuable stone, and have ever since continued to occupy and are in possession and enjoyment of the same, and  
30 have converted to their sole use and benefit all the rents, issues and profits of the same, and have not accounted or turned over to your orators, or any other persons, any of said rents, issues and profits of said land and quarry.

Your orators expressly charge and insist that the said Henry Keeler and George W. Keeler had no authority from this complainant, or any other person, to lease, occupy or possess said lands, or any part thereof,

and that they are not entitled to have and receive the rents, issues and profits of the said lands, or any part thereof.

And your orators further show that your oratrix is seized of and entitled to the one equal undivided one-seventh part of the said tracts of land and premises hereinbefore described.

And your orators further show that the said Charles Keeler, George W. Keeler, Henry H. Keeler, Louis Keeler, Jennie M. Muir and John Keeler are each severally seized of and entitled to the one equal seventh part of the said lands and premises, subject to the inchoate right of dower of the said Lena Keeler, wife of Charles Keeler; Elizabeth Keeler, wife of George W. Keeler; Elizabeth Keeler, wife of Henry H. Keeler; Minnie Keeler, wife of Louis Keeler. 10

And your orators further show that your oratrix is entitled to receive from the said Henry Keeler and George W. Keeler an equal one-seventh part of the rents, issues and profits of the said tracts of land and premises hereinbefore described, collected and received by him since the death of the said Charles Keeler. 20

And your orators further show that they are desirous that a partition or division of the said tracts of land and premises should be made among your oratrix and several parties seized and entitled thereto, according to their several and respective rights, estate and interests therein, or in case, as your oratrix and orator believe and aver the fact to be, that the said tracts of land and premises cannot be divided among the owners thereof without great prejudice to their interests; then, in that case, that the same may be sold and the proceeds thereof divided among your oratrix and the other parties entitled thereto as aforesaid, according to their respective rights and interest. 30

And your orators are advised that no valid or effectual partition, division or sale of the said tracts of land and premises can be effected without the aid and

interposition of some competent jurisdiction in the premises.

In consideration whereof and to the end that the said Charles Keeler and Lena Keeler, his wife, George W. Keeler and Elizabeth Keeler, his wife, Henry H. Keeler and Elizabeth Keeler, his wife, Lewis Keeler and Anna Keeler, his wife, Jennie M. Muir and John Muir, her husband, and John Keeler and Ida Keeler, his wife, may, to the best and utmost of their respective  
10 knowledge, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, your orators hereby waiving, pursuant to the statute, the necessity of the answer of such defendant being put in under the oath of the said defendants, or the oaths of either of them, and that as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereto; and that a fair partition and division of the said tracts of land and premises hereinbefore described may be made  
20 according to the course and practice of this honorable Court, if the same be practicable and consistent with the rights of all the parties in interest therein, among your orator and oratrix and the other persons entitled to shares of the said tracts of land and premises, according to their respective rights and interests therein; and that a lien, if any, on the undivided estate or interest of any of the parties thereto be decreed to be a charge only on the share assigned to such party, such share to be first charged with the proportion of the costs of these proceedings in preference to such lien, and in case of such  
30 partition or division in fact of said lands and premises shall be found to be impracticable, or if it should appear that the same cannot be made without great prejudice to the owners of said lands and premises, that then and in that case the said tracts of land and premises may be decreed by this honorable Court to be sold, including the right of dower of the defendants, Lena Keeler, Elizabeth Keeler, wife of George W. Keeler,

Elizabeth Keeler, wife of Henry H. Keeler, Anna Keeler, wife of Lewis Keeler, and Ida Keeler, wife of John Keeler, and the proceeds thereof after paying the costs and charges of this suit among your orators and the several parties interested therein, according to the respective rights, shares and interest, and that the portion of the money arising from the said sale of the estate, share or interest of any of the parties against whom there are existing liens or encumbrances held by any creditors of such party who is a party defendant to this suit be brought into this court by the master or commissioner, as the case may be, who shall make sale of the said tracts of land and premises after deducting the costs, charges and expenses to which it shall be liable. 10

To the end that the Chancellor shall make such order therefore as the circumstances of the case may require, and that in the meantime one or more proper person or persons may be appointed to receive the rents, issues and profits of the said tracts of land and premises for the benefit of your orators and all other persons interested therein, and that such rents and profits may be paid and divided among your orators and all other persons entitled thereto according to their respective shares and interests therein, and that an accounting may be taken of the rents, issues and profits of the said tracts of land and premises or of any part thereof collected or received by the said Henry H. Keeler and George W. Keeler, since the death of the said Charles Keeler, and that the rents, issues and profits so collected may be paid to such person or persons as may be appointed by this honorable court aforesaid to receive the same, and in case the said Henry Keeler and George W. Keeler shall not pay the said rents, issues and profits according to the order and decree of this honorable court, that then in that case the same may be deducted from his share and portion of the proceeds of the sale of the said lands and premises for the benefit of your 20 30

orators and all other persons interested therein. And that your orators may have such further or other relief in the premises as the nature and circumstances of the case may require, and as shall be agreeable to equity and good conscience.

May it please your Honor to grant unto your orators the State's writ of subpoena to be issued out of and under the seal of this Honorable Court to be directed to the said Charles Keeler and Lena Keeler, his wife, George  
10 W. Keeler and Elizabeth Keeler, his wife, and Henry H. Keeler and Elizabeth Keeler, his wife, Lewis Keeler and Anna Keeler, his wife, Jennie M. Muir and John Muir, her husband, and John Keeler and Ida Keeler, his wife, commanding them and each of them, at a certain day, and under a certain penalty to be therein expressed, personally to be and appear before your honor in this honorable court, then and there to answer the premises, and to stand to and abide by and perform such order and decree therein as to your Honor shall seem meet.

20 And your orators as in duty bound will ever pray, etc.

A. S. APPEGET,  
*Solicitor and of Counsel with  
Complainant.*

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, &c.
MARY E. SCHLICHER,		
<i>Complainant,</i>		
<i>and</i>		
CHARLES KEELER ET AL.,		
<i>Defendants.</i>		

ANSWER OF GEORGE W. KEELER AND ELIZABETH KEELER, HIS WIFE.

(Filed August 23, 1905.) 10

The answer of George W. Keeler and Elizabeth Keeler, his wife, to the bill of complaint of Mary E. Schlicher and William Schlicher, her husband, complainants.

And these defendants admit that Charles Keeler, late of the township of Ewing, county of Mercer and State of New Jersey, was at the time of his death seized in fee simple of a certain farm or tracts of land situate, lying and being in the township of Ewing, in the county of Mercer and State of New Jersey, as particularly de- 20 scribed in the bill of complaint.

And these defendants admit that the said Charles Keeler, being so seized of said tracts of land and premises, departed this life intestate on the twenty-first day of October, nineteen hundred, leaving him surviving seven children, to wit, Charles Keeler, George W. Keeler, Henry H. Keeler, Lewis Keeler, Jennie Muir, Jennie Keeler and Mary Schlicher. These defendants admit that by the death of said Charles Keeler, intestate as aforesaid, the said tracts of land and premises de- 30 scended to his said several children, with the exception of the complainant Mary Schlicher. And these defendants allege and charge the fact to be that the said Charles Keeler, in his lifetime, to wit, on or about the

tenth day of June, eighteen hundred and ninety-nine, made a deed of conveyance to the said Mary Schlicher of certain lands and premises in the city of Trenton, in said county, more particularly described as follows:

*First Tract*—Beginning on the easterly side of Willow street, at the northwesterly corner of a lot now or late of Joseph Gaffney, and running thence (1) along said side of Willow street north, sixteen degrees and fifteen minutes east, thirty-five and fifty-eight hundred  
10 feet to the line of the second tract of land hereinafter described; thence (2) along said second tract of land hereinafter described south, seventy-five degrees east, one hundred and thirty-one feet to a corner in the line of the third tract hereinafter described; thence (3) along the line of said third tract hereinafter described, and continuing beyond said third tract in the same direction south, thirty degrees and twenty-two minutes west, thirty-seven feet, more or less, to the aforesaid lot  
20 now or late of Joseph Gaffney; and thence (4) along said lot now or late of Joseph Gaffney north, seventy-five degrees west, one hundred and twenty-two feet to the easterly side of Willow street and the place of beginning.

*Sccond Tract*—Beginning on the easterly side of Chancery street, at the northwesterly corner of the first tract hereinabove described, and running thence (1) in a direction north, sixteen degrees and fifteen minutes east, twelve and twenty-two hundredths feet to a  
30 point; thence (2) in a line north, fifty-nine degrees and forty-three minutes east, eleven feet and six hundredths of a foot to lands of the Delaware and Raritan Canal Company; thence (3) along said company's lands and other lands south, seventy-five degrees east, one hundred and eighty-four and five-tenths feet to the corner of a stone wall; thence (4) at right angles with the last course south, fifteen degrees west, twenty and thirty-three hundredths feet to a stake, and thence (5)

along the northerly boundary line of tract No. one hereinabove described, and tract No. three, hereinafter described, north, seventy-five degrees west, one hundred and ninety-two and sixty-two hundredths feet to the place of beginning.

*Tract Three*—Beginning at a point ninety-two and one-half feet, measured in a northerly direction at right angles to the northerly side of Bank street, and which beginning point is the northwesterly corner of land formerly belonging to G. and C. Johnson, and running 10  
from said beginning point (1) in a northerly direction north, fourteen degrees and twelve minutes east, fifty-five and two-tenths feet to a point in the third course of the first tract hereinabove described; thence (2) in a direction north, thirty degrees and twenty-two minutes east, being coincident with the third course of the first tract hereinabove described twenty-three and four-tenths feet to a point in the fifth course of the second tract hereinabove described; thence (3) in a course 20  
south, seventy-five degrees east, being coincident with said fifth course of said second tract hereinabove described eleven and five-tenths feet to a point; thence (4) in a course south, fourteen degrees and twelve minutes west, being parallel with the first course seventy-eight and two-tenths feet to lands now or late of Annie Murray, and thence (5) along said lands now or late of Annie Murray north, seventy-five degrees and forty-eight minutes west, eighteen feet, more or less, to the place of beginning.

*Fourth Tract*—Beginning on the southeasterly side 30  
of Chancery street, distant forty-eight feet and ninety-seven hundredths of a foot from the ending point of the second course of the second tract hereinabove described, and running thence (1) easterly, along the southeasterly side of said Chancery street, twenty feet to a point; thence (2) south, five degrees and fifteen minutes east, fifty-two and five-tenths feet to a point in the third course of the second tract hereinabove described; thence (3) north, seventy-five degrees west, in a line coincident

with said third course of said second tract, twenty feet to a point, and thence (4) north, five degrees and seven minutes west, thirty-six and nine-tenths feet to the place of beginning. Which said lands and premises, and ever since have been, and now are in the possession of the said Mary Schlicher, and she claims to be the owner thereof. That at the time of the making of the said deed of conveyance by the said Charles Keeler, deceased, it was understood and agreed between the said Mary  
10 Schlicher and her said father that said conveyance to her was in full payment and discharge of certain services which she claimed to have rendered to him during his lifetime, and in full discharge from any claim or claims which she might make against his estate after his death, and as her share of any and all real estate of which he might be seized and possessed, and of which she might be entitled to as one of his heirs at law, and that her claim to any part or share of the lands in said bill mentioned is fraudulent, inequitable and unjust.

20 And these defendants deny, by reason of the premises, that the said Mary Schlicher has any right, title or interest in the lands described in the said bill of complaint; and they pray the same benefit of this defence as if the same had been formally pleaded.

And that these defendants admit that the said Charles Keeler is a married man, and that his wife's name is Lena Keeler, and that she claims an inchoate right of dower in his share of the said tracts of land and premises of which her said husband is seized.

30 And that the said George W. Keeler is a married man, and that his wife's name is Elizabeth Keeler, and that she claims an inchoate right of dower in the share of the said tracts of land and premises of which her said husband is seized.

And that the said Henry H. Keeler is a married man, and that his wife's name is Elizabeth Keeler, and that she claims an inchoate right of dower of the said tracts of land and premises of which her said husband is seized.

And that the said Lewis Keeler is a married man, and that his wife's name is Anna Keeler, and that she claims an inchoate right of dower in the share of the said tracts of land and premises of which her said husband is seized.

And these defendants admit that the said Henry H. Keeler and George W. Keeler were in possession and claimed to be the owners of the lands described in the said bill, as tenants in common, up to about the first day of July, nineteen hundred and four, at which time 10 they divided the premises by proceedings in partition, so that each became possessed of his share of part in severalty.

And these defendants deny that the said George W. Keeler ever received any rents, issues and profits from the lands and premises in question.

And these defendants deny that the said George W. Keeler leased, occupied or possessed said lands without authority from the said complainant or any other persons. 20

And these defendants further deny that the complainant Mary E. Schlicher is seized of and entitled to the one equal undivided one-seventh part of the said tracts of land and premises hereinbefore described, and charge the fact to be that the said Charles Keeler and George W. Keeler and Henry H. Keeler, Lewis Keeler, Jennie Keeler and John Keeler are each severally seized of and entitled to the one equal sixth part of the said lands and premises, subject to the inchoate right of dower of the said Lena Keeler, wife of Charles Keeler, 30 Elizabeth Keeler, wife of George W. Keeler, Elizabeth Keeler, wife of Henry H. Keeler, and Anna Keeler, wife of Lewis Keeler.

And these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most grievously sustained.

HOMMANN & STRICKER,  
*Sol'rs of said defendants.*

IN CHANCERY OF NEW JERSEY.

Between  
MARY E. SCHLICHER ET AL.,  
Complainants,  
and  
CHARLES KEELER ET AL.,  
Defendants. } On Bill, etc.

ANSWER OF CHARLES KEELER AND LENA  
KEELER, HIS WIFE.

10 (Filed October 3, 1905.)

The joint answer of Charles Keeler and Lena Keeler, his wife, defendants to the bill of complaint of Mary E. Schlicher and William Schlicher, her husband.

These defendants, Charles Keeler and Lena Keeler, his wife, in answer to the bill of complaint of Mary E. Schlicher and William Schlicher, her husband, or to so much thereof as these defendants are advised it is necessary or material for them to answer, say that they  
20 admit that Charles Keeler, late of the township of Ewing, in the county of Mercer and State of New Jersey, was, at the time of his death, seized in fee simple of certain tracts or parcels of land situate and being in the township of Ewing, in the county of Mercer and State of New Jersey, which are truly set forth and described in the complainant's said bill of complaint, except in the following particulars, viz.: The first course of the description of said premises instead of  
30 being described as set forth in the complainant's bill of complaint, should read, "(1) north, twenty-nine degrees east, to a point in the middle of the Birmingham road, which point is intersected by the northerly line of the River road." The eighth course of the description of

said premises, instead of being described as set forth in the complainant's bill of complaint, should read, "thence (8) *eleven* degrees west, three chains and nineteen links to a point."

These defendants, further answering, admit that the said Charles Keeler, being so seized of said tracts of land and premises, departed this life intestate on the twenty-first day of October, in the year nineteen hundred, leaving him surviving seven children as his only heirs at law, viz.: Charles Keeler, one of these defend- 10  
ants, George W. Keeler, Henry H. Keeler, Lewis Keeler, Jennie M. Muir, John Keeler and Mary E. Schlicher, and that by the death of said Charles Keeler, intestate as aforesaid, the said lands and premises, of which he died seized in fee simple, descended to his said seven children, who became seized thereof as tenants in common in fee simple.

These defendants, further answering, admit that they are married; that George W. Keeler is married, and his wife's name is Elizabeth Keeler; that Henry H. Keeler 20  
is married, and his wife's name is Elizabeth Keeler; that Lewis Keeler is a married man, and that his wife's name is Minnie Keeler; that Jennie M. Muir is intermarried with John Muir; that John Keeler is a married man, and his wife's name is Ida Keeler, and that Mary E. Schlicher is intermarried with William Schlicher.

And these defendants, further answering, admit that Henry H. Keeler and George W. Keeler have been in possession of the said lands and premises since on or about the twenty-second day of October, in the year 30  
nineteen hundred, but without authority from these defendants to lease or occupy the said lands and premises for these defendants; and that the said Henry H. Keeler and George W. Keeler have, without authority from these defendants, collected and converted to their sole use and benefit all the rents, issues and profits of the said lands and premises, and have not accounted to these defendants for their share of said rents, issues and

profits so collected by them as aforesaid, or paid to these defendants, or any person for them, their share of said rents, issues and profits or any part thereof.

