
New Jersey Court of Errors and Appeals

Between

RIALTO O. ARNOLD,

Admr.,

and

THEODORE R. ROBINS,

et als.,

Appellant,

Respondents.

On Appeal.

Argument for ²⁰

Respondents.

In the year 1868 Wright Robins, trustee, received a large amount of money in Government Bonds. There were trust funds for several classes of legatees and the trust funds were divided. The principal funds were those held respectively for the lives of Maria Robins and Caroline McClure, each of these funds comprised securities as follows: (Case, p. 45.) ³⁰

U. S. 6 per cent. of 1881, (Regular,) \$165,000;

U. S. 6 per cent., 5.20, 1865, (Coupon,) \$3,200;

U. S. 5 per cent. 10.40, \$1,500.

The record of the issue and transfer of the registered bonds is in evidence (Case, p. 47-48) and is an important piece of evidence. ⁴⁰

In the year 1871 Maria Robins died, and it then became the duty of Wright Robins to divide the fund which had been held in trust for her life. Accordingly

he sold and transferred registered bonds in September, October and November, 1871, amounting to \$165,000, being the exact amount of registered bonds held in the Maria Robins fund.

His sales in these three months amounted to \$170,000, but on Sept. 22, 1873, when he sold one bond for \$10,000, he bought another of the same issue for \$5,000, so that it is apparent that this sale was made because he could not make out the exact sum of \$165,000 without dividing up one of his bonds for \$10,000. In making this sale he closed out all the bonds he held of the issue of Feb. 8th, 1861, and parted with only \$5,000 of the issue of July 17, 1861. (Case, p. 47.) There remained in his hands registered bonds to the amount of \$205,000 of the issue of July 17, 1861, covering the McClure and other funds. Having sold the registered bonds of the Maria Robins fund in the Fall of 1871, he called together the legatees entitled to the proceeds on the 15th of December, 1871, and made distribution of the money. There were, however, three minors, being three of the four children of Amos Robins, who did not receive their share because of minority. (Case, p. 24.) These minors consisted of the two complainants and their brother, John, who died Jan. 13, 1873.

The amount due to them Dec. 15, 1871, was about \$20,000, which remained uninvested in the hands of Wright Robins. He held it because of their minority, and paid interest upon it to their mother, referring to it, not as bonds, but as money in his hands.

(Case, p. 25 and 26, p. 49, Ex. 3 and 5,) on the 15th day of December, 1875. (John having died) he paid one third of John's share to his adult brother, William; and gave memorandum notes to the mother of Complainants for \$17,751.58, being the amount due them. (Case, p. 26 to 29, and p. 49.)

Having this money of the Complainants in his hands he bought, in July, 1873, from one Ely, the Jones

house and plot for \$20,000, of which he paid \$5,000 in cash, and the residue by conveyance of other lands.

In October, 1873, Wright Robins laid hands on the registered bonds. He had transferred none since November, 1871, but in and after October, 1873, he began to dispose of the bonds, and in July, 1879, the whole of this fine estate was gone. His method, in most of the transfers, was first to transfer to his individual name, and then to sell, by commencing with the last transfers by the trustee (Case, p. 47,) and comparing them with the last issues of his individual name (Case, p. 48,) the disposal of these bonds can be readily traced. ¹⁰

The purpose of this was no doubt to prevent suspicion by the purchasers that he was selling trust securities. He transferred to his individual name the last \$30,000 of the registered bonds July 16, 1879, and disposed of them in lots of \$10,000 each, July 22, and Oct. 29, 1879, and March 13, 1880. (Case, p. 47 and 48.) ²⁰

His last payment of interest to Complainants was up to Dec. 15, 1879, (Case, p. 36, l. 3,) and to Caroline McClure was up to January 30, 1880. (Case, p. 37, l. 20) In January, 1881, his insolvency and embezzlements could no longer be concealed. (Case, p. 18; l. 25.) ³⁰

This history alone will incline the Court strongly to the belief that whatever real estate Wright Robins bought after Dec. 15th, 1871, he paid for with trust funds. Defendants offer not the slightest evidence that he reinvested the money of Complainants. No trace of it appears, and the fair presumption is that it remained on deposit in his hands. What finally became of it is shown by his own statements, and the records of deeds. We have already seen that he paid \$5,000 in July, 1873, to Ely, on the purchase of Jones' house. His next purchase was in June and July, 1874, when he bought lots at Robindale, from Laura E Jones, for which paid \$9,803. (Exhibits D8, D9 and D10. The Jones house and three lots, into which he put in, all in cash, \$14,803, ⁴⁰

constitute the property claimed by Complainants and awarded to them by the decree.

10 The admissions and the statements by Wright Robins, establishing the resulting trust as to this property. (In the case they will be found p. 19, l. 40 ; p. 20, l. 1 ; p. 21, l. 8 ; p. 22, l. 1 ; p. 30, p. 31, l. 40 ; p. 32, l. 1 ; p. 32, l. 40 ; p. 33, l. 1.) Taken in connection with the facts, they furnish competent, clear and undisputed evidence of the resulting trust. There is nothing to meet it except surmise.

A bill was first filed to establish a resulting trust in favor of not only the Complainants but also the parties interested in the Caroline McClure fund. That suit
20 failed because William R. Robins, the principal witness, was not a competent witness, being a party interested in the McClure fund. Thereupon the present bill was filed for the Complainants only.

DECISIONS.

This case must be distinguished from those resulting trusts where the fact of payment of money by the person claiming under the trust is in question. In such a case the proof must be strict.

Cutler vs. Tuttle, 4, *C. E. G.*, 549-560.

30 In this case there is no doubt that money of the Complainants was in the hands of the trustee, and that he used it. No special strictness of proof is requisite to show that the trustee used the money to buy land. That he had the money and converted it to his own use for some purpose is plain. A misuse to buy the land in question is as probable as any other misuse. His own statement is that he used the money to buy the Jones property and the Robindale lots. This statement was made to William R. Robins. It is confirmed by the
40 repeated statement to others that the trust fund was invested in real estate.

Where trust money is placed in a bank with private money the *cestui que trust* is entitled to an amount of

it equal to the trust fund, and has a charge on the bankers' balance.

As between individual money and trust money, the first drawings must be deemed to have been individual money. ¹⁰

Houghton v. Davenport, 74, *Me.*, 590, 596, citing *Nat. Bank and Ins. Co.*, 104 *U. S.* 54; *In re. Hallett's Est L. R.*, 13 *Chan. Di.*, 698; 2 *Perry Tr.* (2nd Ed.) S. 837.

Van Allen v. Am. Bank, 52, *N. Y.* 1.

In *Houghton v. Davenport* the proof was that the trustee bought from bonds at a time when he had little money save that of estate. The Court thought this satisfactory proof to establish that the proceeds of the bonds belonged to the ward, and that the bonds were bought by these proceeds. ²⁰

An equitable trust was sustained against the creditors of the trustee.

Verbal admission of a grantee, holding the legal title, are admissible against him and against all claiming under him bona fide purchasers.

Dyie v. Gyer, 1 *Leading Case in Eq.* 341. *Oliver v. Pratt*, 3 *How.* 333-401.

In *Hopper v. Conyers*, *L. R. 2 Eq. Case*, 549, a solicitor used money of his clients to buy real estate. A resulting trust was claimed for it after the death of the solicitor. One of the parties in interest was the sole witness to a material declaration made by the solicitor. A decree was made to establish a charge on the land for the money. ³⁰

If a trustee purchases an estate with trust funds, adding funds of his own, a trust will result to the *cestui que trust*, and the burden will be on the trustee to show the amount of his funds or the *cestui que trust* will take the whole. ⁴⁰

Watson v. Thompson, 12, *R. I.*, 466-470.

Seaman v. Cook, 14, *Ill.* 501.

Nat. Bank and Ins. Co. 14, *Otto* 54, 67 and cases cited.

10 Where a trustee has mingled his money and that of his *cestui quæ trust* and bought an estate, the *cestui quæ trust* may charge the estate with the amount of trust fund laid out:

In re Hallett, J. R., 13 *Ch. Div.* 696-709.

A resulting trust is enforced against executors of an insolvent estate as fully as against the testator if living.

McLanen v. Brewer, 51, *Me.*, 402.

Hopper v. Conyers, L. R. 2 *Eq. Cases*, 549.

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Watson v. Thompson, supra.

CHAS. T. COWENHOVEN,

SOL. RESPONDENTS.

IN CHANCERY OF NEW JERSEY. 10

Between THEODORE R. ROBINS, }
et al., Complainants, }
and }
RALTO O. ARNOLD, } *On bill, etc.*
Administrator of } *Complainant's Brief.*
Wright Robins, deceased, } 20
et als., Defendants. }

It is conceded by counsel of defendant that if the testimony in this cause shows that Wright Robins, the trustee, used the money of the complainants to buy the property in controversy, a resultant trust was created.

(Defendant's brief, p. 3.) 30

The complainants rely upon the verbal admissions of Wright Robins and the circumstances connected with the purchase of the property in question to show that Wright Robins did use the money of the complainants to buy the property.

It is not denied that the admissions of the trustee is competent testimony. 40

Have any admissions then been made by the trustee ?

If so, were they made in such a manner and under circumstances to indicate that the trustee knew the import and meaning of his language ?

Now, what were the admissions, the declarations of Wright Robins ?

See p. 27, line 39.

10 He said "the object of giving the notes (Exhibits 2, 3, 4 and 5) was to show that he held that amount of money belonging to my sister and brother as trustee."

Page 28. I have had a conversation with Wright Robins as to the investment of the funds.

He showed me mother's letters to him.

I asked where the money was and he said he had
20 bought the Jones places with that money and some two or three acres opposite, which he bought at the Jones sale, etc., etc.

Again he said, "I told you the trust funds belonging to Dory and Maggie were in the Jones places, two acres opposite, and the lots near Robindale depot."

Are these not clear admissions ?

30 He refers *expressly* to the money, the balance of the Maria Robins fund retained by him, belonging to Margaret R. and Theo. R. Robins.

He *specifics* the property in which he invested these funds—"The Jones property"—and the lots which he bought at the Jones sale near the Robindale depot, the same property mentioned in the bill of complainant.

40 Is there any testimony to show that Wright Robins at the time he made these declarations was incompetent from any cause to realize the force and meaning of his words ?

Did he not *repeat* this declaration as to the investment of these funds in the Jones property and the lots

and refer to the conversation in which he had previously made the same statement? But it is said that these admissions, if made, were not true, but attributable "to the excitable disposition" of the man and the imaginings in which he was wont to indulge. 10

Does the testimony show that upon either occasion of these conversations, Wright Robins was excited or wandering in imagination?

The witness was there subjected to cross-examination by learned counsel—was he asked as to the condition of Robins when these admissions were made?

Does counsel desire the Court to believe that because Robins "was excitable" and indulged his imagination that he did not *know* the import and meaning of his language on the occasion of these several conversations? 20

I submit respectfully that if these admissions were made by Wright Robins in conversation with W. R. Robins, and in connection with the circumstances of the case, it is clear and convincing that Robins appropriated the trust funds belonging to the complainants and held by him as trustee, for the purchase of the property above mentioned. 30

When were these admissions made?

William R. Robins, the oldest son of the late Amos Robins, deceased, swears unequivocally and directly, stating the place and circumstances, that Wright Robins did make these admissions.

He is not an interested witness. He has no direct interest in the case, he having received his share of the funds in full from Wright Robins. 40

He stands *uncontradicted* before the Court with nothing but the theories and imaginings of counsel, to affect

his testimony. His credibility is not impeached. The opportunity was offered learned and astute counsel to cross-examine the witness, but nothing was elicited to break the force of his testimony or cast a doubt as to its
10 verity.

Counsel says in his brief, "aside from these admissions, etc., etc."

How are these admissions to be placed aside and disregarded by the Court?

It is true no other witness testifies to these admissions. The man who deliberately obtained by fraud and pre-
20 tense from the mother of the children the memorandum papers containing the only evidence *as he thought*, that he held their money as trustee, and tore those papers in the presence of the mother, with the object of destroying that evidence, *that man* is not likely to make admissions or declarations promiscuously to furnish new evidence against himself.

With whom would counsel expect Robins should con-
30 verse about the trust funds, and make admissions? With the mother of the children, whom he had insulted, and from whom he had taken by fraud the evidence of his possession of the trust funds? How carefully he withheld from Mr. Howe and Mr. Bookstaver any admission or statement specifying the property in which he had invested the trust funds.

It has not been shown Wright Robins was a fool--al-
40 though "excitable," and addicted to indulge in "imagin-

"These admissions are not to be regarded" (see defendant's brief, page 5) because they were made after he had squandered this money, but in addition to \$169,000 of the McClure fund.

Where is the evidence of this ?

His statements were untrustworthy (defendant's brief, p. 6) "because he told W. R. Robins the McClure trust was in the Benner property and the homestead." 10

The testimony, page 29, is, that he had spent *the* money (*not his* as in printed case) of the McClure fund in improving the place (the homestead meaning) and the new depot.

It is claimed he paid for the Benner property with his individual check.

Where is the evidence of the fact ? 20

Mr. Benner said on cross-examination that he could not swear it was Wright Robins's *individual* check, p. 49.

It is also claimed by defendant's counsel (page 7) that he (Robins) said he considered his homestead, which he had bought years before coming into possession of these funds, as belonging to the funds, without at all discriminating between the different funds. 30

Now look at the testimony, page 29.

Mrs. McClure's also. He said, "They are all safe, they are in the twenty (20) acres bought of Benner, part of my grandfather Ross's estate, also this place (homestead), where I live, et cct." Thus clearly discriminating between the funds.

The Maria Robins funds balance thereof was invested in Jones property and lots. The McClure fund in the 40 homestead, Benner, Ross and cottage property. Upon an examination of testimony these admissions and statements are not contradictory and inconsistent. They were not extorted or made under pressure of demand as claimed.

It is not shown by the testimony that Mrs. Robins knew anything concerning the purchase of the real estate by Wright Robins; and even if she had such knowledge it would not necessarily create suspicion in her mind that her husband's brother was investing the trust funds in land in his own name to cheat and defraud the children.

Counsel for defendant mentioned the fact that although in the year 1886, Robins put himself in the posture of an enemy, this claim is not asserted until after his death.

By reference to the testimony of Mrs. Robins (page 34, line 31), your Honor will perceive Mrs. Robins states "that immediately after the interview when Robins tore the papers, Mrs. Robins became very ill and remained so five or six months, utterly unable to attend to business, although prosecution of Robins was advised."

It is questionable if he would be in any better condition if living now.

Ely and Robins exchanged property, Robins paying Ely \$5,000. This \$5,000 the complainants claim was their money, also the \$1,500 referred to in the testimony of Van Dyke.

The bonds standing in his name were of the McClure fund.

I submit the complainants here establish a resulting trust by testimony, clear, convincing and satisfactory.

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CHAS. T. COWENHOVEN,

Counsel with Complainants.

In Chancery of New Jersey.

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BETWEEN

MARGARET R. ROBINS *et al.*,
Complainants,

AND

RIALTO O. ARNOLD, Administ'r,
&c., of WRIGHT ROBINS, dec'd,
et al.,

Defendants.

On Bill, &c.

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BRIEF FOR DEFENDANTS.

Wright Robins and George W. Robins, in 1865, as trustees under the will of John Robins, deceased, received about \$240,000 of personal securities for the benefit of Maria Robins and Caroline McClure, during their several lives, in equal proportions. Upon the death of each, her share was to go to the nephews and nieces of the testator then living, and to the issue of any that might be deceased. George Robins held the *corpus* of these funds. Some time after the testator's death George died, and his executors transferred the possession of these trust estates to Wright. He gave them a receipt dated October 12, 1868, in which he acknowledged having received, as a portion of these funds, designated U. S. bonds amounting to \$169,700; and further admitted that by the

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books of the estate these bonds had been allotted to the Maria Robins trust.

Ex. C. 1—for Complt., p. 41. 45

- 10 In 1871 Maria Robins died, and Wright Robins, the trustee, proceeded to distribute her share among the legatees. Amos Robins, who was one of them, died in the same year as Maria, but his death preceded hers and under the provisions of the will his issue took his share.

P. 22—23

- 20 He left four children, two of whom at the time of this distribution were of age and received their shares. The other two who are the complainants in this suit were minors. Wright, on that account, withheld their shares and gave to their mother certain writings acknowledging he retained for each of them \$8,875.79, that being the amount due to each on their respective shares. These papers are dated Dec. 15, 1875.
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Exs. No. 2, 3, 4, and 5, p. 46. 49

Wright is dead and no trust money has been found in possession of his estate.

- 40 These minors are now of age and have filed their bill in this court, setting up the above facts and claiming that Wright used their money to purchase certain real estate in Metuchen, the title to which he took in his individual name; and their prayer is to have these lands declared to be a trust in their favor and to be charged with the amount due them.

The above facts are conceded to be true to a certain extent, to-wit:

It is not denied

1st. That Wright Robins received the funds composing the Maria Robins' trust.

2d. That in making the distribution of these funds he retained the shares of the two minor children of Amos Robins the complainants in this suit, and that the amount due to each of them was \$8,875.79. 10

3d. That he bought the property sought to be charged.

But we do not concede that any of the complainants' money was used to pay for the lands in controversy. On the contrary we assert none of it was so used and submit there is nothing in the testimony that favors any such idea. The whole question in controversy is therefore narrowed down to this: Did Wright Robins take the money of the complainants and use that money to buy the property in controversy? If it is proved he did we concede a resultant trust was created. But before discussing the facts I desire to present what I respectfully submit as the legal rules of evidence governing the case. 20 30

1st. The burden of proof is on the complainants. They must affirmatively show that these moneys were specifically used or were mingled with Wright Robins' individual moneys and the mingled funds used to pay for these lands. In other words they must as a part of their case be able to trace the specific application of their money toward such payment. In *Perry on Trusts*, Sect. 841, the principle is laid down thus: 40

"There may be some difficulty as a *matter of fact* in tracing the trust property into purchases made by trustees. Thus if a

trustee having money in his hands misappropriates the funds and afterwards purchases lands in his own name, it may be difficult to show that the land was purchased with the trust money; and if the trust money or its proceeds cannot be traced into the lands, the *cestui que trust* cannot have a lien upon them."

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Phil. on Ev. (C. & H.'s notes, 4th Ed.)
Vol. 2, 701. *Perry v. Phelps*, 4 Ves., 107.

2d. Where the testimony consists solely of the admissions of the trustee, while it may be competent it is regarded as dangerous and unsatisfactory, especially if he is dead. It is received with the greatest reluctance, and is entitled to no reliance unless corroborated and so certain and decisive as to leave no reasonable doubt.

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Midmer v. Midmer's Ex'rs, 11 C. E. Gr. 299.
Baker v. Vining, 30 Me. 128.
Farringer v. Ramsey, 4 Md. Chy. 33.
Bottsford v. Burr, 2 Johns. Chy. 409.
Boyd v. McLean, 1 Johns. Chy. 590.
Malin v. Malin, 1 Wend. 626.
Snellin v. Utterback, 1 Bibb, 609.

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We now come to the application of these legal principles to the facts.

1st. Aside from the alleged admissions of Wright Robins, there is not a scintilla of evidence showing a specific appropriation of the complainants' money for the purchase of these lands or a mingling of any of it with his own money. Indeed, no attempt was made to furnish any such evidence. We have a right to assume the attempt was not made because the complainants were satisfied there had been no such appropriation or mingling.

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2d. The evidence, therefore, is narrowed down to

alleged admissions of the dead trustee. The lands sought to be charged consist of a tract in Metuchen consisting of $5 \frac{637}{1000}$ acres, purchased of D. J. Ely by deed dated July 1, 1873, and also certain lots purchased of Laura E. Jones by three deeds, the first dated June 13, 1884, the other two July 6, 1884.

The only admissions were those to which W. R. Robins, the brother of complainants, testifies to. They are on pages ~~28~~ and 29. [^] No other witness testifies to any admission of the diversion of complainants' money or any portion of it to the specific purchase of these lands. 10

According to the testimony of this witness, Wright stated he used the complainants' money to buy these lands. 20

P. ~~28~~ 294 30

Now there is not another sentence in the whole book showing any admission that this money was used for that purpose. But the testimony in the case clearly shows this admission if made is unworthy of regard, for— 30

A. It was made after the trustee had not only squandered this money but in addition \$169,700 of principal besides large arrears of interest of the McClure fund.

P. ~~28~~ 294 30

His conduct had been such that exposure would taint his good name and put his personal liberty in peril. Of course it would require him to lose all his property. He had, therefore, every reason to give any excuse to quiet the complainants. 40

B. He was a man given to indulge in imagination in his conversation.

P. ~~12~~, line 1. *13 line 10.*

10 And a very excitable man.

P. ~~34~~ *37 line 4*

20 Such men are not likely to be trustworthy in what they say, especially on questions in which they are personally concerned. The evidence in this case shows Wright was not. He told W. R. Robins the McClure trust was in the Benner property and in the homestead.

P. 29. *30 line 23*

Yet he paid for the Benner property with his individual check and bought the homestead ten years before he had charge of these funds.

P. ~~49~~ ⁵¹ and Exs. D. 1, 2, 3, p. ~~47~~ *50*

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Again he said the McClure fund was put in the Robinvale depot, and at another time that he had spent his own money in the new depot.

P. ~~29~~

P. 30. *line 20 v b 33*

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At another time, when Mr. Howe insisted on knowing if it was true that the trusts were impaired he answered he "had been unfortunate in some of his investments" and then said "there i

enough right round here to pay everybody ;” language entirely appropriate if he meant he had used these funds in outside speculations and that in order to replace them he would sacrifice his individual property, but utterly inappropriate for any other meaning. On another occasion he said he considered his homestead, which he had bought years before 10 coming into possession of these funds, as belonging to the funds, without at all discriminating between the different funds ; and proposed to run streets through it and by selling off building lots in time be able to get his money back for the heirs.