And these defendants, further answering, admit that they are entitled to one equal seventh part of the said lands and premises, and that they are also entitled to receive from the said Henry H. Keeler and George W. Keeler, or one of them, one equal seventh part of the rents, issues and profits of the said lands and premises,  
10 collected and received as aforesaid by them since the death of the said Charles Keeler.

And these defendants, further answering, say that they, as well as the said complainants, have been and are desirous that a fair partition and division of the said tracts of land and premises should be made, and for that purpose these defendants join in the prayer of the said complainants that a commission of partition may issue  
20 out of and under the seal of this honorable Court, directed to proper persons as commissioners to make partition of the said lands and premises, under the control and direction of this honorable Court and according to the rules of law and equity regulating cases of this nature. Or that in case it shall appear that such partition cannot be made without great prejudice to the owners of the said premises, that the same may be decreed by this honorable Court to be sold and the proceeds thereof divided among these defendants and the several parties to this suit according to their respective  
30 interests.

JOHN V. B. WICOFF,  
*Solicitor for the defendants Charles  
Keeler and Lena Keeler, his wife.*

IN CHANCERY OF NEW JERSEY.

BETWEEN	}	On Bill, &c.
MARY E. SCHLICHER AND WILLIAM		
SCHLICHER, HER HUSBAND,		
Complainants,		
and		
GEORGE W. KEELER ET UX., ET AL.,	}	
Defendants.		

REPLICATION.

(Filed September 22, 1905.)

The complainants join issue on the answer of the defendants George W. Keeler and Elizabeth Keeler, his wife.

A. S. APPEGET,  
*Sol'r of Compl'ts.*

IN CHANCERY OF NEW JERSEY.

BETWEEN	}	On Bill for Partition. 20
MARY E. SCHLICHER AND WILLIAM		
SCHLICHER, HER HUSBAND,		
Complainants,		
and		
GEORGE W. KEELER ET UX., ET AL.,	}	
Defendants.		

ORDER OF REFERENCE.

(Filed October 3, 1905.)

This matter coming on to be heard, and it appearing that due notice of the application for this order has been duly served on the answering defendants, it is, on this twenty-sixth day of September, nineteen hundred

and five, on motion of A. S. Appleget, counsel with complainants, ordered that the above-stated cause be and the same is hereby referred to James J. Bergen, Esq., one of the Vice-Chancellors of this court, to hear the same for the Chancellor, and to report thereon to him and advise what order or decree should be made therein.

W. J. MAGIE, C.

10 We hereby consent to the making of the above order.  
 HOMMANN & STRICKER,  
*Sol'r for Geo. W. Keeler et ux., Defendants.*

IN CHANCERY OF NEW JERSEY.

BETWEEN MARY E. SCHLICHER AND WILLIAM SCHLICHER, HER HUSBAND, <i>Complainants,</i> and GEORGE W. KEELER ET AL., <i>Defendants.</i>	}	On Bill, &c.
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20 DECREE PRO CONFESSO.

*(Filed September 8, 1905.)*

30 This cause, being opened to the Court by A. S. Appleget, of counsel with the complainants, and it appearing that process of subpœna for the appearance of the defendants hath been duly issued and returned served by the sheriff of the county of Mercer upon Henry H. Keeler and Elizabeth Keeler, his wife, and that the said defendants, Elizabeth Keeler, wife of George W. Keeler, Henry H. Keeler and Elizabeth Keeler, his wife, have not filed any plea, demurrer or answer to

said bill within the time limited by law and said order, but have wholly failed and neglected so to do:

It is thereupon, on this eighth day of September, in the year of our Lord one thousand nine hundred and five, ordered, adjudged and decreed that the said bill be taken as confessed as against the said Elizabeth Keeler, wife of George W. Keeler, Henry H. Keeler and Elizabeth Keeler, his wife, to the end that such decree may be made against them as the Chancellor shall think equitable and just.

10

By the statute.

EUGENE THOMSON,  
*Master.*

IN CHANCERY OF NEW JERSEY.

BETWEEN

MARY E. SCHLICHER AND WILLIAM  
SCHLICHER, HER HUSBAND,  
*Complainants,*

and

GEORGE W. KEELER ET UX., ET AL.,  
*Defendants.*

} On Bill, &c.

20

DECREE PRO CONFESSO.

(Filed October 4, 1905.)

This cause being opened to the Court by A. S. Appleget, of counsel with the complainants, and it appearing that process of subpoena for the appearance of the defendants hath been duly issued and returned served upon, and that due notice of the order of this Court, made on the second day of August last past, directing John Keeler and Ida Keeler, his wife, Lewis Keeler and Minnie Keeler, his wife, Jennie Muir and John Muir, her husband, of the said defendants to appear, plead, demur or answer the complainants' bill, on or before

30

the third day of October then next, has been duly published and mailed in the manner and as in the said order directed and prescribed, and that the said defendants John Keeler and Ida Keeler, his wife, Lewis Keeler and Minnie Keeler, his wife, Jennie Muir and John Muir, her husband, have not filed any plea, demurrer or answer to said bill within the time limited by law and said order, but have wholly failed and neglected so to do:

10 It is thereupon, on this fourth day of October, in the year of our Lord one thousand nine hundred and five, ordered, adjudged and decreed that the said bill be taken as confessed as against the defendants John Keeler and Ida Keeler, his wife, Lewis Keeler and Minnie Keeler, his wife, Jennie Muir and John Muir, her husband, to the end that such decree may be made against them as the Chancellor shall think equitable and just.

W. J. MAGEE, C.

IN CHANCERY OF NEW JERSEY.

20 BETWEEN

MARY E. SCHLICHER AND WILLIAM  
SCHLICHER, HER HUSBAND,  
*Complainants,*

*and*

GEORGE W. KEELER ET UX., ET AL.,  
*Defendants.*

TESTIMONY.

Transcript of stenographer's notes of evidence, taken  
in the above-entitled cause, before his Honor James J.  
30 Bergen, Vice-Chancellor, at the Chancery Chambers,  
State House, Trenton, N. J., October 24th, 1905, at  
11:15 A. M.

Appearances—Mr. A. S. Appleget and Mr. George Vanderbilt, for the complainants; Messrs. Hommann & Stricker, for the defendants.

*John Keeler*, a witness produced in behalf of the complainants, being duly sworn according to law, on his oath saith.

Examined by Mr. Appleget.

Q. You are one of the defendants in this cause?

A. Yes, sir.

Q. And you are one of the children and heirs-at-law **10**  
of Charles Keeler?

A. Yes.

Q. Was Charles Keeler living on the premises described in this bill at the time of his death?

A. Yes, sir.

Q. You are also one of the answering defendants in this cause?

A. Yes, sir.

Q. Now, is it true that your father died intestate?

A. Yes, sir. **20**

Q. And were letters of administration issued upon his estate to any person?

A. Yes, sir.

Q. To whom?

A. Mary E. Schlicher—

Mr. Hommann—I object to this line of evidence as entirely immaterial.

Court—The mere fact that there was an administrator appointed is not of any consequence in this cause that I can see. **30**

Mr. Appleget—None, your Honor, that I can see, only as corroborating the statement that Charles Keeler died intestate, and that by reason thereof the land descended to these seven children as tenants in common.

Court—Well, anything of that character that is not admitted, of course, you will have to prove.

Mr. Appleget:

*Q.* How many children did your father leave?

*A.* Seven—George, Charlie, Louis, Henry, John and Mary and Jennie.

*Q.* Who is Jennie?

*A.* Her name is now Muir.

*Q.* And what is the other girl's name?

*A.* Mary E. Schlicher.

*Q.* Was there any widow survived your father?

*A.* No, sir.

10 *Q.* He died a widower?

*A.* Yes, sir.

*Q.* After the death of your father who had charge of the farm?

*A.* George and Henry.

*Q.* And who is now in possession of it?

*A.* The same parties.

*Q.* What does that consist of?

*A.* Well, a stone quarry—

*Q.* Do you recall how many acres of land?

20 *A.* I cannot say exactly how many acres there was altogether.

*Q.* What buildings are on it?

*A.* There is a saw-mill, a barn and a house.

*Q.* How many dwelling houses?

*A.* Well, there is, I think, five.

*Q.* Do you know whether they are in the possession of tenants now or not?

*A.* I think they are.

30 *Q.* Do you know anything about another piece of land that was rented to some company; do you know anything about that?

*A.* I haven't heard anything about that; the quarry part is rented.

*Q.* But this is another portion of land near the railroad, occupied or rented by a bridge company, so I have been told.

*A.* I haven't heard about that.

Cross-examination, by Mr. Stucke:

Q. George Keeler is this gentleman here (indicating)?

A. Yes, sir.

Q. Where is Charles Keeler?

A. In the room back there (indicating).

Q. And where does he reside?

A. Philadelphia.

Q. How long has he resided there?

A. I cannot say exactly how many years it has been, 10  
but it has been a good while.

Q. How many years before your father's death?

A. Oh, I cannot really say that either.

Q. A pretty long while, is it not?

A. Not so long, no, sir.

Q. Cannot you estimate the time?

A. I don't think I can.

Q. Louis Keeler, where does he reside?

A. Philadelphia.

Q. How long has he resided there?

20

A. Several years.

Q. Prior to your father's death?

A. I think so, yes, sir.

Q. Henry Keeler is the person you referred to as  
being in possession of the farm now, is it not?

A. Yes, sir.

Q. And Mary Keeler is now Mary Schlicher, is she  
not?

A. Yes, sir.

Q. And the complainant in this cause?

30

A. Yes, sir.

Q. Then she has always lived on the farm with her  
father?

A. Yes.

Q. And Jennie is Mrs. Muir?

A. Yes.

Q. Where does she reside?

A. Philadelphia.

*Q.* How long has she resided there?

*A.* I cannot answer that question; I don't know how many years now.

*Q.* A good many years before your father's death?

*A.* Oh, no, sir; not so many.

*Q.* Well, how many years?

*A.* Not over three, I don't think.

*Q.* Did she ever live with her father?

*A.* Oh, yes.

10 *Q.* How long before his death?

*A.* Oh, well, I think it was about three years before his death.

*Q.* Was it then that she got married?

*A.* Yes, sir.

*Q.* And then moved to Philadelphia?

*A.* Yes, sir.

*Q.* So that the only persons of this family that had any communication with your father directly prior to his death, and for a considerable time before his death,

20 was Mrs. Schlicher, George Keeler and Henry Keeler?

*A.* Yes, sir.

*Q.* And you and Louis and Jennie and the others, Charles, you practically had nothing to do with the family, had you?

*A.* No, sir.

*Q.* And knew nothing about its affairs?

*A.* No, sir.

Court:

*Q.* Where do you live?

30 *A.* In Morrisville.

Mr. Stricker:

*Q.* Do you know anything about the deed that was given to you by your father, to Mary Schlicher, for the Willow street property?

*A.* No, sir; I don't know anything about it.

*Q.* Do you know anything about the deed that your father had given to these very premises to Henry?

*A.* No, sir.

*Q.* Do you know from whom the tenants in possession of that quarry got their lease?

*A.* I could not say.

*Q.* You don't know anything about it?

*A.* No, sir.

*Q.* All you do know about this affair is that you claim to be entitled to one-seventh? 10

*A.* Yes, sir.

*Q.* And whether or not your father had disposed of any of this property before his death you don't know?

*A.* I cannot say, no, sir.

*Mr. Appleget*—I offer in evidence the search of the premises in Charles Keeler.

*Mr. Hommann*—I object to the offer as immaterial.

*Court*—You cannot prove title in that way; I shall sustain the objection. 20

*Mr. Appleget*—It is not incumbent, I think, upon the complainant to prove anything further. The answer admits all the material allegations of the bill, that he died seized of the premises in question, and that he left him surviving no widow, but the seven children and heirs-at-law, and also admits that six of them are entitled to a share of the premises described in the bill of complaint. But then they set up as an allegation of their own, things which we know nothing about, and I respectfully submit that it is incumbent upon them to prove them. 30

*Court*—Do you rest your case?

*Mr. Appleget*—Yes.

*Court*—Proceed with the defense.

*Alice C. Keeler*, a witness produced in behalf of the defendants, being duly sworn according to law, on her oath saith :

Examined by Mr. Stricker :

*Q.* You are the daughter of Charles Keeler?

*A.* Yes, sir.

*Q.* How old are you?

*A.* Twenty-six.

*Q.* You knew your grandfather during his lifetime,  
10 did you not?

*A.* Yes, sir.

*Q.* Did you visit his place frequently?

*A.* Yes, sir.

*Q.* How frequently?

*A.* Very often; sometimes every week, and oftentimes I would go up and stay several weeks at a time.

*Q.* And did this condition of things exist up to the time of his death?

*A.* Yes, sir; it did.

20 *Q.* Who lived on the farm with your grandfather?

*A.* Mary Schlicher.

*Q.* Anybody else?

*A.* No, sir; not at the time of his death.

*Q.* What did she do there?

*A.* She kept house for him.

*Q.* Now, how often would you meet her in the city here?

*A.* I met her every Saturday and sometimes during the week.

30 *Q.* How far is this farm from the city?

*A.* About two and a half or three miles.

*Q.* On these occasions, when you met her in the city, would you have any transactions with her?

*A.* Yes.

*Q.* What?

*A.* She would give me bank notes, and she would have me take them into the different banks and have them exchanged for gold coin.

*Q.* Now, when you visited there would you help her about the house any?

*A.* Yes, sir; I did.

*Q.* And would you talk with her?

*A.* Yes, sir.

*Q.* And was she in the habit of telling you what was going on about the house?

*A.* She often talked to me about things going on about the house.

*Q.* About anything relating to herself and your grandfather?

*A.* Yes, sir.

*Q.* Can you estimate how many of these bank notes you exchanged for her in the city of Trenton for gold coin?

*A.* No, sir; I could not, for I very frequently did it, oftentimes every week.

*Q.* What did she do with this gold coin?

*A.* She kept it in bags made of stockings around the home.

20

*Q.* Did you ever see them?

*A.* I saw them, yes, sir.

*Q.* Did she show them to you?

*A.* Yes, sir; she showed them to me.

*Q.* How many times?

*A.* Very often; most every time I went up I would see them.

*Q.* Was she at that time engaged in any business for herself?

*A.* Not that I know of.

30

*Q.* Did you ever ask her how much money these bags contained?

*A.* I did, and she told me it was about \$10,000, and she also told me that she was saving all the money she could, as she was going to save up everything she could for herself for the future, and that her father had given her the Willow street property, to be her full share of all his estate, and she was not satisfied with it—

Mr. Appleget—I object to that; there is nothing of this kind alleged in the answer.

Court—The object of this evidence is to show that she was advanced this real estate, and, therefore, she should not be charged with it; I will take it.

Mr. Stricker :

Q. How long before your grandfather's death did  
10 you see him?

A. About three days before he died. I went to his house and saw him, and I remained there until he died.

Q. How came you to remain there the three days?

A. He directed me to stay with him until he recovered, complaining of the ill-treatment of Mary Keeler and William Schlicher towards him.

Q. Was there anything said by him at that time concerning the Willow street property?

Mr. Appleget—I object to that as incompetent.  
20

Objection sustained.

Mr. Stricker :

Q. At any time during your stop there was Mrs. Schlicher present?

A. How do you mean?

Q. While he was talking to you?

A. No, sir.

Q. While you were there was anything said about a  
30 watch?

A. Yes.

Q. What was it?

A. Grandfather asked me to hand him his vest, in the pocket of which he had a large sum of money and a gold watch, and I could not find the vest when I looked for it, and I asked Mary for it, and she said she knew nothing of it, and the vest was not found until several

days after my grandfather died, but the gold watch was presented by Mary to my cousin John Keeler.

*Q.* State whether or not you discussed this Willow street property with Mrs. Schlicher on more than one occasion?

*A.* Yes, sir; she often told me that her father had given her the Willow street property to be her full share of his estate, and she was dissatisfied with it, and felt that she should have all of his property.

No cross-examination.

10

*George W. Keeler*, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath saith:

Examined by Mr. Stricker:

*Q.* Where do you live?

*A.* I live in Trenton.

*Q.* How long have you lived there?

*A.* About 25 years.

*Q.* What is your business?

*A.* Architect.

20

*Q.* State to the Court in the first place about the condition of this farm, this property, at the time of your father's death?

*A.* The condition of the property?

*Q.* Yes?

*A.* Well, it was in a very dilapidated condition.

*Q.* Well, just give us a little more detail about that?