P. 39. 42 line 25-

Indeed at another time in the same conversation 20 he contradicted himself. At Mr. Howe's interview with him on this occasion he said referring to the trust fund :

“It is all here in New Jersey and none of it in New York.”

Before he finished he said :

“There was enough money of the estate invested 30 in those (referring to the New Jersey lands) and other lands in New York * * * to pay every body in full.”

P. 48. 20 line 10

Among so many inconsistent and contradictory admissions, uttered by a man accustomed to the use of excitable and imaginative language; extorted 40 under the strain produced by demands upon him touching trust funds which he knew he had wasted, and horrified with the thought of the terrible result that might happen to him as a consequence of his

wrong, is it not presumable that in his answers he reached for the first plausible reply without regard to truth? Besides, the wasting of these funds by the purchase of real estate is the most unlikely mode in which a trustee would embezzle the trust estate. These offences are usually preceded by the engagement of the trustee in speculations of his own which result so disastrously as to put all his own means in jeopardy. In the hope of saving these he uses the trust funds, expecting by recovering his losses to replace them. But the disaster also reaches these moneys and all goes to ruin.

Again the evidence generally shows there was a clear understanding between Wright Robins and his grantors of the lands in question at the time of the purchases that in taking the deeds he was to take both the legal and beneficial interest. In addition to this it is manifest the complainants' guardian who was their mother, must have known of the purchases and that the trustee bought the tracts in his own name. She knew he exercised every act of dominion over the lands from the time of his purchases until his death which any real owner would exercise. She knew he ceased to pay any interest to complainants after December 15, 1879.

P. 33. 36 line 8

In January of 1880 he angrily tore up his written acknowledgments, thus putting himself in the posture of an enemy.

P. 34. ~~34~~ 36 line 26

Yet this claim is not asserted until after the death of the trustee when it is impossible for him to meet it.

We therefore respectfully submit,

1. Had the complainants made out a *prima facie* case, the defendants have shown affirmatively the complainants' money formed no portion of the consideration of the land sought to be charged.

2. The complainants have not offered any such certain, definite, reliable and convincing proof as will justify the Court in divesting the estate of Wright Robins of its title to the lands in question and in putting the title in others.

We therefore submit the complainants have produced no judicial proof of a misappropriation of their money for the purchase of the lands sought to be charged, and that the natural presumption as to the mode in which these funds were wasted is— they were lost in outside speculations and in order to rescue himself from the danger of criminal proceedings, the trustee was willing to transfer all his property to make good the loss.

3d. We submit further that not only is our theory as to the mode by which these trust funds were wasted uncontradicted by the complainants' testimony, but that the evidence of both sides taken as a whole, affirmatively proves they were not used in the purchase of the lands sought to be charged.

In deciding questions of this kind, the financial responsibility of the trustee at the time of the alleged misapplication is important, for a man is not presumed to use the money of others until he has exhausted his own.

See cases supra.

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The last purchase of the lands in controversy, was on July 6, 1874. The first was from D. J. Ely on July 1, 1873. As to the first all but \$5,000 of the

consideration consisted of what is called the Himrod property; that is to say Ely and Robins exchanged property and Robins paid in addition \$5,000 cash.

See Ex. D. 6 and D. 7, and p. 37. *38*

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But Robins bought the Himrod property which was given in exchange—January 20, 1869.

See Ex. D. 5. *pg 38*

The distribution of the Maria Robins fund was as late as December 20, 1871; for the meeting to arrange 20 for it was held on that day.

See Test'y, p. 22. *24 line 1*

Wright did not receive these funds until October 12, 1868. Of course no one can presume the Himrod property was purchased with the complainants' money.

30 The cash that was paid for the Ely and the other property was \$14,804 according to the deeds.

See Ex. D. 7, 8, 9 and 10.

Now after July 6, 1874, the trustee had transferred to him on the books of the U. S. Treasury \$120,000 of U. S. bonds, the transfers running down 40 to 1879.

These he held in his individual right.

At the time of the last of these purchases he had standing in his name, as trustee, on the books of

the U. S. Treasury, U.S. bonds amounting to \$157,000, and the transfer of the last of these bonds from him was in 1879.

See Ex. copy of record of loans from
U. S. Treasury, pp. ~~44, 45.~~ *47, 48* 10

Besides this he owned his homestead, the Benner and other property purchased with his own money, costing some \$20,000, and although there is no express testimony on the subject the general scope of it justifies us in inferring it was all unincumbered.

In addition to this he received as one of the original legatees of John Robins one-ninth of that estate. 20

See Will, Ex. No. 1.

This was the same as the amount of the Maria Robins fund, \$169,700. Upon the distribution of her fund he received the same as fell to the share of Amos Robins. This was over \$24,000, for Amos' son William says he was entitled to one-fourth of his father's share and received over \$6,000. 30

See p. ~~30~~ *23 line 30*

Indeed complainants' own witness admits Wright was reported wealthy until shortly before his death.

See p. 22. *31 line 30* 40

Surely under such circumstances it is utterly

unreasonable to suppose that Wright would have taken money of these complainants and specifically purchased with it the land in controversy.

J. HENRY STONE,

Of Counsel with Defendants.

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Besides this he owned his homestead, the Bennett and other property purchased with his own money, worth some \$20,000, and although there is no expert testimony on the subject the general scope of his affairs as in entering it was all unimpaired.

In addition to this he received as one of the original partners of John Robins one-ninth of that estate

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See VIII, Ex. No. 1.

This was the same as the amount of the Mann Robins fund, \$100,700. Upon the distribution of said fund he received the same as fell to the share of John Robins. This was over \$21,000 for James and William says he was entitled to one-fourth of his father's share and received over \$6,000.

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See p. 30.

Indeed complainants own witness admits Wright was reported wealthy until shortly before his death.

40

See p. 32.

Simply under such circumstances it is utterly

In Chancery of New Jersey.

10

Between MARGARET R. ROBINS
and THEODORE R. ROBINS,
Complainants,

and

RIALTO O. ARNOLD, Administra-
tor, *cum testimento annexo*
of Wright Robins, deceased,
et al.,
Defendants.

On bill, &c.

20

30

To His Honor, THEODORE RUNYON, Chancellor of
the State of New Jersey.

Humbly complaining, show unto your honor your
orators, MARGARET R. ROBINS and THEODORE R.
ROBINS, of Metuchen, Township of Raritan, Middle-
sex County, New Jersey.

In the year 1864 John Robins died, having made 40
his will, which was proved October 27, 1865, and
admitted to probate in the Surrogate's Court in and
for New York city, and letters testamentary on said
estate were issued to George W. Robins and

Wright Robins, the executors in said last will named.

10 By said will John Robins divided his property, real and personal, into nine equal shares, one of which he bequeathed to his niece, Maria Robins. Afterward, the said John Robins executed a codicil
 10 to said last will, which codicil was duly proved with said will, in and by which he revoked the legacy bequeathed to Maria Robins, and gave the same to his executors in trust to invest the same and apply the interest and income to the use of his said niece during her life, and at her death to pay over the principal and unappropriated income to the nephews and nieces of the testator then living, and to the issue of any deceased nephew or
 20 niece.

In the year 1868 George W. Robins died, and thereupon Wright Robins became, and up to the time of his death was, sole executor and trustee under said will, and became possessed of all the property, stock, securities and moneys which had been by the will entrusted to said trustees and acted as such up to the time of his death.

30 The property, bonds and securities which came to the hands of the said Wright Robins, as such trustee under the trust for the life of Maria Robins, amounted to the sum of \$175,000 and upwards.

The said Maria Robins died intestate and without issue in the year 1871. The nephews and nieces of John Robins, referred to in his will, were nine in number, one of whom was Amos Robins, the father of your orators. The said Amos Robins died in the
 40 same year as said Maria Robins, leaving three children, your orators and William R. Robins. The said Wright Robins paid to all said nephews and nieces, or to their representatives, their share of the said fund held in trust for the life of Maria Robins,

except to your orators, to whom no payment was ever made on account of the principal, and the sum due to your orators amounts to seventeen thousand seven hundred and fifty dollars (\$17,750), besides arrears of interest, which sum the said Wright Robins in his lifetime neglected and refused to pay to them, though payment was often demanded. 10

The said Wright Robins, since his appointment as trustee and up to the time of his death, lived in the village of Metuchen aforesaid, and became embarrassed in his affairs and used the trust funds for his private purposes. The said fund of your orators was invested by the said Wright Robins in certain real estate in the village of Metuchen aforesaid.

The property in which the said Wright Robins invested the said money of your orators is described as follows: 20

All that tract of land in the village of Metuchen, Township of Raritan, Middlesex County, New Jersey, bounded northerly by the property of the New Jersey and Transportation Company, easterly by a new street, southerly by the road leading from Metuchen to Woodbridge, and westerly by the parsonage lot, containing 5 627-1000, more or less. 30
Being the property conveyed by Laura E. Jones to David J. Ely, by deed bearing date March 15, 1873, and being the same premises conveyed by the said David J. Ely to Wright Robins, by deed dated July 1, 1873, and recorded in Middlesex County Clerk's office, in Book 141 of Deeds, page 308, etc.

Also the lots known on a map entitled "Map of property belonging to Henry Homer Jones, Metuchen, New Jersey," supplementary to a map of the same property filed in the Middlesex County Clerk's office, as lots 68, 69 and 70. 40

Also lots known on said map as lots 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47.

Also lots 54 to 57 inclusive as laid down on said map.

Also lots 207 and 208 on said map.

Also lots 225 to 260, both inclusive, on said map.

Also lots 210 to 224, both inclusive as laid down
10 on said map.

Also lots 14 to 24, both inclusive, as laid down
on said map.

The said Wright Robins died on the 10th day of
March, 1882, having first made his last will and tes-
tament, by which he divided his estate into five
shares, and directed that one should be given to
his widow, Bridget Robins, and one to each of his
four children, Mary R. Robins, Elizabeth H. Rob-
ins, Annie Robins, and Caroline Robins, and did
20 appoint his wife guardian of the person and estate of
his minor children, and did appoint his nephew,
Nathan Robins, and his daughter, Mary W. Robins,
executors of his will. The said will was duly proved
in the office of the Surrogate of the County of Mid-
dlesex, and Mary W. Robins qualified as executrix.
Since the death of said Wright Robins his daughter,
Annie Robins, has died unmarried and intestate.
30 The said Mary Robins has been released as execu-
trix, and Rialto O. Arnold has been appointed ad-
ministrator with the will annexed.

The said estate is insolvent. The trust fund has
not been kept separate from the individual estate,
but has all been invested in said individual estate,
and the said administrator proposes to apply the
proceeds of the said lands in which the said fund
of your orators is invested, to the payment of the
40 general debts of the said testator.

And your orators further show that afterwards
the said Mary W. Robins intermarried with one
Frank Fisher, of Metuchen, New Jersey, and the

said Elizabeth H. Robins intermarried with one J. C. Hanlon, of Jersey City, New Jersey.