*A.* My father never made any repairs; he let everything go down during the forty years that he lived on the place, and some of the buildings had tumbled down even, and others were on the verge of tumbling down, and so decayed that repairs were actually impossible to the buildings now on the premises, and it would be necessary to tear them down and put up new buildings. There are no fences on the place whatever; the whole place had all grown up with underbrush, so that it became a perfect wilderness, so that you could not even

30

till the land, and it twas generally neglected in the same way all through.

*Q.* And the dwelling in the same way?

*A.* Well, the dwelling house is about in the same condition; it was an old stone house, and the only portion of the house that was good was the stone walls; the interior had decayed, and in places had fallen in, and the beams were all rotted, and the roofs were all gone, and, in fact, everything that could decay was decayed  
10 and gone, and, really, nothing good remained of that house except the solid stone walls.

*Q.* What was your father's business in his lifetime?

*A.* My father was not exactly a farmer, but him and I had a partnership for a number of years in operating the stone quarry, and we conducted that business together until June, 1895, when we dissolved that partnership and we separated, and a month after that I assisted my father in his general business, by an agreement with him, by which I should give him a certain  
20 number of hours each and every day.

*Q.* And that would bring you in contact with him how frequently?

*A.* Every day; I saw my father every day, I used to be with him in the city here, almost every day and, in fact, whenever you saw Charles Keeler you saw me on the street with him.

*Q.* Do you know anything about the value of this Willow street property that your sister is in possession of?

30 *Q.* Yes, sir; I collected the rents for my father for a number of years.

*Q.* Well, how much did it rent for; that is, all of it?

*A.* Well, he used, until the time I give it up, it was bringing in something like \$60 a month in all.

*Q.* And are you familiar with the value of real estate in Trenton?

*A.* Yes.

*Q.* What is that property worth now?

A. That property is worth, at the least, \$10,000.

Q. What was it worth in 1899?

A. It was worth at that time \$10,000.

Q. Did you know anything about the transfer of this property by your father to Mrs. Schlicher?

A. I did.

Q. Tell us what you knew about it?

A. In July, 1899, my father—

Q. Just one moment; about the time he made the deed for this property did he make another deed for the 10 farm?

A. He did, for the 38-acre tract.

Q. Yes, he made another deed for the 38-acre tract?

A. Yes, sir.

Q. And that was made to whom?

A. That was made to Henry; that was on July 25th, 1899; he drew two deeds, one for the 38-acre tract to Henry, and the other for the Willow street property for Mary, being an advancement to Mary for her share of his estate.

20

Mr. Appleget—I object to that evidence as being the conclusion of the witness, and altogether improper evidence.

Objection sustained.

Q. Was anything said at the time he did it?

Mr. Appleget—I object to that.

Court—Unless the other party was present, of course, you know, you cannot prove these statements in this way; you know you cannot bind the complainant by evidence of statements made in her absence.

30

Mr. Stricker—We are trying to show under what circumstances these deeds were made, but we will withdraw the question.

Mr. Stricker:

Q. Was Mrs Schlicher there at the time when she received this deed?

A. She was there when this deed was drawn.

*Q.* And was there any conversation had there?

*A.* Yes, sir; the conversation was that that was to be her portion of his estate.

Court:

*Q.* Do you mean to say that she was told that?

*A.* Yes, sir.

Mr. Stricker:

10 *Q.* Was Henry there?

*A.* Henry was not there.

*Q.* What did Mary do about that house?

*A.* The homestead?

*Q.* Yes?

*A.* She was his housekeeper.

Court:

*Q.* What became of the deed after it was drawn?

*A.* That we don't know.

20 *Q.* Were you not there when it was drawn?

*A.* Well, while I merely had a knowledge that the deed was drawn, and as was brought out in court in another case, it was delivered to her right there and then—

*Q.* You were not present when the deed was delivered, were you?

*A.* No, sir; I was not present when the deed was delivered.

30 *Q.* Did you ever have any conversation with Mr. Hamill about this deed?

*A.* Yes, sir.

*Q.* Tell us what she said and what you said, but principally what she said?

*A.* Well, she claimed that I had the deed; she charged me with having it, and I didn't have it, and I told her I didn't have it, an that it was not in my possession, and I told her that the deed had been delivered to her, and that is as far as I knew anything about.

Q. Did she ever admit to you that the deed was delivered to her?

A. Yes, sir; she did.

Q. When?

A. Oh, on several occasions; I cannot just name the times.

Q. Can you recall where she said it?

A. Right there at the house.

Q. Did she ever tell you what the consideration was for that deed?

10

A. Yes, sir.

Q. What was it?

A. That was to be her share—

Mr. Appleget—I object to that.

The Court—I will take it.

A. That was to be her share of my father's estate, and my father's explanation was that he didn't want her to have any land—

Q. Was this explanation made in her presence?

A. Yes, sir; that he didn't want her to have any 20 farm land that she couldn't handle, and he, therefore, concluded to give her the city property, which would be less difficult for her to handle.

Q. Do you know anything about the value of this farm?

A. Well, it is worth about \$15,000.

Q. And do you know anything about the lease under which these tenants are occupying that place?

A. No, sir; I had no interest in making any lease, and I don't know anything about that.

30

Q. Now, about the same time that your father made a deed to Mary Schlicher; was a deed made to you also?

A. To me?

Q. Yes?

A. No, sir.

Q. Was there one made to Henry?

A. One was made to Henry on the same date.

Q. On the same date?

*A.* Yes, sir.

*Q.* For what?

*A.* For the 38-acre tract.

*Q.* And the title to that was attacked and set aside?

*A.* Oh, no, sir; not that tract, no, sir.

*Q.* Oh, that is the other half; I see.

Court—

*Q.* Henry owns that still, does he?

10 *A.* Yes, sir.

Mr. Appleget:

*Q.* Is that any portion of the premises in this cause, in this bill for partition?

*A.* I think not.

Mr. Hommann—No, sir; it is not.

Mr. Stricker:

*Q.* Did he make another deed to Henry?

*A.* He made another deed just shortly before his  
20 death.

*Q.* To whom?

*A.* To Henry.

*Q.* For what?

*A.* For the homestead; that is the larger farm.

*Q.* That is the farm in question here?

*A.* Yes, sir.

*Q.* And that is the one that was set aside?

*A.* Yes, sir; that is the one that was set aside.

*Q.* Did your father own any other real estate besides  
30 that?

*A.* Not at the time of his death.

Mr. Stricker—Before cross-examination I would like to state to your Honor the reason why that deed, this last one, was set aside. The whole case simmered down to this the old gentleman made a deed and delivered it to a lawyer, and he said, "you hold it until the last day, &c.," and

the Court of Errors held that that was not good delivery.

Court—What has that got to do with this case?

Mr. Stucke—Simply to show the old gentleman's intention!

Court—This deed was made only a few days before his death. Now, that deed was made a long time before that, and it cannot affect this case at all, and has nothing at all to do with it. 10

Examined by Mr. Stricker :

Q. Do you know when that deed to Henry was prepared for this farm?

A. For this farm?

Q. Yes?

A. That was prepared about—now, my father was about a couple of years preparing that deed, but when was it executed—that is the question, is it?

Q. Yes?

A. It was executed about the 18th of October, 1900, 20 as near as I can recollect, but he was about two years in preparing it.

Cross-examination, by Mr. Vanderbilt :

Q. You say there were two deeds drawn, one to Henry for 38 acres and one to Mary, your sister, for the Willow street property?

A. Yes, sir.

Q. And they were both drawn at the same time?

A. Yes, sir.

Q. And who drew the deeds? 30

A. Mr. Hamill and Mr. Chamberlain.

Q. What Mr. Hamill?

A. Hugh H. Hamill.

Q. Where were the deeds drawn?

A. Right in Mr. Hamill's office.

Q. Here in Trenton?

*A.* Yes, sir.

*Q.* Were you present when these deeds were executed?

*A.* They were not executed in Mr. Hamill's office; they were executed up at the house.

*Q.* My question is, were you present when they were executed?

*A.* Yes, sir.

*Q.* Who else was present?

10 *A.* Why, no one else that I know of, excepting Mary.

*Q.* Was Mr. Hamill there?

*A.* Mr. Hamill was there.

*Q.* Was Mr. Chamberlain there?

*A.* I don't remember Mr. Chamberlain being up there.

*Q.* But you do remember that Mr. Hamill was there, and Mary was there and you were there?

*A.* Yes, sir.

*Q.* And was Henry there?

*A.* No, sir; he was not there.

20 *Q.* He was to have one of these deeds?

*Q.* And he was not there?

*A.* No, sir.

*Q.* Where did Henry live at that time?

*A.* He lived at one of the small tenant houses on the farm.

*Q.* On the same farm?

*A.* Yes.

*Q.* He was not invited to be present?

*A.* He was not there.

30 *Q.* The only persons that were there was Hugh H. Hamill, yourself, and Mary and your father?

*A.* Yes, sir.

*Q.* And this was on the 25th of July, 1899?

*A.* On the 25th of July, 1899; yes, sir.

*Q.* Was your father sick at the time?

*A.* Yes, sir; he was.

*Q.* And in bed.

*A.* Yes, sir.

*Q.* How did you come to be there?

*A.* Well, as my father always called me in when there was anything to be done—

*Q.* You got no part of this estate?

*A.* No, sir.

*Q.* Of this property, by any of these deeds?

*A.* No, sir.

*Q.* After the deeds were executed, what was done with it?

*A.* One was delivered to Mary. 10

*Q.* You saw it delivered to Mary, did you?

*A.* Yes, sir; I was there when it was handed to her.

*Q.* Who handed it to her?

*A.* That I do not know, whether it was Mr. Hamill or my father, I cannot remember that.

*Q.* Mary Schlicher filed a bill to quiet title of the Willow street property?

*A.* Yes, sir.

*Q.* She had no written paper or deed for the same?

*A.* It seems not. 20

*Q.* And you were one of the defendants in that cause, were you not?

*A.* Yes, sir.

*Q.* And you filed an answer?

*A.* I think so.

*Q.* You were also a witness in that cause, were you not?

*A.* Yes, sir; I think so.

*Q.* Do you remember testifying in that case that there was no deed ever made out and executed by your father 30 and delivered to Mary Schlicher?

*A.* I don't think I testified anything to that effect, I don't think I testified to that, I don't remember it.

*Q.* That is what your answer set up, did it not?

*A.* I don't know what the answer was, I did not draw that.

*Q.* Didn't you swear in that cause, that your father never gave her any deed for the Willow street property?

*A.* I cannot say that I said that at all.

*Q.* Well, what did you say?

*A.* I don't remember having stated that.

*Q.* You remember being on the witness stand?

*A.* Yes, sir; I remember being on the witness stand.

*Q.* And whatever your objections as a witness, as a defendant, to Mary's having the Willow street property—can you remember what they were?

*A.* My objection was, that she brought me into court  
10 to make me produce her deed, and I simply answered  
that I didn't have it.

*Q.* Well, was that the only thing you set up in your answer?

*A.* I don't remember anything else.

*Q.* You were a witness in that cause, were you not?

*A.* Yes, sir; I was.

*Q.* Didn't you swear in that cause, that she had no deed and never had a deed for that property?

*A.* I don't think I did.

20 *Q.* Didn't you swear to that, or words to that effect, that that title she was claiming under was fraudulent, and that she had no right to this property, and that her father never deeded the property to her, and never meant to deed the property to her?

*A.* I don't remember testifying to that.

*Q.* Do you remember anything you testified to in that cause at all?

*A.* Well, I cannot a great deal, it has been a long time ago you know.

30 *Q.* Who were the answering defendants in that cause, do you remember that?

*A.* I do not remember that.

*Q.* Were there any defendants answered in cause except you and Henry?

*A.* I don't remember.

*Q.* Well, how did you get title to this property in question in this cause, this piece of property you have been in possession of, haven't you?

A. Yes, sir.

Q. How long have you been in possession of it?

A. Well, I have been in possession about five years.

Q. Under what title did you take possession?

A. I bought an interest from Henry in it.

Q. A half interest?

A. Yes, sir.

Q. How long had Henry possession of it, before you bought the half interest?

A. Not a very great while, a short time. 10

Q. Who has been receiving the income and profits from it?

A. Not I.

Q. Who has?

A. Henry.

Q. Since you bought the half interest have you not received a half interest in it?

A. Yes, sir.

Q. Henry received it all, up to the time that he deeded half of it to you? 20

A. No, sir; he received it all up to the present time, until the receiver was appointed.

Q. He received it all?

A. Yes, sir; up to the time the receiver was appointed.

Q. And you never got anything?

A. No, sir.

Q. Who got the rents of the farm?

A. Henry.

Q. Who got the rents from the tenant house?

A. Henry. 30

Q. Who got the income from the crops?

A. Henry.

Q. Who got the money from the railroad?

A. Henry got it.

Q. And you had nothing?

A. I had nothing, and Henry lived on the place.

Court:

*Q.* I do not quite understand your testimony—did you ever settle with him, and did he ever pay you anything?

*A.* No, sir; we partitioned the farm about two years ago.

*Q.* You testified a few moments ago, to something that gave me the impression, that you had received your half of the proceeds, after you had perfected the title?

*A.* No, sir; I never received nothing at all, Henry got  
10 it all, and kept it all. The quarry was never run, or leased until after Henry and I partitioned the place and that quarry fell to his half, and he went right in and leased the quarry, and I had no interest whatever in it.

Re-direct, by Mr. Hommann:

*Q.* You had some doubt at one time about your sister Mary having title to the Willow street property, hadn't you?

*A.* I had; yes, sir.

20 *Q.* And there was a time when she had some doubt about it herself, was there not?

*A.* Yes, sir; there was.

*Q.* And so any statement in your answer contained in this suit or hers in this court, against Charles Keeler and others, on the bill to quiet title was made when you understood that there was a question as to whether she had any title or not?

Mr. Vanderbilt—I object, the question asks for his understanding.

30 Court—That does not enlighten the court much—he has testified that his father prepared a deed and delivered it to the complainant here on the distinct understanding that it was to be taken by her in full, of her share of her father's estate. Now, if that is true, it does not seem clear to me how he could have had any doubt about it. If that statement is true, that the deed was made out and delivered to her on the understanding

that it was taken by her as an advancement to her, in full for her share of her father's estate, I cannot see how he could have ever had any doubt about her title or her right to it.

Question withdrawn.

Mr. Hommann:

Q. Do you know what became of that deed after it was delivered by Mr. Hamill, or by your father to Mary, that is the deed for the Willow street property? 10

A. No, sir; that is the mystery, I do not know what became of that deed, I understood it was handed to Mr. Hamill, and I went to Mr. Hamill's office and asked him for it, and he could not find it and he said he did not have it.

Q. Don't you know what became of it immediately after that time, what was done with it, do you know whether Mary kept it, or whether it was given to anyone to take care of, or what became of it?

A. Well, so far as my recollection serves me, she 20 kept it.

Further cross-examination, by Mr. Vanderbilt:

Q. Is that the answer you filed in the cause to quiet title (handing witness a paper)?

A. I don't know, I never saw it, I did not draw it up and I cannot tell you about that, I don't know, sir.

Defendants rest.

Mr. Appleget—We offer in evidence the answer filed 30 by the defendant in the cause, between the same parties as in this cause, in which answer the Willow street property is referred to, and it is the answer of George Keeler, that is the original answer as filed in the Court.

Court—Have you the original record here?

Mr. Appleget—Yes, I have the original record here.

Court—Then you ought to offer the whole record.

Mr. Appleget—We offer in evidence the whole record

in the suit entitled "Mary E. Schlicher, complainant, and Charles Keeler and others, defendants."

Mr. Appleget—We also offer in evidence the testimony that was given in that cause, as taken by Mr. Lightfoot, the stenographer, also as part of the record.

Court—The testimony is not part of the record, you will have to produce the stenographer with a transcript of the evidence and prove that. As you have not got that here, you cannot offer it.

10 Mr. Vanderbilt—We also offer the decree in the Court in the suit to set aside the title of George Keeler and Henry Keeler.

Court—You will have to produce the record.

Mr. Vanderbilt—I offer in evidence, then, the record in that cause. First there was a suit or bill filed by Judge Lanning as counsel to set aside the deed for this tract of land in question, which Henry had obtained—it was a deed from Charles Keeler to Henry Keeler, and the suit was by Mary Schlicher as complainant, and the

20 Court of Chancery decided against Mary Schlicher.

Court—That deed was set aside, was it not?

Mr. Vanderbilt—Yes, that deed was set aside.

Then I also filed a bill while that suit was pending, to quiet title to the Willow street property, and that suit went to a decree. The questions I asked George Keeler while he was on the stand, had reference to the testimony that he gave, in the suit to quiet title. Now, I offer the whole of the record in the case to set aside the conveyance to Henry and George, entitled "Mary E.  
30 Schlicher and others, complainants, against George W. Keeler and others, defendants."

*Mary E. Schlicher*, being duly sworn according to law, in rebuttal, on her oath saith:

Examined by Mr. Vanderbilt:

Q. You reside in Trenton?

A. Yes, sir.

Q. Your husband's name is what?

A. William Schlicher.

Q. Did you reside with your father at the time of his death?

A. Yes, sir.

Q. How long had you alone with your father?

A. Oh, I don't know how long, alone—

Q. After the other children left, that is?

A. Well, I lived there all my life-time, but how long after the others had left—

Q. Yes; how long after the others had left? 10

A. Well, I guess ten or fifteen years, they all left at different times you know.

Q. They married and went away?

A. Yes, sir! they got married and left home.

Q. At the time of his death, or three or four years preceding that, who lived with your father?

A. No one but myself.

Q. Where did Henry live?

A. In the little small house on the farm.

Q. Did your father carry on farming? 20

A. Yes.

Q. And what did Henry do?

A. He worked on the farm, Henry did the farming.

Q. George Keeler has said that there was no farming done—what have you to say about that?

A. There has not been during the last five years—

Q. During your father's life-time I mean?

A. Well, Henry farmed the place all the time, up to the time of father's death.

Q. Henry farmed the place all the time down to your father's death? 30

A. Yes, sir.

Q. And George has spoken of the buildings being in such a dilapidated condition, at the time of your father's death, what have you to say about that?

A. Well, I think they were in good condition then, but they have all gotten run down and in a bad condition in the last five years, and as to the fences, they were

all right during my father's lifetime, but the fences have all gone within the last five years, the feshet took the fence away and there has never been any put there since.

*Q.* You had a deed for the Willow street property?

*A.* Yes, sir.

*Q.* Who drew that deed?

*A.* Mr. Chamberlain and Mr. Hamill.

*Q.* And where was it executed?

*A.* Up at the house.

10 *Q.* And who was present at the time it was executed?

*A.* No one, but Mr. Hamill and Mr. Chamberlain and myself and my father; no one but us was supposed to know that the deed was being drawn at all; Mr. Hamill gave me strict orders, strictly not to let George or anyone else of the family know anything about that deed.

*Q.* And do you say George was not there when the deed was executed?

20 *A.* No, sir; he was not there when the deed was executed and he knew nothing at all about it until he found out about it—

*Q.* It has been testified to here that that deed was given to you for your full share of your father's estate; what have you to say about that?

30 *A.* No, sir; that is not true; Mr. Hamill, when he was out there, asked my father in what way he wanted to give it to me. He asked him if it was for his division of his estate, and whether this deed was to be for my share of his estate, or whether it was to be extra, and he made a speech, you know; I cannot tell you nearly half what he said, but when he got through my father, he said: "No, it is extra; they deserve to have it," and he said: "I want Henry and Mary to have an extra share; for their share of my estate, I want them to have this extra, because," he said, "all the others went away and they were the only ones that staid home and took care of me," and he said that he was doing that so as to make sure of it, and he didn't care for the rest of the family to know anything of it.

*Q.* Was Henry there at the time?

*A.* No, sir; Henry wasn't there when he said that.

*Q.* Was your father sick at the time?

*A.* Yes, sir; he was very sick.

*Q.* Was he in bed?

*A.* Yes.

*Q.* How did Mr. Hamill and Mr. Chamberlain come to come out there?

*A.* My father sent for him, through Dr. Lawlor; the doctor delivered the message for him to come out to see 10 my father.

*Q.* Was Dr. Lawlor attending him at that time?

*A.* Yes.

*Q.* Was the deed executed in your presence?

*A.* Yes, sir; the deed was executed in my presence, and when it was executed it was delivered to my father, and he handed it back to Mr. Hamill, and then Mr. Hamill delivered it to me.

*Q.* Your father executed the deed?

*A.* Yes, sir; my father executed the deed and then 20 delivered it, or handed it to Mr. Hamill, and then Mr. Hamill delivered it over to me.

*Q.* After you received the deed, what did you do with it?

*A.* Well, I had it in my possession for one year, and then my father thought that he was not going to live very long, and he went over to Mr. Hamill's and asked Mr. Hamill to go and have it put on record, and Mr. Hamill sent Mr. Chamberlain out to the house for the deed, and he came out and got the deed; I gave him the 30 deed, as I understood it, for the purpose of having it recorded, and Mr. Chamberlain, when I asked him about it, he said: "Oh, this is all right for ten years, as long as the deed was not in her possession," and Mr. Hamill then said that he would keep it for me, and he said it would always be all right, and just as soon as father was dead I went over to Mr. Hamill and asked him for the deed, and then it was he said he didn't have it, and

he didn't know where it was; whether it was that father had gone there to him and got it or not, he didn't know, but anyhow, he didn't have it, and he didn't know where it was, but the deed was afterwards seen in George's possession by Henry, and Henry told George that he was surprised—that it was a state prison offence, and he wanted to take the deed away—

*Q.* Well, you afterwards asked me to file a bill to quiet title?

10 *A.* Yes, sir.

*Q.* Were you present during the trial of that cause?

*A.* Yes, sir.

*Q.* And was George Keeler a witness in the cause?

*A.* Yes, sir.

*Q.* And who else?

*A.* Mr. Chamberlain, Mr. Hamill and all the brothers, Henry and George.

*Q.* Was that all?

20 *A.* Yes, sir, I believe that was all; they were all called, and we had Dr. Lawlor called as a witness, but he was not called on to testify.

*Q.* Did George testify that he was present, or say anything about being present at the execution of the deed?

*A.* He testified at that time, that there was no such deed in existence, and that the deed never was made, and that I was not entitled to it.

*Q.* What were his words as near as you recollect that he said, about your never having had such a deed?

30 *A.* I don't remember his words, I only remember that he said there never was one delivered, and that there never was such a deed made out at all.

*Q.* Did he say anything about having anything to do with the getting up of that deed?

*A.* No, sir; and he never had anything to do about that deed at all.

*Q.* But did he swear to that on the trial at all?

A. No, sir, on the contrary, he swore that there was no such deed ever.

Q. Did he swear on that occasion anything about that deed being in full for your share of the estate?

A. No, sir, not at that time, there was not anything mentioned—

Q. But did he admit or swear in that trial that he had ever seen such a deed?

Mr. Hommann—I object as immaterial and incompetent. 10

Court—The witness testifies that George Keeler did give evidence in that cause that no such deed was ever made out or delivered. Now, I do not see how you can have anything stronger than that, anything stronger than the way she puts it.

Mr. Vanderbilt:

Q. George has sworn that there was a contract or an agreement between you and your father, that you were 20 to accept that deed as your share or portion of his estate, and that you was to have no further interest in any other portion of his estate?

Mr. Hommann—I object—the witness has not said so.

Court—I do not understand any such contract having been testified to. He said that his father said, he wanted this deed made out to his daughter, and in her presence, he said, that it was to be accepted by her, as her full share in his estate. 30 And one witness has said that she was dissatisfied with it, and said that it was not right, that she ought to have all of his property. Now, I do not understand that it has been testified to that, that was a contract between the father and his daughter.

Question withdrawn.

Mr. Vanderbilt :

*Q.* Did any such conversation as the Vice-Chancellor has spoken of, that George swore to, ever take place between your father and yourself?

*A.* No, sir, never, nothing of the kind. Mr. Hamill was there, and he knows just exactly what took place, ask him.

*Q.* Miss Alice Keeler has sworn that you stated to her, that your father had given you a deed for the  
10 Willow street property, which was to be in full for your share, or words to that effect, and that you were dissatisfied with it, and that you were going to get all you could besides that, now what have you to say about that?

*A.* Well, now, there was nothing in it at all, there was never anything of the kind ever said by me to Alice, and there was nothing to be got on the farm whatever, and everything that we did get there, we worked for, and we had to work hard for it, and pretty nearly every-  
20 thing that was got on the farm that we worked so hard for, went to pay George's debts, I never had a dollar in the bank, and I can prove it by my husband, I say I never had a dollar in the bank before I was married.

*Q.* Was there any such conversation between you and her ever took place?

*A.* Never, nothing of the kind ever occurred, I never said any such things to her.

*Q.* She has testified that you gave her bank bills and got her to go to the banks and get gold coin for them—  
30 did you ever give her bank bills to get her to go to the different banks to get them exchanged for gold coin?

*A.* Never, never in my life.

*Q.* Did you ever have piles of gold coin in old stockings?

*A.* No, sir, I never had, I wish I could say yes to that, but I cannot, I never had any such thing in my life.

Cross-examination, by Mr. Hommann:

Q. When did your mother die?

A. Oh, when I was twelve years old, I guess, or even younger than that.

Q. About how long ago was that?

A. Well, she has been dead, I guess, about thirty years, and maybe more than that.

Q. And immediately after your mother's death, were you your father's housekeeper?

A. No, sir; we had a housekeeper, and she died 10 several years ago.

Q. How long were you entrusted with the care of the house?

A. For over ten years or more, I guess as much as fifteen years altogether.

Q. And you and your father were friendly, were you?

A. Yes, sir, very.

Q. And he was very fond of you?

A. Well, he would not have anyone else to wait on him but myself, in fact he would not take a spoonful of 20 medicine from anyone else, it didn't matter who it was.

Q. He provided for you as long as he lived, didn't he?

A. I didn't get anything, only what I earned myself, outside of his home.

Q. Well, what did you do outside?

A. Well, we had some friends in New York, a Mr. Smith or Mrs. Smith, and she had a grandson, and she generally sent him up there for me to take care of during the summer season, and I kept him usually during the summer and she paid me for that. 30

Q. He was a boarder, was he?

A. Yes, sir.

Q. And you kept the money that you got from that?

A. Oh, well, now, we didn't want to take any board, and we didn't make any charge for board, but she would just simply make a present of it, she would generally make me a present of about \$25 in gold, or something

like that, and that is about the only gold that I ever handled at the time.

*Q.* And in the meantime your father gave you money to pay for your clothes, didn't he?

*A.* Well, very, very seldom, whatever I had I earned just as I have told you, and I generally got presents and whatever I had I generally got in that way, that is when I had anything, and that was not very often.

*Q.* Your father had money, hadn't he?

10 *A.* Oh, yes, sir, he had some money, but the property was in such shape that it didn't realize very much, and what money he did get went to pay George's debts more than anything else, he gave him a house once, or more than one, I don't know just exactly how many, and he mismanaged things so that they went into the hands of a receiver, and that sort of thing kept us in hard lines all the time.

*Q.* Now, when your father made the deed of the Willow street property to you, tell us all about that again,  
20 please?

*A.* Well, he asked Mr. Hamill to come up, and when Mr. Hamill came up there he asked Mr. Hamill if he didn't think it a good idea, and he said yes, you certainly should look after your daughter—(interrupted)

*Q.* Oh, then you expected something of the kind, did you?

*A.* No, sir; I never expected anything of the kind. I never looked for anything of the kind, and I never spoke to my father one single word about it, and it  
30 never entered my mind to either look for anything of the kind or to speak to him anything about it.

*Q.* Well, you lived with him and took care of him for over ten years, you say?

*A.* Yes.

*Q.* And you expected, of course, when he died that you would get one share of his estate, didn't you?

*A.* Yes, sir; I expected that his estate would be divided into seven equal shares.

*Q.* And you expected that your brothers in Philadelphia would get the same as you got, did you?

*A.* Yes, sir; of course they were all his children, just the same as I was, and I didn't think I was entitled to any more than the rest of them.

*Q.* Yet they never came near him?

*A.* Oh, well, I want to change that, all except George. George has had a good deal from my father; my father was giving him money and property all the time. George I didn't think was entitled to as much as the rest of us, in fact I didn't think he was entitled to anything. He had had more than any of us; my father had done more for George than he did for any of us. 10

*Q.* Now, did your brothers come from Philadelphia to see your father at all?

*A.* Occasionally.

*Q.* They didn't help him in a business way, did they?

*A.* None of them was in a position so that they could help him any. They were too far away in the first place to be of any particular assistance to my father. Of course you know they couldn't all stay at home; they couldn't all attend to the farm. 20

*Q.* You attended to that, didn't you?

*A.* Well, we attended to the farm; that is, Henry did the farming, and I attended to the household duties.

*Q.* There was a quarry there, was there not?

*A.* Well, they hadn't been running the quarry for the last ten years.

*Q.* Not at all?

*A.* No, sir. 30

*Q.* Was there no stone sold out of it?

*A.* No, sir; not for the last ten or fifteen years, not any portion of it. I can find the date exactly, if you want it, but I think it is about that time, that the quarry has been idle.

*Q.* It is immaterial. Your brother, George, once brought a suit in partition in this court on that very Willow street property, didn't he?

*A.* Yes, sir.

*Q.* And do you remember answering to that bill?

*A.* What is that?

*Q.* Do you remember filing an answer to that suit?

*A.* No, sir; I do not. Well, I know he filed an answer; I don't remember about it, what it was.

*Q.* And you went to see Judge Lanning?

*A.* Yes.

*Q.* And he was your counsel?

10 *A.* Yes, sir; at that time he was.

*Q.* And he filed an answer for you?

*A.* Yes.

*Q.* And you told him what to put in the answer, didn't you?

*A.* I don't know whether I told him, or he told me; I cannot say.

*Q.* You consulted with him, did you?

*A.* I consulted with him; yes.

*Q.* And do you remember that in your answer you  
20 said, "that your father was a widower and had been  
such for a number of years, and that it is true that all  
his life, up to the time of the death of your father, you  
had resided with him, and for many years prior to his  
decease you were his housekeeper, and that when your  
father executed and delivered the deed to you for this  
Willow street property he declared that it was intended  
as a voluntary settlement upon you as a portion of his  
estate"?

*A.* No, sir; I don't think there was anything of the  
30 kind ever said, because Mr. Hamill was sworn as a wit-  
ness on that suit and he testified to why it was given  
to me.

*Q.* Now, this suit having come to trial as I under-  
stood, your brother filed a bill in partition?

*A.* It never came to trial.

*Q.* No; that suit never came to trial?

*A.* With Judge Lanning as my counsel?

*Q.* Yes?

*A.* No; I think he gave it up; I think Judge Lanning gave it up because he was going away, and Mr. Vanderbilt took it up for me.

*Q.* No; Mr. Vanderbilt didn't take this case up; this suit was discontinued; but my question is, do you remember that answer?

*A.* I don't know what suit it is you are referring to now; has it anything to do with the Willow street property?

*Q.* This is on the Willow street property—didn't your brother George file a bill to partition that Willow street property? 10

*A.* I don't know whether he did or not; he filed several partitions; I don't know what one this is you are speaking about.

*Q.* You have had a good deal of litigation over this matter, haven't you?

*A.* Yes, sir; I have, a good deal.

*Q.* Now, you did not expect, did you, after that deed was made to you, to get anything more out of your father's estate? 20

*A.* Yes, sir; certainly I did. He said the rest of his estate would be all divided equally between us, except as to George, and he said that he had already had his share, and he made only six shares of his estate; he didn't intend that George should have anything more out of his estate.

*Q.* You were aware that your father had made a deed to Henry for this thirty-eight-acre tract, were you not?

*A.* Yes, sir; and mine was given at the same time. 30

*Q.* And you understand that your father was engaged in making a survey of the farm you were seeking to partition for the purposes of making that deed to Henry, didn't you?

*A.* No, sir; George made that deed, and he made him sign it, which was just three days before he died, and then George he confessed it to me, and he said that he didn't know why he made him sign it; he said he knew

that it was not right, and he also said that there was another small deed that he wished to give to Henry, instead of the seventy-six-acre tract; he said he wanted to give him a portion of the large farm, and he asked George if that deed which Gorge asked him to sign was for the small farm, and George said yes, and Mr. Chamberlain also said yes to that—(interrupted)

*Q.* Didn't you testify on the trial of the case that was tried before Vice-Chancellor Reed, when you took  
10 the title, that your father went over that description, course by course, in his room in your presence?

*A.* Only for the small tract—

*Q.* No; for the large farm?

*A.* Not for the large farm; no, sir; the surveyor told me himself that he had never surveyed it, and that is Mr. Weir, who died just recently, he told me—

*Q.* Who made this deed for the whole farm?