Your orators therefore pray that the defendants hereinafter named may answer the premises without oath ; that they may account for the trust funds in the hands of the said Wright Robins, deceased, at the time of his death, and may make disclosure of the investment of the same by the said Wright Robins, and by the said defendants since his death ; that a trust may be established in favor of your orators against the said lands, and that the said lands may be charged with the amount due to your orators and sold to realize the same, and that your orators may have such other and further relief as the nature of the case may require, and as may be agreeable to equity. 10 20

May it please your Honor, the premises considered, to grant unto your orators a writ of subpcena, to be addressed to the said Rialto O. Arnold, administrator, with the will annexed of Wright Robins, deceased, Bridget Robins, Mary W. Fisher and Frank Fisher, her husband, Elizabeth H. Hanlon, and J. C. Hanlon, her husband, Caroline Robins and Bridget Robins, testamentary guardian of Caroline Robins, an infant under the age of twenty-one years, commanding them, and each of them, to be and appear before this Court, to answer the premises, and to abide such order and decree as to your Honor shall seem meet. 30

And your orators will ever pray, etc.

CHAS. T. COWENHOVEN,

Solicitor of Complainants. 40

IN CHANCERY OF NEW JERSEY.

10 Joint and several answers of RIALTO O. ARNOLD, Administrator, with the will annexed of WRIGHT ROBINS, BRIDGET ROBINS, MARY W. FISHER, and FRANK FISHER, her husband, and ELIZABETH H. HANLON, and J. C. HANLON, her husband, to the bill of Complaint of THEODORE R. ROBINS, and MARGARET R. ROBINS, Complainants.

These defendants admit that John Robins died leaving a will which was admitted to probate and that letters testamentary on his estate were issued to Geo. W. Robins and to Wright Robins as in said bill set forth.

20 These defendants admit that by said will said John Robins divided his property into nine equal shares, that one of these shares was devised to his niece, Maria Robins, that after making said will said John Robins made and executed a codical thereto which was also duly proved, in and by which he revoked the legacy bequeathed to said Maria Robins and gave the same to his executors in trust to invest the same and apply the interest and income to the use
30 of his said niece during her life, and at her death to pay over the principal thereof and the unappropriated interest to such of his nephews and nieces as should then be living and to the issue of such as should be deceased.

40 And these defendants admit that said G. W. Robins died in eighteen hundred and sixty-eight, and that said Wright Robins became, and up to the time of his death, was the sole executor and trustee under said will and became possessed of all the property, stock, securities and moneys which under said will were entrusted to said trustees.

And these defendants have no knowledge or infor-

mation save as furnished by said bill what was the amount of the property, bonds and securities which came to the hands of said Wright Robins, as such trustee, under the trust for the life of said Maria Robins and leave the complainants to prove the same.

And these defendants admit that said Maria Robins died intestate, and without issue, in the year 1871, that the nephews and nieces in said will of John Robins referred to were nine in number, that one of them was Amos Robins, the father of aforesaid complainants, that said Amos Robins died in the same year in which said Maria Robins died, leaving three children, the third one being Wm. R. Robins, the said Wright Robins paid to all his nephews and nieces of said John Robins, or their representatives, their respective shares of the said fund held in trust for the life of said Maria Robins, except the shares due to said complainants, that the joint shares amounted to the sum of \$17,750, with arrears of interest, amount of which is unknown to these defendants, and that said Wright Robins in his lifetime failed to pay to said complainants the same or any part thereof.

And these defendants admit that said Wright Robins since his said appointment as trustee and up to the time of his death lived in the village of Metuchen and became embarrassed in his affairs, as in said bill set forth, and these defendants say they have no knowledge or information, save as furnished by said bill, whether said Wright Robins invested any of said trust funds for his private purposes and leave complainants to prove the same; and these defendants admit that said Wright Robins did invest money in real estate in said village, but deny that he used any of said trust funds in the purchase of the same and aver that to the best of their knowledge and belief he made such purchases with his

own private means out of which he was abundantly able to make such purchases.

10 And these defendants admit that said Wright Robins did purchase the various tracts referred to in said bill, but deny that the purchase money of said complainants, and aver their belief that the same was his own private money, and that at the time of said purchase he was worth at least over two hundred thousand dollars.

20 And these defendants admit that said Wright Robins died in 1882, having first made his last will by which he divided his estate into five shares, one of which was to be given to his widow, Bridget Robins, and one to each of his four children, Mary R., Elizabeth N., Anna and Caroline Robins, and appointed his said wife guardian of the persons and estate of his minor children, and did also appoint his nephew, Nathan Robins, and his daughter, Mary W. Robins, executors of his said will, also that said will was duly proved in the office of the Surrogate of Middlesex County, and that said Mary W Robins 30 duly qualified as such executrix, also that since the death of said W. Robins, his said daughter Anna has died, that said executrix has been released from her duties as such, and that said Rialto O. Arnold has been appointed administrator of said estate, with will annexed.

40 And these defendants admit the estate of said Wright Robins is insolvent, but these defendants deny said trust fund has not been kept separate from the undivided funds of Wright Robins and also deny that the same or any part thereof has been invested in the individual estate of said Wright Robins, but admit said administrator proposes to apply the proceeds of said lands to the payment of

general debts of said Wright Robins and charges that it is his duty so to do.

And these defendants admit it to be true that the defendant, Mary W. Robins, has intermarried with said defendant, Frank Fisher, and said defendant, Elizabeth H. Robins, has intermarried with the defendant, J. C. Hanlon. 10

And the said defendants, each for themselves, respectively say they have no knowledge or information as to the disposition made by said Wright Robins of the funds constituting the shares to which said complainants were entitled by reason of the death of said Maria Robins except they understand and believe it to be true that long after the death of said Maria Robins, and after the purchase of said lands, said Wright Robins, as trustee of said funds, and of other funds which he held by virtue of being trustee under said will of John Robins, was the holder in his own name, trustee of a large amount of U. S. Registered Bonds, that between 1868 and 1876 he, as such trustee, had made investments in said bonds to the extent of \$438,000 par value, and after the last purchase of the real estate described in said bill, still held, as such trustee, over \$150,000 par value of said bonds, and these defendants further say they know of no investments of the shares of said complainants since the death of said Wright Robins, and have no information as to any. And these defendants, Mary W. Fisher and Rialto O. Arnold, say that no funds or property of any kinds representing the said shares have come into the possession of either of these or any part thereof. And of all of these defendants say they have been informed and believe it to be true that said Wright Robins, shortly before his death, spent a large sum of money, amounting to some \$25,000, on land and erected a costly building thereon, at 30 40

Metuchen, and gave the same to the P. R. R. Co. for a railroad station, and that within a few years prior to his death he operated heavily in stock speculations and lost large sums of money thereby, which exact time and the exact amount of said losses these defendants have no knowledge of but are informed and believe it to be true that it was within two or three years prior to his death, and amounted to several hundred thousand dollars.

All of which matters and things these defendants are ready and willing to prove, aver and maintain, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

20

J. HENRY STONE,

Solicitor of and of Counsel with Defendants.

30

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the property. The dwelling house stood about two hundred and fifty feet from that road. And that property lies chiefly south-east and west of the house. Wright Robins lived in that house about fifteen or sixteen years next previous to his death. During his sickness he occupied the bedroom immediately over the music room. He was in different rooms. The room mentioned by Walter Howe in his testimony I think is this room I mention over the music room. It may be the one next to it on the south. There were two rooms which would comply with the description of Mr. Howe; one facing south and east and the other south and west.

Q. Do you know of any property that Wright Robins owned in Metuchen south of this Woodbridge road, except those contained in the deeds marked Exhibits D 1, D 2 and D 3, since April 1, 1879?

A. No; nothing except the Himrod property marked Exhibit D 5. This Himrod property is not on the Woodbridge road; it is on another road; it is about a mile from the homestead and about southwest. He sold this Himrod property some years before his death, long before the interview Mr. Howe speaks of having with him. The Benner property is about a mile to a mile and a quarter from the homestead. The first conversation I had with Mr. Wright Robins took place in his house in middle room, about two years before he died, in the evening. The family was in and out, but I think most of them had gone to bed. The second conversation I speak of took place out under a tree; it took place in the afternoon. I think this conversation was after the conversation I speak of before. It was about a week or ten days. I do not know who the young man was who came out from the Safe Deposit Company. I have made no effort to

find out who this young man was. The conversation I had with him when I asked him why he mortgaged his farm, was on a third occasion and after the two above referred to. Quite some time after the two conversations above referred to. I knew Mr. Wright Robins very intimately. I was there quite some time. He was a man given to indulge in imagination in his conversation sometimes. 10

WILLIAM R. ROBINS.

Sworn and subscribed before me }
November 11, 1884. }

CORNELIUS S. SEE,

Master in Chancery of New Jersey. 20

At which time the examination was adjourned to
November 18, 1884, at one p.m. at same place.

30

40

IN CHANCERY OF NEW JERSEY.

Between	}	<i>On bill.</i>
10 THEODORE R. ROBINS, et al.,		
Complainants,		
and		
BRIDGET ROBINS, et al.,		
Defendants.		

20 Testimony taken this day, February 10, 1885, before me, Arthur R. Denman, Master in Chancery of New Jersey, by consent of Charles T. Cowenhoven, Counsel with Complainants, and J. Henry Stone, Counsel with Defendants.

H. L. R. VAN DYCK being duly sworn deposeseth and saith as follows :

30 I am an attorney and counselor at law, practicing in New Jersey. I reside in Metuchen, Middlesex County, New Jersey, and have resided there since 1874. I practice and have my office in Hudson County. I have been practicing since 1872; was admitted in 1862. I knew Wright Robins, and I transacted business for him.

40 Witness being shown discharge of mortgage, dated March 12, 1878, from Valorious Southworth to Mary Himrod, says : I recognize this discharge which I procured at the request of Wright Robins. Its date, March 12, which was, I think, Thursday. I saw him on Monday, a few days before I went to

Auburn, New York State, to procure it of Mr. Southworth, the mortgagee. I paid Mr. Southworth no money. I asked for the discharge of the mortgage mentioned in the discharge, dated July 18, 1868, made and executed by Mary J. Himrod, by William Himrod, her attorney, to Valorous Southworth, to secure payment of _____ 10
 recorded in Middlesex County Clerk's Office, Book 36 of mortgages, page 329. On July 22, 1868, I asked for the discharge of the mortgage on the ground that Wright Robins had paid the sum of \$1,500, which said sum was paid for the purpose and at the time which the quit claim deed is dated for the purpose of securing said deed to Mary J. Himrod, for and in addition of \$1 paid to grantor for a quit claim deed, executed by Mary J. Himrod to David 20
 J. Ely, dated July 11, 1873, acknowledged in month of August following. I took with me an affidavit from Wright Robins, setting forth that at the time the quit claim deed was given, in 1873, he had paid the balance of \$1,500 then due to the Himrods, and thereupon Mr. Southworth finally sent me the discharge by mail.

Discharge offered in evidence, marked 62, for complainants, also quit claim deed. 30

Counsel for respective parties hereby consent that a certified copy of the deed, referred to by witness, by Mary J. Himrod to David J. Ely, may be put in evidence and marked as exhibit 63 for complainants.

HENRY L. R. VAN DYCK.

IN CHANCERY OF NEW JERSEY.

10	Between MARGARET R. ROBINS, et al., Complainants, and RIALTO O. ARNOLD, Adminis- trator, etc., of WRIGHT ROBINS, deceased, et als., Defendants.	} <i>On bill, etc.</i>
20		

It is hereby stipulated by the counsel of the respective parties to this suit that the testimony taken in a previous cause in this court, wherein James R. Cuming, Trustee, et als., were Complainants, and Bridget Robins et als., were defendants (which cause was decided in the October term of 1884), together

30 with the exhibits offered therein, may be used as testimony and exhibits in this cause.

February 9, 1885.

CHAS. T. COWENHOVEN,

Solicitor and Counsel with Complainants.

J. HENRY STONE,

Of Counsel with Defendants.

40

Testimony taken in the suit referred to in the foregoing stipulation :

IN CHANCERY OF NEW JERSEY.

JAMES R. CUMING,

Complainant,

and

BRIDGET ROBINS, et als.,

Defendants.

10

On bill, etc.

20

Testimony taken before me this eleventh day of June, 1883, upon notice given and acknowledged.

C. T. Cowenhoven, Esq., for complainant, and J. Henry Stone, Esq., for defendants, Mary W. Robins, Bridget Robins and Caroline Robins and Elizabeth H. Robins.

30

WALTER HOWE.—I reside in the city of New York, and I am an attorney and counselor-at-law. I am married to Mary A. B. Robins, daughter of George W. Robins, deceased, late of the city of New York. He was a nephew of John Robins and one of the executors of his will. Upon his death Wright Robins, late of Metuchen, Middlesex County, New Jersey, became executor of his will and sole trustee of certain trusts thereunder, including a trust for the life of Maria Robins, deceased, and of Caroline McClure, deceased wife of John McClure.

40

My wife is entitled under the will of John Robins,

deceased, to a distributive share of the fund held in trust upon the life of Caroline McClure, deceased, amounting to one-seventh part thereof. The fund amounting when received by Wright Robins, deceased, as such trustee, to the sum of about \$175,000 in each case.

- 10 Mrs. Howe had received her share of the Maria Robins fund at the time of her death, about 1872. I refer to the death of Maria Robins.

The children of Amos Robins did not receive their share of said estate. I mean the minor children of Amos Robins did not. I will qualify this statement by saying that my information is derived from my general knowledge of the disposition of the estate and from conversations with Wright Robins prior to his death. My wife, Mrs. Howe, is only interested to the extent of her share under what we call the McClure trust.

- 30 In January or February, 1881, I was informed by Mrs. Amos Robins and by Judge C. T. Cowenhoven, her counsel, that Wright Robins had refused to pay interest then overdue upon funds in his hands under what we call the Maria Robins trust, being the shares of her minor children, Theodore and Margaret, and had also refused to make to her any statement or accounting as to such fund. Counsel for defendant objects to the last answer and to any further testimony that may be given by this witness, disclosing information derived from Mrs. Robins or any other person in the absence of Wright Robins, other than Mr. Wright Robins himself, on the ground of its being hearsay.

- 40 Witness continues.

As soon as I heard that Wright Robins was embarrassed I went immediately to his house at

Metuchen, New Jersey, and had an interview with him, which was commenced by my inquiring whether it was true that he was financially embarrassed. He gave me some evasive answer which I have now forgotten, and I asked him if he had been requested by Mrs. Amos Robins to pay the interest to her children. He said he had and that it would be all right : that he had been confined by sickness and when he could go to New York he would raise the money. I asked him whether he had refused to account to her for the principal of said fund, and he made some such remark as this, that it was none of her business, adding with an oath, that she was not their guardian. I then asked him about the fund forming the McClure trust. He said that it was all right and he would make a satisfactory statement at some proper time. 10 20

In answer to further questions by me he refused to make any statement as to the condition of that trust.

I had a subsequent interview within a few weeks subsequent, when I called upon him at the same place, when I served him personally with a citation from the Surrogate of the city of New York. In each of two proceedings, one at the instance of James R. Cuming, who had in the meanwhile been appointed guardian of the infant children of Amos Robins, the other at the instance of Mrs. Mary A. B. Howe, my wife, to show cause why he should not account before said surrogate as to both of said trusts. Mr. Robins, after receiving the citations, said that he was advised by his counsel that the New York surrogate had no jurisdiction over him as trustee, but that he wanted to do what was right, and that if the heirs would only be reasonable, he would satisfy every one. Any way he said "it is all here in New Jersey, and none of it is in New York. Why," he said, "this land is worth a thousand dollars an acre, 30 40

and there are a good many acres about here,' or some such expression as that. I then asked him if it were not true that he had recently mortgaged this property, and he said, No, that he had only put a little mortgage on the house. He then added that we need not be afraid, that there was enough money
 10 of the estate invested in those and other lands in New York which he did not particularize to pay every body in full.

The third interview I had was with Mr. Bookstaver, of the firm of Vanderpoel, Green & Cuming, lawyers of New York, at his residence in Metuchen. This interview was about the 5th of March, 1881. The conversation was carried on by all three. Mr.
 20 Bookstaver representing Mr. Cuming, the guardian, and I representing Mrs. Clarissa Haydock, one of the nieces of Wright Robins and my wife.

We asked Mr. Robins if it were true that the trusts were impaired. He said he had been unfortunate in some of his investments, and that in consequence of his long sickness he had been unable to look after them. But he said there is enough right
 30 around here to pay every body, if they will only give me time. That for some of these lands he had only a little while before been offered a hundred thousand dollars, and there were some other tidbits, as he expressed it, lying around that would, if judiciously and properly sold, bring in a great deal of money, but not specifying how much.

We then referred to a proposal that had been informally made to us, that he should execute an
 40 assignment, for the benefit of the trust estates, of all his own property, including his homestead and the other lands which he had previously referred to as belonging to the trust, and said that as soon as he could get well enough, he would have it fixed up,

and that then with his family, he would move to some little house where with one horse he would manage to live, and start life over again.

Q. Where did he say the estate funds were when you asked him ?

A. Oh ! he said, waving his hand, it is all around here in these lands I have been talking about, and he then made the statement I have already referred to, that he had been recently offered one hundred thousand dollars for some of the lands. 10

He said in the course of the conversation that he had two hundred acres there, or about that, and that they were worth easily one thousand dollars an acre ; some such expression as that he used.

Mr. Robins referred me to his attorney, Mr. E. Randolph Robinson of the city of New York, who, he said, would carry out his plan of conveying all his property for the benefit of the trusts. 20

This was on the same occasion when Mr. Bookstaver was with me, or on a subsequent date of the same year, 1881, when I again visited Metuchen for the purpose of serving a citation upon Mr. Robins to show cause why he should not be removed as trustee. This was on the 8th of April, 1881.

He was still suffering from his disease, but better, and said that he wanted to get rid of this matter just as soon as he could, but he was not going to give up his property unless we could get a release from all the heirs, and just as soon as he could get that he would turn over every thing to us, and that his lawyer, Mr. Robinson, had entire charge of it, and he would only do what he said. 30

Cross-examined :

40

Except as above stated, he did not tell me in what

he had invested any of these trust funds. In referring to the property which he had purchased with the trust funds, he waved his hand and said, "it is all around here." When he said this he was in his bedroom at his house in Metuchen, and he pointed out of the window, or rather he waved his arm, 10 looking out of the window, and indicated lands somewhere in the neighborhood. I think the window was on the south side of the room. He never told me or specified what personal investments he had made.

WALTER HOWE.

Subscribed and sworn to before me }
this 11th day of June, 1883. }

20

G. R. LINDSAY,

Master and Examiner in Chancery of N. J.

Testimony taken before me, one of the Masters and Examiners of this court, this seventh day of August, 1883.

G. R. LINDSAY.

30

WILLIAM R. ROBINS, a witness produced and sworn on the part of the complainant, being duly sworn, says: I reside in New Brunswick, New Jersey, and was thirty-four years of age last June, and my parents are Amos Robins, now deceased, and Margaret T. Robins. My father died June 27, 1871. My mother is living in Metuchen, New Jersey. My 40 father was the son of Nathan Robins, and a nephew of John Robins, now deceased. The names of my brothers and sisters are as follows: Margaret Ross Robins, now of age; Theodore Randolph Robins, who was twenty years of age last January. I had a

brother John Robins, who died January 13, 1873. I was twenty-one years of age June 19, 1869. My uncle was Wright Robins, who is now deceased.

I know as a fact that Wright Robins told me that John T. Bruce, the executor of the last will and testament of George W. Robins, deceased, had paid over to him all the trust funds to him, Wright Robins, as surviving trustee and executor, held by him, George W. Robins, as one of the trustees of John Robins, deceased. 10

The principal sum of both trusts under the will of John Robins held by the trustees was about \$320,000. I refer to the trusts held for the benefit of Maria Robins and Caroline McClure.

He stated to me that those funds consisted of government bonds chiefly, and to that amount. He told me that he kept these securities in a safe deposit company in New York. 20

After the death of my father, my aunt Maria died, and then Wright Robins distributed a portion of the principal sum, the income of which, under the will of John Robins, was paid to her. I received my share as representative of my father. My share was one-fourth of which my father would be entitled to, and I received a little over \$6,000. I gave him a receipt for it. It afterward appeared, however, that there was a mistake, and that my uncle Wright had overlooked some ten forties, and made a second distribution, and out of that second distribution I got about \$50. 30

He paid me my share by a check drawn on the Phenix Bank of New York. 40

Mrs. Howe was there at the meeting, but did not at that time receive her share. This meeting was

called at the house of Maria Robins, deceased, on the 20th of December, 1871, at 360 West Thirty-third street, New York city, and was called for the purpose of paying over to us our shares.

10 Mrs. Howe was not at that time married. I do not know from my own knowledge whether she received her share, except what Wright Robins told me. He told me he had paid her her share.

W. R. ROBINS.

Further taking of testimony adjourned to Friday, August 10, 1883.

20 In the latter part of January, 1872, Mr. Wright Robins called at my mother's house in New Brunswick. I was present at the interview.

Q. Please state what took place between your mother and Wright Robins, trustee, in reference to the trust fund belonging to your brother and sister, retained by Wright Robins. I refer to the Maria Robins trust fund?

30 Defendants' counsel objects to the above question, on the ground that the witness being one of the complainants, is not a competent witness to testify as to any conversation or transactions of Wright Robins, because the said Wright Robins' executrix is a party defendant in the case.

40 It is here stipulated between counsel for complainants and defendants that the foregoing objection shall be considered as made to all subsequent testimony of the present witness touching any conversation or transaction of the said Wright Robins.

A. Mr. Robins was in the habit of coming to my mother's house when he was in town, and on this

occasion I refer to, she asked him why it was he did not send her a notice to receive the share held by him as trustee, to which my brother and sister were entitled. He answered that he did not have to send her notice, because he was to hold those moneys as trustee under the will of John Robins, and that when they became of age he would pay it over to them, but that they were entitled to the interest, that whenever she wanted the interest to let him know, and he would pay it over to her. She said that all she wished him to do in the matter was that which was lawful, and expected him to do that. 10

Q. Did he at that time offer to her the shares of the children?

Objection by counsel for defendants, as leading. 20

A. No, sir.

Q. Did he at that time or at any subsequent date in your presence, offer to pay, and insist upon the money being received by Mrs. Robins?