*A.* George made that deed out, and he told my father that it was for the small farm, and in reality it was for  
20 the large farm; he deceived my father, and he confessed to me afterwards—

*Q.* Were you not present in the room at that time and was it not all read over to him.

*A.* No, sir, it was not read over to him at all, it was just three days before he died, and he was not able to understand anything, but he asked me afterwards "why did they want him to sign it," and I said, "I did not know." And he said, "he thought it was for the little place."

30 *Q.* That was the 38 acre tract?

*A.* Yes, sir, but he made another deed also for a portion of the large farm, a portion which was separated from the large farm by the railroad, and he said he thought it was better for Henry to have that, and he wanted to make him a new deed and he said he would take the 38 acre tract back again, and instead of that, make the small deed out for him, that is he thought they wanted to make out the whole deed, and then George

promised to divide with Henry, and Henry had to give him one-half and I guess that is how they came into possession of the farm.

*George Keeler*, being recalled, saith :

Examined by the Court :

*Q.* You testified that the Homestead farm was partitioned between you and Henry?

*A.* Yes, sir.

*Q.* How did you make that partition? 10

*A.* By a commission appointed by the Court.

*Q.* What title had you?

*A.* We had the title which was on Henry's deed, which was sustained by the Vice-Chancellor.

*Q.* Where did you get title—I know Henry had a deed for it, but where did you get your title?

*A.* Henry conveyed a half interest to me, an undivided half interest.

*Q.* I see—now what was the consideration of that conveyance? 20

*A.* Well, there was various kinds of money, and some part of it was for services which I was to render to him in starting up the farm, in order that he might operate it.

Examined by Mr. Stricker :

*Q.* It has been testified by Mrs. Schlicher, that your father had paid some debts for you, and that all the money they got, it took to pay your debts—is that so?

*A.* That is not true, I have records to show for that.

*Q.* Has your father since your majority, been obliged 30 to pay any debts for you?

*A.* Never.

*Q.* And your sister has testified something to the effect that you were on the verge of being put into the hands of a receiver, or something of that kind, is that true?

*A.* Nothing of the kind, I never conducted any business of any kind.

Recess.

*Hugh H. Hamill*, declaring himself conscientiously scrupulous of taking an oath, being duly affirmed, on affirmation saith :

Examined by Mr. Vanderbilt :

Q. You reside in Trenton?

A. Yes.

Q. You are a counsellor-at-law?

A. Yes.

Q. You knew Charles Keeler in his lifetime?

10 A. Very well.

Q. You transacted business for him?

A. Yes.

Q. Over what period of time?

A. Fifteen years or more.

Q. You knew the family well?

A. Not all of them, some of them. Some of them I never saw and never knew.

Q. You knew George Keeler?

A. George Keeler; yes.

20 Q. And you knew Mary Keeler or Mary Schlicher, as it is now?

A. Yes.

Q. And Henry?

A. Yes.

Q. In 1899 was Henry living home with his father on the farm?

A. You will have to fix for me the date of Mr. Keeler's death. I think he died somewhere in 1900, but, of course, I do not know exactly.

30 Q. He died on February 7th, 1900.

A. Yes; I think Henry was living with him that year, and the year before that.

Q. Was Mary home with her father?

A. When?

Q. In 1899. She lived home with her father up to the time of his death, didn't she?

A. I think so. She certainly was home with her father for a number of years, and up to his death, I

think, or to within a short time of his death. I cannot say about that exactly. I was very rarely there. I never was to the house over half a dozen times in my life.

*Q.* Who came to your place of business, or transacted the business with you?

*A.* Charles Keeler, frequently.

*Q.* Do you remember preparing some deeds for him for part of the farm, a deed for Henry for part of the old homestead?

*A.* By the old homestead you mean the old John Keeler place near the asylum?

*Q.* Yes?

*A.* That is the old homestead, as I understand it.

*Q.* That is not part of the farm?

*A.* No.

*Q.* Where he died?

*A.* No, sir; that is known as the Hill farm, with the saw-mill there.

*Q.* That was deeded to Henry by Charles Keeler in his lifetime, was it not? 20

*A.* The John Keeler or the old homestead farm?

*Q.* Yes?

*A.* Yes, sir; at least he executed a conveyance for that purpose.

*Q.* Do you remember his executing a conveyance to Mary for the Willow street property in Trenton?

*A.* Yes; I remember the fact.

*Q.* Did you have the deed prepared under your supervision?

*A.* Yes. 30

*Q.* Do you remember the fact of his being sick a year or two years before he died, and of his sending word to you, by Dr. Lawlor, that he desired you to come up to his place?

*A.* Yes.

*Q.* In answer to that information conveyed by Dr. Lawlor, did you go to his place?

*A.* I did.

*Q.* Did Mr. Chamberlain go with you?

*A.* It was in the late summer, I think; yes.

*Q.* Was it in the month of June?

*A.* Yes; it might have been. I was living at the shore at the time, I remember.

*Q.* Do you remember Mr. Chamberlain being in your employ?

*A.* Yes.

*Q.* What is his name?

10 *A.* Richard C. Chamberlain.

*Q.* He prepared the deed under your supervision?

*A.* Yes.

*Q.* Do you remember his accompanying you up there?

*A.* Yes.

*Q.* Do you remember finding Charles Keeler sick in bed?

*A.* Yes.

*Q.* And you had that deed made at that time—that is, Mary's deed—for the Willow street property with you?

20 *A.* Yes, two deeds; one for the old homestead and one for the Willow street property.

*Q.* The John Keeler place?

*A.* Yes, and one for Mary for the Willow street property.

*Q.* Do you remember his executing those two deeds at that time?

*A.* He certainly executed the John Keeler deed at that time; I am not sure whether he executed Mary's deed at that time, or whether it had previously been  
30 executed, but perhaps it was at that time; I am not sure, but to the best of my recollection I should say now, at that time, but I may be wrong about that; the dates would settle that for themselves.

*Q.* Was Mary present when they were executed?

*A.* She was present at that interview.

*Q.* Was George Keeler present at that interview?

*A.* I think not; to the best of my recollection Mr. Keeler was there in bed, and Mr. Chamberlain and my-

self and Mary, who was in and out of the room; in part of the time and out part of the time.

*Q.* After the deeds were executed, did you deliver them to anyone?

*A.* Now, I do not remember; I did not take them away with me; if you mean by that, did I deliver them to Mary or to Charles Keeler I cannot say which.

*Q.* The deeds afterwards were brought by Charles Keeler, after he recovered from that sickness, to your office, were they not? 10

*A.* Yes, by him.

*Q.* And you kept them for a while?

*A.* For some time; yes.

*Q.* And he called afterwards and got them?

*A.* Yes.

*Q.* Now, at the time the deeds were executed, did Mr. Keeler say anything about advancing Mary this Willow street property, in full for her share, that she should get of his estate?

*A.* Oh, no; quite the contrary. 20

*Q.* What did he say, as near as you can recollect it?

*A.* Well, that is very difficult for me to give you anything more than a very general impression; that by reason of the fact that Mary had nursed him and been his housekeeper and cared for him he intended to give the Willow street property to her as something additional to what she was yet to get; that is my impression. Now, afterwards he came and took these deeds away, because he was, shall I say angry, perhaps he was angry, because she was engaged to be married, or was married to Mr. Schlicher, which did not seem to meet his approval. 30

Mr. Vanderbilt:

*Q.* You have stated that you have done business for him for fifteen years?

*A.* Yes.

*Q.* About that time of the delivery, or shortly before or after, did he ask you to draft a will for him?

*A.* Before that time I had drawn a will, which he had executed—after that time—yes, yes, I made a draft of a will, which was never executed, so far as I know.

*Q.* After that second draft of the will, did Mary get her share—

Mr. Hommann—I object to the question as immaterial and incompetent.

10 Court—I do not think that would affect the question at all. She did get a portion of her father's estate by this conveyance, and it was sustained by the decree of the Court of Chancery, and the simple question here is whether such a conveyance under our statute is an advancement. You have to assume that he actually passed from him the title to this land by that deed, because the Court said that the deed was given, and that it was a delivered deed, and that it was effective. Now, what he undertook to do afterwards cannot affect that. I will over-  
20 rule the question.

Mr. Vanderbilt:

*Q.* Why did he state that he gave this Willow street property to Mary?

Mr. Hommann—I object to the question—it does not appear that he stated anything of the kind.

Question overruled.

30 Mr. Vanderbilt:

*Q.* What were the reasons he stated for giving this property to Mary?

*A.* I can only say what I have said before, of course I cannot quote his words—Mary had lived with him, and was his housekeeper, and had nursed him, and he wanted to do something for her right away, in excess of what he intended to do for the family.

*Q.* In excess of what he intended to do for the rest of the family?

A. Yes.

Q. In excess of what he intended to do for the rest of the family?

A. Yes. I cannot give you his words, I can only give you the impression on my mind. I ought to add, however, to that, that he had it in his mind that Mary was to remain with him, and remain unmarried; now, I cannot give you his words, but that he expected, I am sure.

Cross-examination, by Mr. Hommann:

10

Q. You prepared all the deeds that Mr. Keeler gave, did you not?

A. Well, I don't know about that.

Q. You prepared the deed for the John Keeler farm?

A. Yes.

Q. Now, is the John Keeler farm, the farm that contains 125 acres that was afterwards deeded to Henry, and the deed set aside by the Court of Errors?

A. I don't know, sir; it is the farm nearest the Asylum, and east of the Reading railroad.

20

Q. Do you know whether it is the one with the quarry on it?

A. No.

Q. It is not?

A. No, it is not.

Q. What do you call that farm?

A. That is the old Hill farm, the old Homestead, that is the larger farm.

Q. You prepared a deed for that also, did you not?

A. It was prepared under my direction.

30

Q. Who gave you the direction for preparing that deed?

A. Charles Keeler.

Q. Did you know whether there was a mortgage on that farm or not?

A. I think so.

*Q.* Have you any knowledge of it, and do you know how much it was?

*A.* I cannot tell you now, but I am quite sure there was a mortgage on it.

*Q.* Now, you say that at this interview, you had with Mr. Keeler, at his home, in June, 1899, when he executed a deed for the Willow street property, to Mary, that George was not there—are you positive of that?

10 *A.* In the room, George was not in the room, at least, I think not.

*Q.* You are not positive then?

*A.* No; but to the best of my recollection, he was not there.

*A.* I am not positive of it.

*Q.* He might have been there?

*A.* He might have been there, yes.

*Q.* Do you remember what the consideration was in the deed you drew for Mary, that is that was to go to  
20 Mary?

*A.* Named in the deed?

*Q.* Yes, what was the consideration named in the deed?

*A.* No, I don't know.

*Q.* Was it a dollar, and natural love and affection, or anything of that sort?

*A.* I don't remember the conversation we had; the conversation was before the conveyance.

*Q.* Was before that deed was given?

30 *A.* Yes; the conversation was before the deed was given.

*Q.* How long before?

*A.* Oh, some time before, weeks before.

*Q.* A week or weeks?

*A.* Weeks before.

*Q.* Do you remember in the deed that you made for the big farm—the deed was finally executed by Charles Keeler for his son, Henry—how long was it after you

got your instructions to draw that deed before it was finally prepared and ready for execution?

*A.* That is the last deed for the Hill farm?

*Q.* Yes, the big farm?

*A.* West of the Bound Brook railroad?

*Q.* That this bill is filed to partition, do you remember how long it was you got your instructions to draw that deed, before it was finally prepared and ready for execution?

*A.* I cannot tell you. 10

*Q.* It was some time, was it not?

*A.* Oh, yes; it was talked over several times. A survey was made by Mr. Weir, I think, and I think George Keeler assisted him.

*Q.* It was a considerable time before it was actually presented to him for execution, was it not?

*A.* I think so.

*Q.* In your dealings with Mr. Keeler, did he occasionally come to see you alone, or generally?

*A.* Yes. 20

*Q.* Was he accompanied frequently by his son George?

*A.* In the earlier days he was; not latterly.

*Q.* When you say "not latterly" tell us up to what time George used to accompany him?

*A.* Well, I should say two or three years before his death, and perhaps three or four, say three years; that is the best of my recollection. I do not mean to say that George did not come with him after that, perhaps once or twice after that. 30

*Q.* He was very frequently with him, was he not?

*A.* Before that, but not after that; no.

*Q.* Do you recall how you went out to the farm on the day that the deed was executed that was given to Mary? You lived in Trenton, and went out there?

*A.* Yes.

*Q.* Do you recall how you went up there, by what means of conveyance?

*A.* I think Mr. Chamberlain went with me. I am not positive, but he was there at all events.

*Q.* Do you recall how you went—by carriage, buggy or vehicle, drawn by horse or how?

*A.* Yes; it was not by railroad or motor car.

*Q.* Do you remember whether he came to get you or you got one yourself and went out there?

*A.* That I do not remember.

*Q.* You do not know that George did not come and  
10 get you, do you?

*A.* I should say not, but I do not remember how I went out there.

*Q.* Did you go out with Mr. Chamberlain at the time the deed was made to Henry for the big farm, when it was actually executed?

*A.* I don't remember; I think not. I am sorry I cannot be more positive of it, but it is a good many years ago.

*Q.* Your attention has not been directed to this mat-  
20 ter very recently, until within a very few days?

*A.* No. You spoke to me the other day, and these gentlemen came as I was going to lunch to-day.

*Q.* When I spoke to you that was the latter part of last week?

*A.* Yes.

*Q.* And that interview was very brief?

*A.* Yes; the interview was very brief.

*Q.* And your testimony is now rather a matter of im-  
pression rather than recollection?

30 *A.* Yes.

Re-direct, by Mr. Vanderbilt:

*Q.* You were a witness in a case in this court to quiet title to the Willow street property, before Vice Chancellor Grey, were you not?

*A.* I was a witness in one of the Keeler cases before Vice Chancellor Grey; one of the cases.

*Q.* Don't you remember whether it was in relation to the Willow street property or not?

A. I do not remember.

Q. It was before Vice Chancellor Grey, you testified?

A. Yes.

*William Schlicher*, called.

Court—Why do you call this witness? Your case was closed at noon, you said, with the exception of calling Mr. Hamill and Mr. Chamberlain, and they were not here, and you were not ready to go on and complete your case, and you said you only wanted to call those 10 gentlemen, and the other side agreed that you could do so, and on that agreement they went on with their rebuttal evidence, and then were adjourned, so as to give you an opportunity to call Mr. Hamill. Of course, you will remember that I asked you if there were any other witnesses you wished to call and you said no; that is all, and so I told the defendants that they may as well go on with their rebuttal. I do not think it proper that you should call any other witnesses.

Mr. Vanderbilt—Then we will withdraw this witness. 20

Mr. Hommann—I would like to offer in evidence the record of a case entitled “George W. Keeler *v.* Charles Keeler and others,” in this court, where the complainant answered the bill and stated in her answer that this property had been given to her by her father, and that it was intended as a voluntary settlement with this complainant as a part of his estate.

Mr. Appleget—I would like to offer, or be permitted to call and supplement the record, by calling Mr. Lightfoot, the stenographer who took the evidence in the 30 case, all the record of which has been already offered. I say I would like to supplement that offer by the production of the evidence, on the ground that there is a dispute of fact between these witnesses, one side saying one thing and the other side contradicting it in detail. That if the Court would like to have that evidence and to understand all the case, it would be necessary to have the testimony taken by Mr. Lightfoot in that case

transcribed and produced before your Honor, and I think it ought to be offered. I thought I could lay my hands on a transcript of that evidence, but I find I am not able to do so.

The Court—What is your offer?

Mr. Appleget—My offer is to produce and supplement the offer of the record already made in that case by the testimony taken in that Willow street property case, to have Mr. Lightfoot make a transcript of it and offer  
10 that transcript in evidence.

The Court—That I overrule. Even if you had it here now the transcript would not be competent evidence.

Case closed.

Argument.

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IN CHANCERY OF NEW JERSEY.

	BETWEEN	
	MARY E. SCHLICHER ET AL.,	} On Bill for Partition.
	<i>Complainants,</i>	
20	<i>and</i>	
	CHARLES KEELER ET AL.,	
	<i>Defendants.</i>	

CONCLUSIONS.

(Filed October 31, 1905.)

A. S. APPLEGET and G. O. VANDERBILT, for Complainants; HOMMANN & STRICKER and J. V. B. WYCKOFF, for Defendants.

BERGEN, V. C.