Same objection by counsel for defendants as to the last question. 30

A. No, he always held that he had a right to retain that as trustee under the will of John Robins.

My mother and myself went to the Surrogate in New York city to see and to learn whether she had to take out letters of guardianship in New York. She had always taken them out in New Jersey.

After her interview with the Surrogate in New York she did not take out letters of guardianship there. 40

I know the fact of his paying my mother some

interest on the sum of money he retained in his hands, as trustee.

My brother John died January 13, 1873.

10 I was present when Wright Robins gave to my mother a paper writing stating the amount of money he held in his hand, as trustee, belonging to the children of the Maria Robins fund. That occurred at my mother's residence in New Brunswick, No. 110 George street. That was the time he distributed the share to which my brother John Robins was entitled. He then paid my mother the one-fourth of John's share, which he held as trustee, and myself one-fourth. The other two-fourths he held as trustee for my brother and sister, Theodore and Margaret.

20 At that time he gave my mother two papers, which he said was to show in case of his death, that he held that amount of money for Theodore and Margaret as trustee under the will of John Robins. This was the 15th of December, 1875. I am quite sure that was the date.

30 He credited the account of my brother Theodore and sister Margaret each with the one-fourth part of my brother John's share. And the papers which he gave my mother each showed the total amount of both combined.

Objection by counsel for defendant.

4 The last time I saw those papers they were in possession of Wright Robins. They were at his house in Metuchen, about the middle of March to the first of April, 1880. He pulled them out of his pocket and they were all torn. I asked him where he got them. He said he had been up to my mother and told her he had come to settle that trust fund,

which she had written to him often enough about. I asked him if he paid her and he said, No.

Then I asked him how it was that he had come in possession of those notes, and he said he told my mother to go and get them as he was in a hurry to get back. He said she went and got a tin box and took them out, and he said to her let us see them, and she handed them to him, took them and tore them up in front of her, and said, "that is the way I pay such women as you are." He was going to throw them in the fire. I mean these papers, but I prevailed upon him not to. I told him he had better put them in an envelope and put them in his safe, that they might be of use to him some time or another, which he did, and I have not seen them since. After that, I mean after he had put them in the safe, we sat down upon the lounge together in the middle room, and he said he had no right to give her those papers, any how, that he had the right to hold it as trustee until the children became of age.

He said, Will, you know what those papers were given for, simply a memorandum in case of his death to show his executors and administrators that there was that amount held in trust, by him.

Counsel for the complainants calls upon counsel for defendants to state whether he knows of the existence of these two papers referred to by the witness, and if he does know that they are in existence and are under his control to produce them.

To which counsel for defendants replies that he does know of the existence of one of those papers, and of torn portions of the other one, or rather what he supposes may be those papers; that they are now in his possession and he produces the same.

Witness shown the two papers now produced says: I know the handwriting of Wright Robins. The

paper which I hold in my hand is one of the papers which my mother held, the torn portions of which have been pasted together, marked A for identification. The second paper produced by counsel for defendants being shown to witness, he says: I do not remember ever seeing that paper before, al-
 10 though he may have given it to my mother.

There was another similar to the one marked A for Margaret's share. That paper does not appear.

Counsel for complainants calls upon counsel for defendants to produce the other paper if he has it. To which defendants' counsel replies: "I now produce detached portions of what I presume you call for. I have put them loosely together, so
 20 as to enable the witness to read it consecutively."

Witness here states: I believe that to be the other of the papers referred to, marked B for identification.

I remember now that the paper which I have before mentioned as having no recollection of is a paper which was written by Mr. Robins at my mother's house. At the time he brought the papers
 30 marked A and B to my mother.

That paper is marked C for identification.

I recollect that I got that piece of paper upon which that is written out of the library table drawer. He said that that was given to show that he held that amount of money in his hands, and to whom it belonged. That was given in connection with the one marked A for identification.

40 Counsel for complainants calls upon counsel for defendants to produce the last paper referred to by witness.

To which counsel for defendants replies: "I have

detached portions of a paper a part of which is missing, which imperfect portions I have put together as well as I could, and now offer them for the inspection of the witness.

Witness says : I recognize that as the paper given to show what the paper marked B for identification was given for. 10

Paper marked D for identification.

The object of giving the notes marked A and B, Mr. Robins said, was to show that he held that amount of money belonging to my sister and brother as trustee under the will of John Robins, and that he gave these smaller ones marked C and D to show that he had that amount of money under the will of John Robins. 20

He said that he had no business to give her those notes at all, that he was the proper one to hold those moneys under the will of John Robins. He said those notes were simply given as memoranda of those amounts, that she had no right to receive the money ; that he was the proper person to hold them as trustee and pay the interest if he saw fit.

I have had conversations with Wright Robins as 30 to the investments of these funds. I have had two conversations with him. One of these conversations originated in this way : He had shown me two letters that he had got from my mother at different times calling upon him for the interest upon the trustee funds held by him for the benefit of my sister and brother, and in one of those letters he was told that if he did not pay the interest she would take legal advice and try to collect the interest and principal of the trust fund. He said she 40 had no right to do that ; that he held it as trustee ; that their shares were entirely safe. I asked him where the money was and what he had done with it,

and he said that he had bought the Jones' place with that money, and I think some two or three acres opposite and some lots which he had bought at the Jones sale down near the Robinvale depot. He said he did not know that he was bound to pay interest for the money after all, but supposed he would be responsible for the rent of the house.

There was another conversation which came about in this way. There was a young man came out from the Safe Deposit Company to collect the rent for the safe. He said he had no use for a safe anyhow, that he had nothing to put into it. I said there are the trust funds belonging to Dora and Maggie, and he said you know I told you they were in the Jones place, two acres opposite, and the lots near the Robinvale depot.

Then I said there are the trust funds you hold of Mrs. McClure also.

He said they are all safe. They are in the twenty acres he bought of Mr. Benner, a part of grandfather Ross's estate; also, this place where I live, and a little cottage down in the village.

I said, how can that be. You bought this place before the trust fund was created. He said that was all right, that he had spent his money in improving the place and new depot, and the property would rise in value, and that none of us would ever suffer any loss.

W. R. ROBINS.

Further taking of testimony, adjourned to Wednesday, August 15, 1883, at 10 A.M.

G. R. LINDSAY,

M. & E.

The complainants' counsel here offers in evidence the papers referred to in the testimony of William R. Robins, and marked A, B, C and D, for identification, which I now mark respectively as exhibits, as follows: The one marked A, for identification I have marked Exhibit No. 2, for complainants.

The one marked B, I have marked Exhibit No. 3, 10
for complainants.

The one marked C, I have marked Exhibit No. 4,
for complainants.

The one marked D, I have marked Exhibit No. 5,
for complainants.

G. R. LINDSAY,

20

Master and Examiner.

Taking of testimony continued this 15th day of August, 1883.

Cross-examination of William R. Robins by J. Henry Stone, Esq., counsel for defendants.

30

I have no personal knowledge and could not have of the financial condition of Wright Robins during his lifetime. He was reputed to be a wealthy man, up to a short time previous to his death, and was so reputed at the time he gave Exhibits No. 2 and 4 to my mother.

I know that my mother did not request him to keep the two shares belonging to Theodore and Margaret.

40

He said he took the money out of the McClure fund to build the Robinvale depot, that the property would increase in value, and that no one would be

- the loser. He said the depot had cost him between eighteen thousand and twenty thousand dollars, that he did not know exactly. I do not exactly know when the depot was built, but it was about 1879, I think. I think George W. Robins died between 1867 and 1868, some time before my father.
- 10 I was on friendly terms with Wright Robins up to the time of his death, and with all his family.

W. R. ROBINS.

Sworn to and subscribed this }
15th day of August, 1883. }

G. R. LINDSAY,

20

Master and Examiner.

Further taking of testimony, adjourned to Wednesday, August 22d, at 10 A.M.

G. R. LINDSAY,

Master and Examiner.

- 30 Testimony taken before me, Cornelius S. See, a commissioner for New Jersey in the above cause, at my office, 145 Broadway, New York city, on Monday December 3, 1883, at 11 A.M., in the presence of Charles T. Cowenhoven, solicitor for complainants and J. Henry Stone, solicitor for defendants.

- 40 HENRY W. BOOKSTAVER being duly sworn according to law, as a witness for the complainant, says: I live in 14 E. 67th street, New York city, Counselor-at-Law, connected with firm of Vanderpoel, Green & Cuming. I know Walter Howe of this city, the witness produced on the part of the complainants.

I accompanied Mr. Howe to Metuchen in March, 1881, I think it was. I am certain. I have read the testimony of Mr. Howe taken before G. R. Lindsay in June last, at New Brunswick. His testimony of what took place at that interview between Wright Robins, Mr. Howe and myself is correct. Every thing is as he has stated except about the mortgage, 10 that I cannot recall with sufficient distinctness to testify on the subject.

H. W. BOOKSTAVER.

Sworn and subscribed to before }
me, Dec. 3, 1883. }

CORNELIUS S. SEE,

20

Commissioner for New Jersey in New York.

Deposition of witnesses in the above matter taken before me, Cornelius S. See, a Commissioner of Deeds for New Jersey in New York, at my office, 145 Broadway, New York City, on November 22, 1883, at 11 A. M., in the presence of Charles T. Cowenhoven, for complainants, and J. Henry Stone 30 for defendants.

JOHN T. BRUCE, a witness produced in behalf of the complainants, being duly sworn on his oath, says:

I live in the city of New York. I am a commission merchant. I knew George W. Robins in his lifetime. He was one of the executors of the last 40 will and testament of John Robins, deceased. He was a brother of Wright Robins. Wright Robins was one of the co-executors and trustee under the will of John Robins. George W. Robins is now

deceased. He died leaving a will. I am the surviving executor of his will. Wright Robins survived George W. Robins, and then became the sole surviving executor and trustee under the will of John Robins. As the executor of the will of George W. Robins, I surrendered the trust funds which
 10 were then held by George W. Robins and Wright Robins jointly as trustees—being all the assets in the hands of the said George W. Robins, and I took a receipt for the same—I have that receipt. The witness produces the same.

That receipt is signed by Wright Robins. The date mentioned in the receipt is the true date when I surrendered the securities.

20 The solicitor of the complainants also produces a true copy of the said receipt.

I have examined the copy and it is correct.

The copy is offered in evidence and marked Exhibit C 1, for complainants.

Being cross-examined by Mr. Stone. The securities mentioned in that receipt is a true list of the securities actually surrendered by me.
 30

JOHN T. BRUCE.

Sworn and subscribed before }
 me, November 22, 1883. }

CORNELIUS S. SEE,

Commissioner of Deeds,

40

for New Jersey in New York.

Examination of witnesses in the above matter taken before me, Cornelius S. See, a Commissioner

for New Jersey in New York, at my office, 145 Broadway, New York city, on Friday, February 1, 1884, at 11 A. M., in the presence of Charles T. Cowenhoven, solicitor of complainants, and J. Henry Stone, solicitor of defendants.

10

MARGARET T. ROBINS, a witness produced in behalf of the complainant, being duly sworn on her oath, says :

I am the widow of the late Amos Robins, and the mother of William R. Robins and Margaret Robins, Theodore R. Robins, and John Robins, now deceased, the children of the late Amos Robins. At the time of Senator Robins' death they were all minors except William R. Robins. At the time of the death of Senator Robins I resided at New Brunswick with my family, and continued to reside there until 1875. The only remaining minor now is Theodore R. Robins. I knew Mr. Wright Robins, the brother of my late husband. I am aware of the fact that he was also the trustee under the will of the late John Robins. I am aware of the fact that he held money as trustee under the will of the late John Robins, belonging to my children, after the death of Maria Robins.

20

30

I took out letters of guardianship of my children in Middlesex County. I requested Mr. Wright Robins to give me some paper showing that he held such money in trust for my children. He gave me first two notes, stating that they were merely as a memorandum to show that he held that money, that they were not given as notes, but simply as memorandums. He then gave me two pieces of paper.

40

It is admitted that the notes and papers marked Exhibits Nos. 2, 3, 4 and 5, for complainants re-

spectively, are the same ones referred to by witness.

Mr. Wright Robins from time to time paid me the interest on these memorandums. They were paid up to 1879—December 15. That is, the interest was paid. Mr. Wright Robins never at any time offered me the principal of those notes, or either of them. The last interview I had with him was from the middle to the last of January, 1880. I think that was the time. I know it was during the first three months of 1880. Prior to that interview I had sent several written notices to him, to pay the interest. The last six months' interest, I think, was then due on both sums. Up to the last interview he did not respond to any of those communications. I finally told him that unless he responded to my communications I would try to collect the money. He finally came to the house and told me he came to have the matter settled up. He requested me to bring the memorandums. I brought them, laid them on the table. He brought out the checks to pay me the interest, and then he took up the papers and tore them literally all to pieces, and put them in his pocket, and told me to go and see my lawyer, and said, tell your lawyer that I am trustee and have Vanderbilt to back me. He paid me the interest at that time. He did not really say when he came in that he was going to pay the principal, but he gave me to infer that. He said he wanted to settle the matter. He never at any of our interviews in reference to the trust matters intimated to me in any way that he was not a trustee, but on the contrary, repeatedly said that he was trustee. Immediately after this last interview of which I have spoken, I was taken very sick and remained so for five or six months. I was so sick that I was utterly unable to attend to business. My counsel advised prosecution, but I was too sick to attend to it.

And being cross-examined by Senator Stone the witness says : I do not know whether Wright Robins was afterward threatened with prosecution for destroying those notes. He was a very excitable man. This trait of his character developed more and more as he grew older.

I have seen the signature of Caroline McClure and Maria Robins. I have received letters from both of them. 10

Witness being shown a book on which are the words "Estate of John Robins," containing receipts, and having her attention called to the receipts, says :

I recognize the signature to the first receipt in the book. I believe that is the genuine signature of Maria Robins and was signed by her.

The witness having her attention called to the various receipts in said book containing the names of Maria Robins and Caroline McClure, down to and including January 30, 1880, says : To the best of my belief they are their genuine signatures and were signed by them. 20

The book is offered in evidence and marked exhibit D. A. on the part of the defendants.

MARGARET T. ROBINS. 30

Sworn and subscribed before me February 1, 1884.

CORNELIUS S. SEE,

Commissioner for New Jersey in New York.

The solicitor of the complainant declares his case closed, reserving the right to introduce documentary evidence hereafter. 40

By consent of both parties the further taking of evidence is adjourned to Friday, February 8, 1884, at 11 A. M., at the same place.

At which time, Friday, February 8, at 11 A. M., the examination was continued in the presence of
 10 J. Henry Stone, solicitor for defendants.

The solicitor of the defendants produces three deeds from S. Mundy et als. to Wright Robins, dated April 1, 1859, and recorded in the Clerk's office of the County of Middlesex as follows: The first in Book 80 of Deeds, page 190; the second in the same book, page 193; the third in the same book, page 195; which three deeds are marked respectively Exhibits D 1, D 2, and D 3.

20 Also a deed from Wesley Benner and wife to Wright Robins, dated March 25, 1871, and recorded in said office in Book 126 of Deeds, page 509. The deed is marked Exhibit D 4.

Also a deed from Mary J. Himrod to Wright Robins, dated January 20, 1869, and recorded in said office in Book 117 of Deeds, page 347. The deed is offered in evidence and marked D 5.

30 Also a paper purporting to be an agreement between D. J. Ely and Wright Robins for the sale of certain lands of said Ely, dated July 1, 1873, which paper is marked D 6 on the part of the defendants for identification.

Also a deed from David J. Ely to Wright Robins, dated July 1, 1873, and recorded in said office in Book 141 of Deeds, page 308. The deed is offered in evidence and marked Exhibit D 7 for defendants.

40 Also a deed from Laura E. Jones to Wright Robins, dated June 13, 1874, and recorded in said office in Book 147 of Deeds, page 601, which deed is marked Exhibit D 8 for the defendants.

Also two other deeds, both from Laura E. Jones to Wright Robins, dated July 6, 1874, and recorded in said office in Book 148 of Deeds, one whereof is on page 201, and the other on page 204, which deeds are offered in evidence, and marked respectively D 9 and D 10.

10

Also a deed from Louis Thomas and wife to Wright Robins, dated March 20, 1879, and recorded in said office in Book 175 of Deeds, page 359. The deed is offered in evidence on the part of the defendants and marked Exhibit D 11.

EDGAR L. PIERSON, a witness produced in behalf of the defendants, being duly sworn on his oath, says : 20

The witness being shown the paper marked D 6, for identification, says :

I recognize my signature to that paper, at the foot of it as a witness. That is my signature. In my judgment the property in Exhibit D 6, for identification, which Wright Robins agreed to exchange for another piece of property with D. J. Ely, is the same property as described in Exhibit D 5, that is my impression. I was the agent that negotiated the exchange. I was a member of the firm of Campbell & Pierson, real estate agents at Metuchen. I now live in Brooklyn. I know the property which Robins deeded to Ely. It was property which Robins got from Himrod. I think I was not present when the actual transfers were made. I am sure I was not. 30

I believe the property referred to in Exhibit D 6, for identification, as the property to be conveyed by Ely to Robins, is the same as described in Exhibit D 7. The solicitor for the defendants offers in evi- 40

dence the paper heretofore marked Exhibit D 6, for identification, and the same is marked Exhibit D 6.

EDGAR L. PIERSON.

10 Sworn and subscribed before me at }
New York city, February 8, 1884. }

CORNELIUS S. SEE,

Commissioner for New Jersey in New York.

20 THEODORE H. SMITH, a witness produced in behalf of the defendants, being duly sworn on his oath, says :

I reside in Orange, New Jersey, and am bookkeeper in the Phenix National Bank in New York city. I knew Wright Robins in his lifetime, and knew that he kept an account with our bank.

30 The witness, being shown a book marked Check Book, says :

That is really the Debit Cash Book of the Phenix National Bank. On April 7, 1871, there is a charge nine thousand seven hundred and seventy-five dollars against Wright Robins.

The witness, being shown the bank book, says :

40 I recognize that as Wright Robins's deposit book with our bank. I recognize the figures balancing the account, and the writing between March 10 and May 15, 1871 : The item in this book of a draft for ninety-seven hundred and seventy-five dollars, be-

tween said dates, is the same item which I have pointed out to you in the Debit Cash book.

THEODORE H. SMITH.

Sworn and subscribed before me at }
New York city, February 8, 1884. } 10

CORNELIUS S. SEE,

Commissioner of New Jersey.

The solicitor for the defendants offers in evidence the pass book referred to by the last witness, it is marked Exhibit D 12 for defendants.

Testimony taken before me, a master and examiner in chancery, of New Jersey, this 6th day of May, 1884, in presence of C. T. Cowenhoven, Esq., of counsel for complainants, and J. Henry Stone, Esq., counsel for defendants, said testimony being taken by consent. 20

WILLIAM R. ROBINS, a witness being produced on the part of complainants, and being duly sworn, 30 says :

I have testified before in this case. I visited my uncle, Wright Robins, in his lifetime quite frequently. He very often alluded to his official position as trustee in my presence, and also of his personal affairs. I remember his giving a \$12,000 mortgage on some property in Metuchen, the date I do not remember, it was two years or eighteen months before he died, somewhere about there. I know that the mortgage did not cover all of the homestead property and the property immediately contiguous to it. 40

Q. State what conversation you had with Wright Robins in reference to the property mentioned and described in that mortgage, and the reason why it did not include the property immediately adjoining and known as the cottage property. Reason if any?

10 Question objected to on the ground that it is not rebutting and because the witness being a party to the suit, it is incompetent for him to narrate any conversation he had with Wright Robins in his lifetime.

A. I had a conversation with him and asked him why it was that he mortgaged that portion of the farm, and he said the reason he mortgaged it was that people were pressing him hard for money and
 20 he had to raise the money. I asked him why it was that he mortgaged the portion where he lived and why he did not mortgage the portion where the little cottage is and the twenty acre lot instead, and then he would have his home free of a mortgage. He said the reason that he did not mortgage that portion was that he considered that as belonging to the trust fund and that it was his intention to cut streets through it and to cut it up with building
 30 lots, and by that means he would be able to get back the trust fund that he had used and in time he would be able to get back all the money he had used, and the heirs would not lose any thing.

CROSS-EXAMINATION :

I had this conversation at his house on the stoop
 4 off the music room. It was some time about the middle of December, the same year the mortgage was given. No one else was present. I do not know why I did not tell this in my previous testimony. I thought I had gone over about the whole thing in

substance. In the conversation I had with Wright Robins and referred to in my previous testimony, no one was present. The only time any one was present that I remember of, was when the man from the Safe Deposit Company came out.

The land which I refer to in my testimony to-day as the twenty acre tract, was a part of the original tract bought at the commissioner's sale of his father's property. He bought it somewhere about March, 1859, and the part which I refer to as the cottage property was also a part of the same tract. 10

WILLIAM R. ROBINS.

Subscribed and sworn to }
before me this 6th day } 20
of May, 1884.

G. R. LINDSAY,

Master and Examiner in Chancery.

The counsel for the respective parties here declare that the testimony in this case is closed.

May 6, 1884. 30

G. R. LINDSAY,

Master and Examiner.

EXHIBIT C 1 FOR COMPLAINANTS.

NEW YORK, Oct. 12, 1868.