Charles Keeler, died in October, 1900, seized of a  
30 farm, near Trenton, on which he resided at the time of his death. He left as his heirs at law seven children, of whom the complainant is one, who files her bill of

complaint praying partition of the lands. In July, 1899, her father conveyed to the complainant a valuable lot of land on Willow street, in Trenton, worth, according to the undisputed evidence in the cause, \$10,000. George W. Keeler, one of the children, has answered and charges that the real estate so conveyed to the complainant was intended by their father as an advancement, and that she is not in equity, entitled to the equal undivided one-seventh part of the remaining lands left by their father, but to such part only as may be necessary to equalize the shares of the respective owners after charging her with the value of the lands previously transferred to her. It was urged on the argument, that the answer is not so framed as to present the precise question the court is asked to determine, but as the evidence offered by both parties was directed to the real issue between them, I will permit the defendants to amend their answer so that the issue tried may be presented by the record.

The testimony shows that the homestead is fairly worth \$15,000, and that it is all of the real property of which Charles Keeler died seized. It thus appears that the father had conveyed to this daughter a large proportion of his landed estate, although she was but one of seven children, and it does not appear that she paid any consideration therefor.

At the conclusion of the argument, I expressed my conviction that the transfer of the Willow street property was intended as an advancement, and further consideration has strengthened that conclusion. A conveyance of land in consideration of natural love and affection, or for a nominal consideration by a parent to his child, has been held to be an advancement within our statute, unless a contrary intention is made to appear, and the presumption arising from such conditions overcome, *Speer v. Speer*, 1 *McCarter* 240; *Hattersley v. Bissett*, 51 *N. J. Eq.* 597-601.

This complainant expressly disclaimed that the trans-

fer was made in consideration of services rendered to her father, and testified that her services to her father were given without the expectation of payment, and there is no proof of any claim of that character, nor of any accounting between them when the transfer was made. It was manifestly a conveyance in consideration of the grantors affection for his daughter, prompted perhaps by a desire to greatly prefer her in the distribution of his estate. Bearing on the question of intention, is the fact proven in this cause, that shortly before his death, the father undertook to convey to one of his sons the homestead property, which constituted the residue of his real estate. This effort was unsuccessful because, as declared by our courts, the deed was not properly delivered to become effective, but the attempt, though void in law as an efficient method, nevertheless discloses a determination on his part to place the remainder of his lands beyond the possibility of the daughter's inheritance.

20 The only other testimony I consider it necessary to refer to, is that of Mr. Hamill, the attorney who was present when this deed was executed, who, while unable to recall the words used by the grantor at the time, testified that according to his recollection, Mr. Keeler said in substance, that as Mary (the complainant) had taken care of him and nursed him, he wanted to do something for her right away, in excess of what he intended to do for the rest of the family. In another part of his testimony Mr. Hamill said, that Mr. Keeler  
30 declared that he wanted Mary to have something in addition to the others. Accepting Mr. Hamill's statement of impressions remaining in his mind regarding a conversation had six years ago, as a substantial reproduction of what was said, it is entirely consistent with the theory that it was intended as an advancement, and does not tend to overcome the presumption that a gift of this character is an advance to a probable inheritor. The provision being made was in excess of what the

other children could possibly inherit, and it was something in addition to what the others would get. Her share of the estate without preference, would have been one-seventh of \$25,000, while under the advancement she has \$10,000, a substantial excess over, or an addition to, any sum the other children will take.

There will be a reference to a master, in the usual form, who, among matters, shall ascertain the interests of the respective parties, and also what amount should be charged against the share of the complainant in this cause on account of the advancement to her of the Willow street lot. The master will also take an account of the rents, issues and profits derived from the lands sought to be partitioned by the tenants in common who are, or have been, in possession, and what amount, if any, should be charged against the respective shares of such tenants. 10

IN CHANCERY OF NEW JERSEY.

BETWEEN

MARY E. SCHLICHER AND  
WILLIAM SCHLICHER, HER  
HUSBAND,

*Complainants,*  
*and*

CHARLES KEELER ET AL.,  
*Defendants.*

}  
} On Bill, &c.  
}

20

ORDER.

(Filed February 20th, 1906.)

It appearing by affidavit to the satisfaction of the Court that Henry H. Keeler, one of the defendants to this suit, has departed this life, and that by the death 30

of the said Henry Keeler, Charles Keeler, aged about eighteen years, Henry Keeler, aged about sixteen years, John Keeler, aged about fourteen years, Edward Keeler, aged about twelve years, and Sadie Keeler, aged about nine years, his children and only heirs at law, he having died intestate, have become interested in this suit, and that the complainants choose to make them defendants hereto.

It is on this twentieth day of February, A. D. nineteen hundred and six, on motion of A. S. Appelget, of counsel with the complainants, ordered that the said suit stand revived against said heirs at law, and that the said five children: Charles Keeler, Henry Keeler, John Keeler, Edward Keeler and Sadie Keeler, heirs at law of the said Henry H. Keeler, deceased, be and the same are hereby made defendants hereto, in the place and stead of the said Henry Keeler, deceased.

And it is further ordered that the said children appear in this suit, and proceed therein according to law and rules of this court within thirty days after service upon them of a copy of this order, and in case they fail so to do that the complainants may cause their appearance to be entered.

Respectfully advised,

J. J. BERGEN,  
V. C.

W. J. MAGIE,  
C.

IN CHANCERY OF NEW JERSEY.

BETWEEN MARY E. SCHLICHER AND WILLIAM SCHLICHER, HER HUSBAND, <i>Complainants,</i> <i>and</i> GEORGE W. KEELER ET AL., <i>Defendants.</i>	}	On Bill for Partition.
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ORDER OF REFERENCE.

(Filed January 12th, 1906.)

10

This cause coming on to be heard at the last regular term of the Court of Chancery, held at the State House in the city of Trenton, in the presence of A. S. Appleget, of counsel for complainants, and John V. B. Wyckoff, of counsel for Charles Keeler defendant, and Messrs. Hommann & Stricker, of counsel for George W. Keeler, et ux., defendants.

The complainants' bill having been heretofore taken as confessed against the defendants, Jennie Muir and 20  
 John Muir, her husband, Henry H. Keeler and Elizabeth Keeler, his wife, Lewis Keeler and Anna Keeler, his wife, and John Keeler and Ida Keeler, his wife, and the said Charles Keeler and Lena Keeler, his wife, having appeared and answered the complainants' bill, admitting all the material allegations of the same, and the pleadings and proofs having been produced and heard, and the arguments of the respective counsel having been heard and considered, the court having duly considered the said pleadings, proofs and arguments. 30

And it appearing that the complainants are entitled to the relief sought and prayed for by them in their bill of complaint.

It is on this ninth day of January, A. D. nineteen hundred and six, by the Chancellor of the State of New Jersey ordered, adjudged and decreed, and the said Chancellor by virtue of the authority and power of this court doth hereby order, adjudge and decree that it be referred to John T. Bird, Esquire, one of the Special Masters of this court, to ascertain and report the right, title and interest of the respective parties in the premises mentioned and described in the bill of complaint in this  
10 cause. And also whether in his opinion the said lands and real estate are so situate that a partition thereof can be made without great prejudice to the owners thereof; and that he state the facts upon which his opinion is founded.

And also report what amount should be charged against the share of the complainant in this cause on account of the advancement to her of the Willow street lot.

And also take an account of the rents, issues and  
20 profits derived from the lands sought to be partitioned by the tenants in common who are or have been in possession, and what amount if any should be charged against the respective shares of said tenants.

And it is further ordered that the said Master make his report to the Chancellor with all convenient speed.

W. J. MAGIE,  
C.

Respectfully advised,

J. J. BERGEN,  
V. C.

IN CHANCERY OF NEW JERSEY.

BETWEEN MARY E. SCHLICHER, AND WILLIAM SCHLICHER, HER HUSBAND, <i>Complainants,</i> <i>and</i> CHARLES H. KEELER ET AL., <i>Defendants.</i>	}	On Bill for Partition.
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ORDER AMENDING DECREE.

10

(Filed March 27th, 1906.)

This matter being opened to the court, and it appearing that due notice of the application for this order has been served upon the defendants in this cause, it is on this twenty-seventh day of March, A. D. nineteen hundred and six on motion of A. S. Appelget, of counsel for complainants, in the presence of Samuel G. Naar, of counsel with Henry Keeler's heirs, John V. B. 20  
 Wyckoff, counsel for Charles Keeler, and Charles C. Hommann, of counsel with George W. Keeler, and George O. Vanderbilt, of counsel with John Keeler, Lewis Keeler and Jennie M. Muir, ordered that the interlocutory decree heretofore filed in this cause on the twelfth day of January, A. D. nineteen hundred and six, be and the same is hereby amended so as to read as follows: That the said special master to whom the same is referred shall, in addition to the other matters and things therein, further ascertain and report what 30  
 was a fair rental value of the lands sought to be partitioned during the said occupancy by the tenants in common who were in possession thereof, and this he shall report as a separate item; and also an account of the compensation, if any, to either of said co-tenants for money expended for taxes, insurance, interest on

their ancestor's mortgage, repair, or the costs of improvement put upon said premises.

Respectfully advised, W. J. MAGIE,  
C.  
J. J. BERGEN,  
V. C.

IN CHANCERY OF NEW JERSEY.

BETWEEN  
 10 MARY E. SCHLICHER AND  
 WILLIAM SCHLICHER, HER  
 HUSBAND,  
*Complainants,*  
*and*  
 CHARLES H. KEELER ET AL.,  
*Defendants.*

ORDER TO AMEND INTERLOCUTORY  
 DECREÉE.

(Filed September 10th, 1906.)

Application being made to the court and upon good  
 20 cause shown, it is on this tenth day of September, A. D.  
 nineteen hundred and six, on motion of A. S. Appelget,  
 solicitor of complainants, ordered that the interlocutory  
 decree heretofore made in this cause, and directed to  
 John T. Bird as master of this court, be and the same  
 is hereby further amended by directing that the said  
 master, in addition to the other directions in said order  
 of reference specified, further ascertain and report  
 whether or not (in the event of a sale of the premises  
 sought to be partitioned is necessary and advisable), that  
 30 then and in such case the interests of all the parties  
 thereto would be promoted by selling the same free and

clear of the encumbrance of the dower of Elizabeth Keeler, defendant, as widow of Henry Keeler, deceased, who was a former defendant in this cause.

Respectfully advised,  
 CARROLL ROBBINS,  
*Adv. Master.*

W. J. MAGIE,  
 C.

I hereby consent to the making of the above order.  
 S. G. NAAR, IO  
*Solr.*

IN CHANCERY OF NEW JERSEY.

BETWEEN MARY E. SCHLICHER AND WILLIAM SCHLICHER, HER HUSBAND, <i>Complainants,</i> and CHARLES H. KEELER ET AL., <i>Defendants.</i>	}	On Bill for Partition.
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MASTER'S REPORT.

*(Filed September 15, 1906.)*

In pursuance of an order of this Court, made in the<sup>20</sup> above cause, bearing date on the ninth day of January, in the year of our Lord one thousand nine hundred and six, and of another supplemental order made in the same cause bearing date the twenty-seventh day of March, in the year last aforesaid, and by another supplemental order made in the same cause, bearing date the tenth day of September, in the last above-named year, whereby it was ordered that it be referred to the subscriber, one of the special masters of this Court, to ascertain and report the right, title and interest of the<sup>30</sup>

respective parties in the premises mentioned and described in the bill of complaint in this cause; and also to report to this Court whether the premises are so situated that a partition thereof can be made without great prejudice to the owners thereof, and that he state the facts upon which his opinion is founded; and to ascertain and report whether or not (in the event of a sale of the premises sought to be partitioned it is necessary and advisable), that then and in such case the interests  
10 of all the parties thereto would be promoted by selling the same free and clear of the encumbrance of the dower of Elizabeth Keeler, defendant, as widow of Henry Keeler, deceased; and what amount should be charged against the share of the complainant, on account of the advancement to her of the Willow street lot; and to take an account of the rents, issues and profits derived from the land by the tenants in common, who are or have been in possession, and what amount, if any, should be charged against the respective shares of said  
20 tenants; and in addition to the other matters, ascertain and report what was a fair rental value of the lands sought to be partitioned during the said occupancy by the said tenants in common, who were in possession thereof, and this he shall report as a separate item; and also an account of the compensation, if any, to either of said co-tenants for money expended for taxes, insurance, for interest on their ancestor's mortgage, repairs, or the cost of improvements put upon said premises, and that he make his report to the Chancellor with  
30 all convenient speed.

I, John T. Bird, Special Master, do hereby report to his Honor the Chancellor, that I have been attended by the solicitor of the complainant and by the solicitors of the several defendants, except the solicitor of the infant defendants, for whom I have the acknowledgment of service of Vivian M. Lewis, clerk of said court and guardian ad litem of the infant defendants, named in said cause, and in the presence of the said solicitors have

examined into the matters referred to me by the said several orders; and I do find and report that the rights and interests of the respective parties in the premises whereof partition is sought by the said bill of complaint are as follows:

I. That Mary E. Schlicher, the complainant, is seized in fee of the undivided one-seventh part of said premises; that George W. Keeler is seized in fee of the undivided one-seventh part of said premises, subject to the inchoate right of dower of his wife, Elizabeth, therein; 10 and that Charles Keeler, another of said defendants, is seized in fee of the undivided one-seventh part of said premises, subject to the inchoate right of dower of his wife, Lena, therein; and that Lewis Keeler, another of said defendants, is seized in fee of the one-seventh part of said premises, subject to the inchoate right of dower of his wife, Minnie; and that John Keeler, another of said defendants, is seized in fee of the one-seventh part of said premises, subject to the inchoate right of dower of his wife, Ida, therein; and that Jennie Muir, wife of 20 John Muir, and another of said defendants, is seized in fee of the one-seventh part of said premises; and that Charles Keeler, Henry Keeler, John Keeler, Edward Keeler and Sadie Keeler, children and heirs-at-law of Henry Keeler, deceased, are each seized in fee of the equal undivided one-thirty-fifth part of said premises, subject to the right of dower of their mother, Elizabeth, the widow of the said Henry Keeler, deceased; and that the said Elizabeth Keeler is seized in fee of the right of dower in the last-named share or interest in 30 said premises as widow of the said Henry Keeler deceased.

And I do further certify and report that the said premises are, in my opinion, so situate that a partition thereof cannot be made between the parties interested therein without great prejudice to the owners thereof, and that my reasons for this opinion are that the premises in question are valuable solely for farming purposes,

and for the production of stone from a quarry thereon for building purposes, which quarry constitutes as a whole but a small portion of said premises; the farm independent of the quarry being of sufficient size for convenient farming, and if divided and sold in two parcels might still make parcels of desirable size for profitable farming, but if divided into lots among the parties interested therein the several lots would be too small for farming purposes and would be of comparatively  
 10 little value, as appears from the depositions hereunto annexed.

And I do further certify and report that under all the circumstances of the case, regard being had to the interest of all the parties, the estate of Elizabeth Keeler (widow of Henry Keeler, deceased, as tenant in dower) in the said one-seventh part of said premises, ought not to be excepted from the sale thereof, but that, in case of a sale of said premises, her said estate and interest should be sold.

20 And I do further find and report that the sum of eight thousand dollars, that being the fair valuation of the Willow street lot, referred to in the bill of complaint and in said order should be charged as against the share or interest of the complainant in the said tract of land and premises.

And I do further find and report that the said George W. Keeler and the said Henry Keeler (now deceased), were or have been in possession of the said tract of land and premises, either jointly as to the whole or separately as to parcels thereof; and that the said George  
 30 W. Keeler collected and received of and from the said premises:

For rent for bridge house, or for services for attending to bridge, .....	\$100.00
In the year 1904, for sand, the sum of, .....	7.00
In the year 1904, for tent privilege, .....	5.00
Nov. 11, 1905, for corn sold, .....	109.00
Nov. 21, 1905, for corn sold, .....	38.50

And that these amounts should be charged against the share or interest of the said George W. Keeler in the said tract of land and premises.

And that the said Henry Keeler, in his lifetime, collected and received of and from the said premises:

Rent from canal house, or for services attending canal bridge, .....	\$200.00	
Rents collected from John T. Moore, from April 1st, 1901, to November 1st, 1903, at \$6.00 less \$26.00, not collected, .....	160.00	10
Rent from DeGraves Bros. for Quarry, .....	452.16	
1904, rent from Walton for quarry, .....	600.00	

And that these amounts should be charged against the share or interest of the said infants, the children and heirs at law of the said Henry Keeler, deceased, in said land and premises.

And I do further certify and report, as a separate item that the fair rental value of the said premises, considering the condition in which they were, during the period in which the said George W. Keeler and the said Henry Keeler occupied the same as aforesaid was four hundred and fifty dollars a year. 20

And that Henry and George claim title to the whole by deed; that they occupied it jointly from January, 1901, to and including September, 1901; and that Henry occupied it from September, 1901, to and including April, 1904, when it was equally divided between them; and that each occupied his portion from thence until the fifth day of July, 1905. 30

And I further find and report that George is entitled to the credit for the costs of repairs and improvements made upon the said land and premises by him as follows:

1901, July 23. To Jos. Stelwagon Co., Ex. G 5, .....	\$6.90
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	1901, June 17.	To C. C. Rogers, Ex. G 7,..	2.25
	1905, Jan. 2.	To J. A. H. Delp, new pump, Ex. G 8, .....	9.68
		For windows and trim, .....	12.10
		For doors and hardware, .....	17.62
		For repairing chimneys, .....	31.00
	1901.	Mason work and plastering, .....	70.00
		For picket fence in front of the house,..	12.24
		Wire fence along river road, .....	22.35
10		For roofing, .....	40.20
		For clearing lands, .....	172.40
		For underdrainage, .....	28.00
		For repairing old fence which is design- ated as along the house, .....	14.00
		For out-house, .....	23.50
	1905, May.	Material on mansion house, ....	71.30
		Labor on same, .....	78.00
	1905, June.	Material on mansion house, ....	32.35
		Labor on same, .....	76.50
20	1903, Dec. 1st.	To E. F. Hooper & Co., Ex. G 9, .....	17.94
		For repairing porch, .....	2.69

And I further find and report that Henry is entitled to the credit for the costs of repairs and improvements made upon the said land and premises by him as follows:

		Taxes paid, .....	\$24.90
30	1901, June 24.	To Mark S. Moses, repairs,	10.00
	1902, August.	Interest paid on Ancestor's mortgage, .....	165.00
	1903, March.	Interest ditto, .....	75.00
		Interest on ancestor's mortgage, .....	150.00
		Culvert in lane, .....	19.00
		Papering, painting and masonry, .....	78.10
		Glass, cellar doors and plastering on canal house, .....	7.84

Roofing and repairing chimneys on man- sion house and bridge house, . . . . .	41.18
Repairing siding, . . . . .	21.80
Roofing, plastering and papering small house, . . . . .	14.16
Two new doors and glasses, . . . . .	9.80
Walling around the yard, . . . . .	11.00
Addition to the barn, repairing, . . . . .	27.16
Corn crib, . . . . .	11.48

10

All of which, together with the testimony of the several witnesses taken in the cause and the Master's summonses, is hereby respectfully submitted this fifteenth day of September, in the year of our Lord nineteen hundred and six.

JOHN T. BIRD,  
*Special Master in Chancery.*

MASTER'S SUMMONS.

To A. S. Appleget, Esquire, solicitor of Mary E. Schlicher and William Schlicher, the above-named 20  
complainants; John V. B. Wyckoff, solicitor of Charles Keeler, and Messrs. Hommann & Stricker, solicitors of George W. Keeler and his wife; Jennie Muir and John Muir, her husband; Elizabeth Keeler, Lewis Keeler and Anna Keeler, his wife; John Keeler and Ida Keeler, his wife; Vivian Lewis, guardian ad litem of Charles Keeler, Henry Keeler, John Keeler, Edward Keeler and Sadie Keeler:

By virtue of an order of reference made in the above 30  
cause, you are hereby summoned to be and appear before me, on Monday, the ninth day of April next, at ten-thirty o'clock in the forenoon of said day, at my office, Room No. 27, Forst-Richey Building, southwest corner

of Warren and State streets, at which time I shall proceed to ascertain and report the right, title and interest of the respective parties in the premises mentioned and described in the bill of complaint in this cause. And also whether in my opinion the said lands and real estate are so situate that a partition thereof can be made without great prejudice to the owners thereof; and also what amount should be charged to the said complainant in this cause on account of the advancement to her of the  
 10 Willow street lot, and also to take an account of the rents, issues and profits derived from the lands sought to be partitioned by the tenants in common who are or have been in possession, and what amount, if any, should be charged against the respective shares of said tenants; and also what was a fair rental value of the lands sought to be partitioned during the said occupancy by the tenants in common who were in possession thereof; and also an account of the compensation, if any,  
 20 to either of said co-tenants for moneys expended for taxes, insurance, interest on their ancestor's mortgage, repair, or the costs of improvement put upon said premises.

Dated this twenty-ninth day of March, A. D. 1906.

JOHN T. BIRD,  
*Special Master in Chancery,*  
*Trenton, N. J.*

Due and legal service of the within summons is hereby acknowledged this third day of April, A. D. 1906.

VIVIAN M. LEWIS,  
*Ck., Gd. ad Litem.*

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MASTER'S SUMMONS.

To A. S. Appleget, Esquire, solicitor of Mary E. Schlicher and William Schlicher, the above-named complainants; John V. B. Wyckoff, solicitor of

Charles Keeler, and Messrs. Hommann & Stricker, solicitors of George W. Keeler and his wife; Jennie Muir and John Muir, her husband; Elizabeth Keeler, Lewis Keeler and Anna Keeler, his wife; John Keeler and Ida Keeler, his wife; Vivian Lewis, guardian ad litem of Charles Keeler, Henry Keeler, John Keeler, Edward Keeler and Sadie Keeler:

By virtue of an order of reference made in the above cause, you are hereby summoned to be and appear before **10** me, on Monday, the ninth day of April next, at ten-thirty o'clock in the forenoon of said day, at my office, Room No. 27, Forst-Richey Building, southwest corner of Warren and State streets, at which time I shall proceed to ascertain and report the right, title and interest of the respective parties in the premises mentioned and described in the bill of complaint in this cause. And also whether in my opinion the said lands and real estate are so situate that a partition thereof can be made without great prejudice to the owners thereof; and also what **20** amount should be charged to the said complainant in this cause on account of the advancement to her of the Willow street lot, and also to take an account of the rents, issues and profits derived from the lands sought to be partitioned by the tenants in common who are or have been in possession, and what amount, if any, should be charged against the respective shares of said tenants; and also what was a fair rental value of the lands sought to be partitioned during the said occupancy **30** by the tenants in common who were in possession thereof; and also an account of the compensation, if any, to either of said co-tenants for moneys expended for taxes, insurance, interest on their ancestor's mortgage, repair, or the costs of improvement put upon said premises.

Dated this twenty-ninth day of March, A. D. 1906.

JOHN T. BIRD,  
*Special Master in Chancery.*

Due and legal service of the within summons is hereby acknowledged.

VIVIAN M. LEWIS,  
*Clerk, Guardian ad Litem.*

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MASTER'S SUMMONS.

To A. S. Appleget, Esquire, solicitor of Mary E. Schlicher and William Schlicher, the above-named complainants; John V. B. Wyckoff, solicitor of Charles Keeler, and Messrs. Hommann & Stricker,  
10 solicitors of George W. Keeler and his wife; Jennie Muir and John Muir, her husband; Elizabeth Keeler, Lewis Keeler and Anna Keeler, his wife; John Keeler and Ida Keeler, his wife; Vivian Lewis, guardian ad litem of Charles Keeler, Henry Keeler, John Keeler, Edward Keeler and Sadie Keeler:

By virtue of an order of reference made in the above cause, you are hereby summoned to be and appear before me, on Monday, the ninth day of April next, at ten-  
20 thirty o'clock in the forenoon of said day, at my office, Room No. 27, Forst-Richey Building, southwest corner of Warren and State streets, at which time I shall proceed to ascertain and report the right, title and interest of the respective parties in the premises mentioned and described in the bill of complaint in this cause. And also whether in my opinion the said lands and real estate are so situate that a partition thereof can be made without great prejudice to the owners thereof; and also what  
30 amount should be charged to the said complainant in this cause on account of the advancement to her of the Willow street lot, and also to take an account of the rents, issues and profits derived from the lands sought to be partitioned by the tenants in common who are or have been in possession, and what amount, if any,

should be charged against the respective shares of said tenants; and also what was a fair rental value of the lands sought to be partitioned during the said occupancy by the tenants in common who were in possession thereof; and also an account of the compensation, if any, to either of said co-tenants for moneys expended for taxes, insurance, interest on their ancestor's mortgage, repair, or the costs of improvement put upon said premises.

Dated this twenty-ninth day of March, A. D. 1906. 10

JOHN T. BIRD,  
*Special Master in Chancery.*

Due and legal service of the within summons is hereby acknowledged this third day of April, A. D. 1906.

S. G. NAAR,  
*For Elizabeth Keeler.*  
J. V. B. WYCKOFF,  
*Solicitor for Charles Keeler.*

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MASTER'S SUMMONS.

To A. S. Appleget, Esquire, solicitor of Mary E. 20  
Schlicher and William Schlicher, the above-named  
complainants; John V. B. Wyckoff, solicitor of  
Charles Keeler, and Messrs. Hommann & Stricker,  
solicitors of George W. Keeler and his wife;  
Jennie Muir and John Muir, her husband; Eliza-  
beth Keeler, Lewis Keeler and Anna Keeler, his  
wife; John Keeler and Ida Keeler, his wife; Vivian  
Lewis, guardian ad litem of Charles Keeler, Henry  
Keeler, John Keeler, Edward Keeler and Sadie  
Keeler:

By virtue of an order of reference made in the above 30  
cause, you are hereby summoned to be and appear before  
me, on Monday, the ninth day of April next, at ten-

thirty o'clock in the forenoon of said day, at my office, Room No. 27, Forst-Richey Building, southwest corner of Warren and State streets, at which time I shall proceed to ascertain and report the right, title and interest of the respective parties in the premises mentioned and described in the bill of complaint in this cause. And also whether in my opinion the said lands and real estate are so situate that a partition thereof can be made without great prejudice to the owners thereof; and also what  
10 amount should be charged to the said complainant in this cause on account of the advancement to her of the Willow street lot, and also to take an account of the rents, issues and profits derived from the lands sought to be partitioned by the tenants in common who are or have been in possession, and what amount, if any, should be charged against the respective shares of said tenants; and also what was a fair rental value of the lands sought to be partitioned during the said occupancy  
20 by the tenants in common who were in possession thereof; and also an account of the compensation, if any, to either of said co-tenants for moneys expended for taxes, insurance, interest on their ancestor's mortgage, repair, or the costs of improvement put upon said premises.

Dated this twenty-ninth day of March, A. D. 1906.

JOHN T. BIRD,  
*Special Master in Chancery.*

Due and legal service of the within summons is hereby  
30 admitted this second day of April, A. D. 1906.

HOMMANN & STRICKER,  
*Solicitors of Geo. W. Keeler et al.*

## MASTER'S SUMMONS.

To A. S. Appleget, Esquire, solicitor of Mary E. Schlicher and William Schlicher, the above-named complainants; John V. B. Wyckoff, solicitor of Charles Keeler, and Messrs. Hommann & Stricker, solicitors of George W. Keeler and his wife; Jennie Muir and John Muir, her husband; Elizabeth Keeler, Lewis Keeler and Anna Keeler, his wife; John Keeler and Ida Keeler, his wife; Vivian Lewis, guardian ad litem of Charles Keeler, Henry 10 Keeler, John Keeler, Edward Keeler and Sadie Keeler:

By virtue of an order of reference made in the above cause, you are hereby summoned to be and appear before me, on Monday, the ninth day of April next, at ten-thirty o'clock in the forenoon of said day, at my office, Room No. 27, Forst-Richey Building, southwest corner of Warren and State streets, at which time I shall proceed to ascertain and report the right, title and interest of the respective parties in the premises mentioned and 20 described in the bill of complaint in this cause. And also whether in my opinion the said lands and real estate are so situate that a partition thereof can be made without great prejudice to the owners thereof; and also what amount should be charged to the said complainant in this cause on account of the advancement to her of the Willow street lot, and also to take an account of the rents, issues and profits derived from the lands sought to be partitioned by the tenants in common who are or have been in possession, and what amount, if any, 30 should be charged against the respective shares of said tenants; and also what was a fair rental value of the lands sought to be partitioned during the said occupancy by the tenants in common who were in possession thereof; and also an account of the compensation, if any, to either of said co-tenants for moneys expended for

taxes, insurance, interest on their ancestor's mortgage, repair, or the costs of improvement put upon said premises.

Dated this twenty-ninth day of March, A. D. 1906.

JOHN T. BIRD,  
*Special Master in Chancery.*

Due and legal service of the within summons is hereby acknowledged this third day of April, A. D. 1906.

10 GEO. O. VANDERBILT,  
*Solicitor of John Keeler, Lewis  
Keeler, Jennie Muir.*

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IN CHANCERY OF NEW JERSEY.

BETWEEN

MARY E. SCHLICHER AND  
WILLIAM SCHLICHER, HER  
HUSBAND,

*Complainants,*  
*and*

20 CHARLES H. KEELER ET AL.,  
*Defendants.*

} On Exceptions to  
Master's Report.

ORDER TO STRIKE OUT AND CONFIRM  
MASTER'S REPORT.

*(Filed February 14th, 1907.)*

30 This matter coming on to be heard in the presence of Charles C. Hommann, of counsel for acceptants, and of A. S. Appelget, of counsel for complainants, and of George O. Vanderbilt, of counsel for the defendants, John Keeler, Louis Keeler and Jennie Muir, defendants, and the court having read the report of John T. Bird, bearing date September the fifteenth, nineteen hundred

and six, and read the exceptions thereto filed by the said George W. Keeler, acceptant, heard the argument of counsel thereon and duly considered the same.

It is on this fifth day of February, A. D. nineteen hundred and seven, on motion of A. S. Appelget, of counsel for complainants, ordered that the first exception to the said Master's report, which therein challenges the charge against the defendant George W. Keeler, the sum of one hundred and forty-seven dollars and fifty cents as the value of a crop of corn grown and harvested on the lands described in the complainants' bill, by the defendant George W. Keeler, be and the same is hereby allowed, and the said charge is stricken out. 10

And it further appearing that the second and fourth exceptions being waived and the third disallowed, it is ordered that they be overruled.

And it further appearing by the fifth exception, wherein the Master's report charges the exceptant and his brother, Henry Keeler, with the sum of four hundred and fifty dollars a year as the fair rental value of the lands during the period of their joint occupancy, it is ordered that the Master's report as to said rental value be sustained and said exception overruled, and that the said rental during said joint occupancy be charged against each of their said shares of said estate. 20

And it is further ordered that the said Master's report in all other matters and things be and the same is hereby ratified and confirmed.

Respectfully advised,

J. J. BERGEN,  
V. C.

W. J. MAGIE,

C. 30

IN CHANCERY OF NEW JERSEY.

BETWEEN  
MARY E. SCHLICHER,  
*Complainant,*  
*and*  
CHARLES KEELER ET AL.,  
*Defendants.* } On Bill, &c.

ORDER FOR LEAVE TO FILE AMENDMENT  
OF ANSWER.

10 (Filed February 7th, 1907.)

Upon motion of Charles C. Hommann, of counsel with the defendants, George W. Keeler and wife, it is on this seventh day of February, nineteen hundred and seven, ordered that the said defendants be permitted to file a supplemental answer as an amendment to their answer heretofore filed in this cause to conform to the facts as shown on the hearing heretofore had on the former answer, and pursuant to the conclusion of this court thereon.

20 W. J. MAGIE,  
C.

IN CHANCERY OF NEW JERSEY.

BETWEEN  
MARY E. SCHLICHER,  
*Complainant,*  
*and*  
CHARLES KEELER ET AL.,  
*Defendants.* } On Bill, &c.

AMENDED ANSWER.

(Filed February 7th, 1907.)

30 The amended answer of George W. Keeler and Elizabeth Keeler, his wife, to the bill of complaint of Mary E. Schlicher and William Schlicher, her husband, complainants; by leave of this court first had and obtained.

And these defendants admit that Charles Keeler, late of the township of Ewing, county of Mercer, and State of New Jersey, was at the time of his death seized in fee simple of a certain farm or tract of land, situate, lying and being in the township of Ewing, in the county of Mercer and State of New Jersey, as particularly described in the bill of complaint.

And these defendants admit that the said Charles Keeler, being so seized of said tracts of land and premises, departed this life intestate on the twenty-first day 10 of October, nineteen hundred, leaving him surviving seven children, to wit, Charles Keeler, George W. Keeler, Henry H. Keeler, Lewis Keeler, Jennie Muir, John Keeler and Mary Schlicher.

And these defendants, further answering, say that the said Charles Keeler in his lifetime, to wit, on or about the tenth day of June, eighteen hundred and ninety-nine, conveyed to the said complainant, Mary Schlicher, certain lands and premises in the city of Trenton, in the county of Mercer, more particularly de- 20 scribed as follows:

*First Tract*—Beginning on the easterly side of Willow street, at the northwesterly corner of a lot now or late of Joseph Gaffney, and running thence (1) along said side of Willow street north, sixteen degrees and fifteen minutes east, thirty-five and fifty-eight hundred feet to the line of the second tract of land, hereinafter described; thence (2) along said second tract of land hereinafter described south, seventy-five degrees east, one hundred and thirty-one feet to a corner in the line 30 of the third tract hereinafter described; thence (3) along the line of said third tract hereinafter described, and continuing beyond said third tract in the same direction south, thirty degrees and twenty-two minutes west, thirty-seven feet, more or less, to the aforesaid lot now or late of Joseph Gaffney; and thence (4) along said lot now or late of Joseph Gaffney north, seventy-five degrees west, one hundred and twenty-two feet to

the easterly side of Willow street and the place of beginning.

*Scod Tract*—Beginning on the easterly side of Chancery street, at the northwesterly corner of the first tract hereinabove described, and running thence (1) in a direction north, sixteen degrees and fifteen minutes east, twelve and twenty-two hundredths feet to a point; thence (2) in a line north, fifty-nine degrees and forty-three minutes east, eleven feet and six hundredths of a foot to lands of the Delaware and Raritan Canal Company; thence (3) along said company's lands and other lands south, seventy-five degrees east, one hundred and eighty-four and five-tenths feet to the corner of a stone wall; thence (4) at right angles with the last course south, fifteen degrees west, twenty and thirty-three hundreds feet to a stake, and thence (5) along the northerly boundary line of tract No. one hereinabove described, and tract No. three, hereinafter described, north, seventy-five degrees west, one hundred and ninety-two and sixty-two hundreds feet to the place of beginning.

*Tract Three*—Beginning at a point ninety-two and one-half feet, measured in a northerly direction at right angles to the northerly side of Bank street, and which beginning point is the northwesterly corner of land formerly belonging to G. and C. Johnson, and running from said beginning point (1) in a northerly direction north, fourteen degrees and twelve minutes east, fifty-five and two-tenths feet to a point in the third course of the first tract hereinbefore described; thence (2) in a direction north, thirty degrees and twenty-two minutes east, being coincident with the third course of the first tract hereinabove described twenty-three and four-tenths feet to a point in the fifth course of the second tract hereinabove described; thence (3) in a course south, seventy-five degrees east, being coincident with said fifth course of said second tract hereinabove described eleven and five-tenths feet to a point; thence

(4) in a course south, fourteen degrees and twelve minutes west, being parallel with the first course seventy-eight and two-tenths feet to lands now or late of Annie Murray, and thence (5) along said lands now or late of Annie Murray north, seventy-five degrees and forty-eight minutes west, eighteen feet, more or less, to the place of beginning.

*Fourth Tract*—Beginning on the southeasterly side of Chancery street, distant forty-eight feet and ninety-seven hundredths of a foot from the ending point of the second course of the second tract hereinabove described, and running thence (1) easterly, along the southeasterly side of said Chancery street, twenty feet to a point; thence (2) south, five degrees and fifteen minutes east, fifty-two and five-tenths feet to a point in the third course of the second tract hereinabove described; thence (3) north, seventy-five degrees west, in a line coincident with said third course of said second tract, twenty feet to a point, and thence (4) north, five degrees and seven minutes west, thirty-six and nine-tenths feet to the place of beginning.

That said conveyance was made by a deed duly executed by the said Charles Keeler and delivered to the said complainant, Mary E. Schlicher.

And these defendants further show that the conveyance of said lands and premises to the said Mary E. Schlicher was intended to be and was in fact an advancement to her of a portion of the real estate of the said Charles Keeler; that the said lands and real estate so conveyed and intended to be an advancement were of the value of ten thousand dollars or thereabouts, and that the value thereof exceeded the share, portion or interest of the said complainant, Mary E. Schlicher, in the lands and premises of which the said Charles Keeler died seized, and that by reason thereof the said complainant Mary E. Schlicher is not entitled to any share, portion or interest in the lands and premises described in the said bill of complaint.

And these defendants, further answering, say that the said conveyance made by the said Charles Keeler to the said Mary E. Schlicher was wholly without a valuable consideration, and was made in consideration of the natural love and affection of the said Charles Keeler for the said complainant and was intended as an advancement in real estate to her.

And these defendants, further answering, deny that the said complainant, Mary E. Schlicher, has any right,  
10 title or interest in the lands and premises described in the said bill of complaint and by reason of the premises charge that she has no right, title or interest therein.

And these defendants, further answering, deny that the said George W. Keeler ever received any rents, issues or profits from the lands and premises in question, and deny that the said George W. Keeler leased, occupied or possessed said lands without authority from the said complainant or any other person.

And these defendants, further answering, deny that  
20 the complainant, Mary E. Schlicher, is seized of and entitled to the one equal seventh part of the said tract of land and premises in said bill of complaint described, and charge the fact to be that the said Charles Keeler, George W. Keeler, Henry H. Keeler, Louis Keeler, Jennie Muir and John Keeler are each severally seized of and entitled to the one equal sixth part of the said lands and premises, subject to the inchoate right of dower of the wives of these defendants, Charles Keeler, George W. Keeler, Henry H. Keeler and Louis Keeler  
30 in the several shares owned respectively by them.

And these defendants submit themselves to the jurisdiction of this Honorable Court and join in the prayer of the complainant for a partition of the lands and premises described in the bill of complainant, among the parties entitled thereto.

HOMMANN & STRICKER,  
*Solrs. of said Defendants.*

IN CHANCERY OF NEW JERSEY.

BETWEEN MARY E. SCHLICHER AND WILLIAM SCHLICHER, HER HUSBAND, <i>Complainants,</i> and CHARLES H. KEELER ET AL., <i>Defendants.</i>	}	On Bill.
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FINAL DECREE.

(Filed February 14, 1907.)

10.

This cause coming on to be heard on bill, answer, replication and proofs, in the presence of Charles C. Hommann, of counsel for the defendant George W. Keeler, and John V. B. Wyckoff, of counsel for the defendant Charles Keeler; Samuel G. Naar, of counsel for defendant Elizabeth Keeler, widow of Henry Keeler, deceased; George O. Vanderbilt, of counsel for the defendants John Keeler, Lewis Keeler and Jennie Muir, and A. S. Appelget, of counsel for complainants; and the Court having heard the testimony of the witnesses produced on the part of the respective parties, together with the argument of counsel thereon, and duly considered the same; and it further appearing by the report of John T. Bird, one of the special masters of this court, bearing date on the fifteenth day of September, nineteen hundred and six, by which it appears that the rights and interests of the parties in the premises described in the complainants' bill are as hereinafter declared; and the exceptions heretofore presented on behalf of the defendant George W. Keeler having been heard, determined and settled by an order of this Court made and filed on the fifth day of February, nineteen hundred and seven, and no other or further cause being shown or appearing against confirming the said report,

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30

It is thereupon, on this sixth day of February, nineteen hundred and seven, by his Honor William J. Magie, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor does, by virtue of the power and authority of this Court, hereby order, adjudge and decree that the said Master's report as modified by the order of this Court, made and filed on the fifth day of February, nineteen hundred and seven, and all other matters and things therein contained

10 stand ratified and confirmed; and that the parties to this suit, hereinafter named, are seized of and entitled to the lands and premises described in the complainants' bill with appurtenances; and that their respective rights and interests therein are, and they are hereby ascertained, adjudged and decreed to be as follows, to wit:

The defendants George W. Keeler, John Keeler, Charles Keeler, Jennie Muir and Louis Keeler are each respectively seized of and entitled to one equal undivided seventh part of said premises, and the defendants

20 Charles Keeler, Henry Keeler, John Keeler, Edward Keeler and Sadie Keeler, heirs-at-law of Henry Keeler, deceased, are each respectively seized and entitled to one equal one thirty-fifth part of said premises, subject first, to the right of dower of Elizabeth Keeler, widow of said Henry Keeler, deceased; and the defendant Elizabeth Keeler, widow aforesaid, is entitled to dower in the equal undivided one-seventh part of the said premises, which the said Henry Keeler, deceased, was seized and possessed of in his lifetime in said premises; and

30 second, subject to a charge as found and reported by the said Special Master John T. Bird, in his report bearing date on the fifteenth day of September, nineteen hundred and six, to the sum of twenty-three hundred and thirteen dollars and forty-two cents, as due as a proper charge to be deducted from and out of the proceeds of the sale of the share of the said Henry Keeler and his heirs in said premises.

The complainant Mary E. Schlicher is seized in fee of and entitled to the one equal undivided seventh part of the said premises, and it appearing in the report of John T. Bird, Special Master, bearing date September the fifteenth, nineteen hundred and six, wherein the said Master reports that the value of a property described in a certain conveyance made by Charles Keeler, deceased, to the said Mary E. Schlicher, his daughter (then Mary E. Keeler), in July, eighteen hundred and ninety-nine, of premises in Willow street in the city of 10 Trenton, was the sum of eight thousand dollars.

It is hereby ordered, adjudged and decreed that the said conveyance was intended by the said Charles Keeler to be, and was in fact, an advancement to his said daughter, Mary E. Schlicher, then Mary E. Keeler.

It is further ordered, adjudged and decreed that the said sum of eight thousand dollars be and the same is hereby constituted a charge against her undivided one equal seventh part in the real estate described in the complainants' bill. 20

And it is further ordered, that the said parties, or either of them, be at liberty to apply to this Court for further directions, if occasion shall require.

W. J. MAGIE.

Respectfully advised.

J. J. BERGEN,  
V. C.

IN CHANCERY OF NEW JERSEY.

BETWEEN  
 MARY E. SCHLICHER AND  
 WILLIAM SCHLICHER, HER  
 HUSBAND,

*Complainants,*  
*and*

CHARLES H. KEELER ET AL.,  
*Defendants.*

10 NOTICE OF APPEAL.

(Filed March 5th, 1907.)

The complainants hereby appeal from that portion of the final decree made in this court in the above stated cause, bearing date February sixth, A. D. 1907, wherein it is recited and decreed as follows:

“It appearing in a report of John T. Bird, Special Master, bearing date September the fifteenth, nineteen hundred and six, wherein the said Master reports that  
 20 the value of a property described in a certain conveyance made by Charles H. Keeler, deceased, to the said Mary E. Schlicher, his daughter, then Mary E. Keeler, in July, eighteen hundred and ninety-nine, of premises in Willow street in the city of Trenton, was the sum of eight thousand dollars.”

“It is hereby ordered, adjudged and decreed that the said conveyance was intended by the said Charles Keeler to be, and was in fact, an advancement to his said daughter, Mary E. Schlicher, then Mary E. Keeler.”

30 “It is further ordered, adjudged and decreed that the said sum of eight thousand dollars be, and the same is hereby constituted a charge against her undivided one equal seventh part in the real estate described in the complainants’ bill, to the Court of Errors and Appeals in the last resort in all causes.

A. S. APPELGET,  
*Sol'r of Complainant.*

Dated February 26th, 1907.

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

ALAN H. STRONG,  
*Of Counsel.*

IN CHANCERY OF NEW JERSEY.

BETWEEN

MARY E. SCHLICHER AND  
WILLIAM SCHLICHER, HER  
HUSBAND,

*Complainants,*  
*and*

CHARLES H. KEELER ET AL.,  
*Defendants.*

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PETITION OF APPEAL.

*To the Honorable the Court of Errors and Appeals in  
the Last Resort in All Cases:*

The humble petition of Mary E. Schlicher and William Schlicher, her husband, the appellants in the above stated cause, respectively show that your petitioners find themselves aggrieved by a final decree made 20 in the Court of Chancery by his Honor William J. Magie, Chancellor of New Jersey, bearing date February the sixth, A. D. nineteen hundred and seven, wherein your petitioners were the complainants and Charles H. Keeler and others were defendants in this respect, to wit: from that portion of the final decree wherein it is recited and decreed as follows:

"It appearing in a report of John T. Bird, Special Master, bearing date September the fifteenth, nineteen hundred and six, wherein the said Master reports that 30 the value of a property described in a certain conveyance made by Charles H. Keeler, deceased, to the said

Mary E. Schlicher, his daughter, then Mary E. Keeler, in July, eighteen hundred and ninety-nine, of premises in Willow street in the city of Trenton, was the sum of eight thousand dollars."

It is hereby ordered, adjudged and decreed, that the said conveyance was intended by the said Charles Keeler to be, and was in fact, an advancement to his said daughter, Mary E. Schlicher, then Mary E. Keeler.

It is further ordered, adjudged and decreed that the  
10 said sum of eight thousand dollars be and the same is hereby constituted a charge against her undivided one equal seventh part in the real estate described in the complainant's bill.

And your petitioners humbly appeal from that portion of said final decree which decrees as aforesaid upon the ground that the same is erroneous, in that the court should not have decreed that the said Willow street property was conveyed by said Charles Keeler to his said daughter, Mary E. Keeler, now Mary E. Schlicher,  
20 in July, eighteen hundred and ninety-nine, as an advancement.

And also said decree is further erroneous in that the defendants, Charles H. Keeler, Henry W. Keeler, now deceased, John Keeler, Louise Keeler, and Jennie Muir, defendants in said cause, have by permitting the complainants to take and enter of record a decree *pro confesso* against them herein, and thereby admitting that the said Mary E. Schlicher was entitled to her equal undivided one seventh share of the premises described  
30 in the complainant's bill, without any diminution for or on account of any charge, matter or thing whatever.

Said decree is further erroneous in that the answering defendant, George W. Keeler, in his answer filed in this cause, expressly sets forth and declares, that at the time of the making of the said deed of conveyance by the said Charles Keeler, deceased, it was understood and agreed between the said Mary Schlicher and her said father, that said conveyance to her was in full payment and

discharge of certain services which she claimed to have rendered him during his lifetime, and therefore by reason of the premises last aforesaid said decree is erroneous in so much that it disregards the allegations on the part of both the complainant and the defendant; and also for that the court should have decreed that the complainants have the relief prayed for in their said bill of complaint, to wit: that the said complainant, Mary E. Schlicher, was entitled to an equal one seventh part of the land and premises described in the bill of complaint filed in this cause, without any charge against her by or on any account whatever. 10

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

A. S. APPELGET,  
*Solicitor and of Counsel*  
*with Complainants.* 20

Service of a copy of the within petition of appeal is hereby admitted this tenth day of March, A. D. 1907.

HOMMANN & STRICKER,  
*Solicitors for Geo. W. Keeler.*

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ANSWER OF GEORGE W. KEELER TO  
PETITION OF APPEAL.

The answer of George W. Keeler, one of the above named respondents, to the petition of appeal of the above named appellant.

This respondent, not acknowledging all or any of 30 the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was on the sixth day of Feb-

ruary last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and he prays that same may be affirmed with costs to be adjudged to this respondent.

HOMMANN & STRICKER,  
*Solicitors.*  
CHARLES C. HOMMANN,  
*Counsel.*

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ANSWER OF CHARLES KEELER TO  
PETITION OF APPEAL.

The answer of Charles Keeler, one of the above named respondents, to the petition of appeal of the above named appellants.

This respondent, not acknowledging all or any of the  
20 matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and denies that a decree *pro confesso* was ever taken or entered up of record against this defendant, and that he ever admitted that the said Mary E. Schlicher was entitled to her equal undivided one-seventh share without any diminution for or on account of any charge, matter or thing whatever; and this respondent further says and admits, that a final decree was, on the sixth day of February, nineteen hundred and seven, made and  
30 entered in the Court of Chancery, in the cause for the purpose of charging the undivided one-seventh interest of the said Mary E. Schlicher in the property mentioned in complainant's bill with eight thousand dollars as is in said petition stated, but as to the substance and form thereof, this respondent prays to refer thereto, when

the same shall be produced. And the said respondent is advised and believes, that the said decree is agreeable to equity, and he prays that same may be affirmed, with costs to be adjudged to this respondent.

JOHN V. B. WICOFF,  
*Solicitor for Respondent*  
*Charles Keeler.*

WILLIAM R. PIPER,  
*Of Counsel.*