10 Received from Margaret Jane Robins, Exx. and
 John T. Bruce, Exr., of the last will and testament
 of George W. Robins deceased, the following secu-
 rities part and parcel of the estate of John Robins,
 late of this city, deceased, which said securities to
 the time of his death were in the custody of the said
 Geo. W. Robins, who with myself were executors
 and trustees under the last will and testament of
 the said John Robins, deceased, and which said
 securities were all contained in a tin box marked
 20 estate of John Robins, and deposited so inclosed in
 a safe with the Safe Deposit Company of New York,
 corner of Broadway and Liberty street, city of New
 York, hired and controlled by the said George W.
 Robins.

The securities before mentioned are as follows to
 wit :

30 \$455,000. Four hundred and fifty-five thousand
 dollars United States six per cent. stock redeemable
 in 1881. Registered stock all standing in name of
 John Robins.

\$8,800. U. S. 5-20 6 per cent. bonds of 1865, cou-
 pons.

\$15,000. U. S. 10-40 5 per cent. bonds coupons
 40 September and March.

\$9,000. City of Brooklyn Park Loan.

And which by the books of said estate of John

Robins, appear to have been allotted in the several trusts created under his will as follows, viz.:

To Maria Robins. U. S. 6 per cent. of 1881,	\$165,000	
U. S. 6 " " 5-20 1865	3,200	
U. S. 5 " " 10-40	1,500	10

To Caroline McClure.

U. S. 6 per cents. of 1881.	\$165,000	
U. S. 6 " " 5-20 of 1865, coupons	3,200	
U. S. 5 " " 10-40 of " "	1,500	

Clarissa S. Robins.

U. S. 6 per cts. of 1881. Registered.	\$40,000	20
U. S. " " 5-20 1865, coupons.	800	
U. S. 5 " " 10-40 " "	4,500	
Brooklyn Park 6 per cent. coupons	4,500	

Wright Robins, Jr.

U. S. 6 per cent. of 1881. Registered.	\$42,500	
U. S. 6 " " 5-20 1865. Coupons,	800	
U. S. 5 " " 18-40 " "	4,000	30
Brooklyn Park Loan,	2,250	

Frank P. Robins.

U. S. 6 per cent. of 1881. Registered.	\$42,500	
U. S. 6 " " 5-20 1865. Coupons,	800	
U. S. 5 " " 10-40 " "	4,000	
Brooklyn Park Loan,	2,250	

40

In addition to the before mentioned securities I acknowledge to have received the securities as stated below, they were also contained in the tin box before alluded to—

No. 41, certificate dated Jan. 1, 1853, for forty-six hundred and fifty dollars of the 5 per cent. deferred special canal stock of the State of Indiana.

No. 61, certificate dated 15th Jan. 1851, for fifteen thousand five hundred dollars of the 5 per cent. deferred canal stock of the State of Indiana.

No. 345, certificate dated Jan. 15, 1861, for forty-six hundred and fifty dollars of the deferred 5 per cent. special canal stock of the State of Indiana.

No. 28327, Land warrant in name of John Robins, for one hundred and sixty acres of land.

20 Oct. 1, 1860. Note 18 mo. Lane, Boycet & Co.
\$3261.23.

Oct. 1, 1860. Note 12 mo. Lane, Boycet & Co.
\$3261.22.

Jan. 4, 1861. Note 8 mo. Leavitt, Toler & Co.
\$2122.29.

WRIGHT ROBINS.

30 Surviving Executor and Trustee }
under the last will of John }
Robins deceased.

No. 1. S. C. M.

FROM RECORDS IN TREASURY DEPARTMENT.

Loan of February 8, 1861. Wright Robins, Trustee.

ISSUED AS FOLLOWS :

1868	Oct. 17.	No. 2729	.....	\$5,000	
"	"	" 983 a 1002	.....	10,10000	200,000
1870	" 22.	" 9389 a 9391	.....	3.10000	3,000
Total				<u>\$208,000</u>	10

TRANSFERRED ON BOOKS AS FOLLOWS :

1870	Oct. 22.	No. 2729	.....	\$5,000	
"	"	" 983 a 86	.....	4.10000	40,000
"	" 28.	" 9389	.....		1,000
1871	Oct. 7.	" 999 a 1002	.....	4.10000	40,000
"	" 23.	" 998, 988 a 991	.....	5.10000	50,000
	Nov. 20.	" 987	.....		10,000
"	" 21.	" 993 a 995	.....	3.10000	30,000
"	" 27.	" 992 a 997	.....	2.10000	20,000
"	" 29.	" 996	.....		10,000
1865	Jan. 15.	" 9390 a 9391	.....		2,000
Total				<u>\$208,000</u>	20

Loan of July 17, 1861. Wright Robins, Trustee.

ISSUED AS FOLLOWS :

1868	Oct. 17.	No. 10792 a 10812	.....	21.10000	\$310,000
1871	Sept. 22.	" 9969	.....		5,000
1875	Feb. 24.	" 11560	.....		5,000
Dec. 1.	" 11897	.....		5,000	
1876	Sept. 25.	" 12322	.....		5,000
Total				<u>\$230,000</u>	

TRANSFERRED ON BOOKS AS FOLLOWS :

1871	Sept. 22.	No. 10812	.....	\$10,000	
1872	Oct. 8.	" 9969	.....	5,000	30
"	" 18.	" 10801 a 10805	.....	5.10000	50,000
1874	Jan. 2.	" 10806	.....		10,000
	Aug. 20.	" 10793	.....		10,000
1875	Feb. 24.	" 10797	.....		10,000
"	" 27.	" 10795	.....		10,000
	July 27.	" 11560	.....		5,000
	Dec. 1.	" 10792	.....		10,000
1876	Jan. 4.	" 11897	.....		5,000
	Sept. 25.	" 10794	.....		10,000
	Nov. 4.	" 12322	.....		5,000
1877	Jan. 5.	" 10807	.....		10,000
	Aug. 13.	" 10808	.....		10,000
1878	Jan. 5.	" 10809	.....		10,000
	June 1.	" 10810	.....		10,000
	Sept. 20.	" 10811	.....		10,000
1879	Feb. 15.	" 10796	.....		10,000
	July 16.	" 10798 a 10800	.....	3.10000	30,000
Total				<u>\$230,000</u>	40

[SEAL]

No. 2. S. C. M.
Loan of July 17, 1861. Wright Robins.

ISSUED AS FOLLOWS :

	1873	Oct. 18.	No. 5846	.....	\$	500
	"	"	" 30482 a 30483	.....	2,1000	2,000
	"	"	" 10939	.....		5,000
	1875	Feb. 24.	" 11561	.....		5,000
		July 27.	" 33427 a 33431	.....	5.1000	5,000
10		Dec. 1.	" 11896	.....		5,000
	1876	Jan. 4.	" 11927	.....		5,000
		Sept. 25.	" 35608 a 35612	.....	5.1000	5,000
		Nov. 4.	" 12382	.....		5,000
	1877	Jan. 6.	" 12478 a 12479	.....	2.5000	10,000
		Aug. 13.	" 13124 a 13125	.....	2.5000	10,000
	1878	Jan. 5.	" 13381 a 13382	.....	2.5000	10,000
		June 1.	" 13663 a 13664	.....	2.5000	10,000
		Sept. 20.	" 13839 a 13840	.....	2.5000	10,000
	1879	Feb. 15.	" 14063 a 14064	.....		10,000
		July 16.	" 22898 a 22900	.....	3.10000	30,000
	Total.....						<u>\$127,500</u>

TRANSFERRED ON BOOKS AS FOLLOWS :

20	1873	Oct. 24.	No. 5846	.....	\$	500
	"	"	" 30482 a 30483	.....	2.1000	2,000
	"	"	" 10939	.....		5,000
	1875	Mar. 6.	" 11561	.....		5,000
		Aug. 27.	" 33431	.....		1,000
		Sept. 6.	" 33430	.....		1,000
		" 25.	" 33429	.....		1,000
		Oct. 5.	" 33427	.....		1,000
		" 12.	" 33428	.....		1,000
	1876	Jan. 3.	" 11896	.....		5,000
		" 10.	" 11927	.....		5,000
		Oct. 13.	" 35608 a 12	.....	5.1000	5,000
	1877	Jan. 12.	" 12478	.....		5,000
		" 25.	" 12382	.....		5,000
30		April 4.	" 12479	.....		5,000
		Aug. 20.	" 13124 a 13125	.....	2.5000	10,000
	1878	Jan. 10.	" 13381	.....		5,000
		Feb. 19.	" 13382	.....		5,000
		July 2.	" 13663 a 13664	.....	2.5000	10,000
		Sept. 28.	" 13840	.....		5,000
		Nov. 27.	" 13839	.....		5,000
	1879	Mar. 20.	" 14064	.....		5,000
		June 2.	" 14063	.....		5,000
		July 22.	" 22900		10,000	
		Oct. 29.	" 22899		10,000	
	1880	Mar. 13.	" 22898		10,000	
	Total.....						<u>\$127,500</u>

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TREASURY DEPARTMENT,

REGISTER'S OFFICE, Feb. 15, 1884.

I hereby certify that the foregoing statement of U S. registered bonds issued to, and transferred by Wright Robins, individually and as Trustee, is a correct transcript from the loan books of this office.

[SEAL]

B. K. BRUCE, Register.

COMPLAINANTS' EXHIBITS.

Ex. No. 1.—Will of John Robins.

Ex. No. 2.—Demand Note given by Wright Robins to Margaret T. Robins, guardian of Theodore R. Robins, dated Dec. 15, 1875, for \$8,875.79, interest from date at 7 per cent. 10

Ex. No. 2.—Mem. that Ex. No. 2 is “given for money now in my hands belonging to Theodore R. Robins, son of Amos and Margaret T. Robins,” signed by Wright Robins. 20

Ex. No. 4.—Demand note given by Wright Robins to Margaret T. Robins, guardian of Margaret R. Robins, dated Dec. 15, 1875, for \$8,875.79, interest from date at 7 per cent.

Ex. No. 5.—Mem. that Ex. No. 4 “is given for money now in my hands belonging to Margaret R. Robins, daughter of Amos and Margaret T. Robins,” signed by Wright Robins. 30

Ex. C. I.—Receipt of Wright Robins acknowledging receipt of securities belonging to estate of John Robins, received from the Executors of George W. Robins, co-executor and co-trustee with Wright Robins of the estate of John Robins. 40

DEFENDANTS' EXHIBITS.

- Ex. D A.—Receipts of Maria Robins and Caroline McClure to Wright Robins, trustee.
- 10 Ex. D 1.—Deed from S. Mundy and als. to Wright Robins, dated April 1, 1859.
- Ex. D 2.—Deed from same to same—same date.
- Ex. D 3.— “ “ “ “
- Ex. D 4.—Deed from W. Benner to Wright Robins, dated March 25, 1871.
- 20 Ex. D 5.—Deed from M. J. Himrod to Wright Robins, dated Jan. 20, 1869.
- Ex. D 6.—Agreement between D. J. Ely and Wright Robins, dated July 1, 1873.
- Ex. D 7.—Deed from D. J. Ely to Wright Robins, dated July 1, 1873.
- 30 Ex. D 8.—Deed from Laura E. Jones to Wright Robins, dated June 13, 1874.
- Ex. D 9.—Deed from same to same, dated July 6, 1874.
- Ex. D 10.—Deed from same to same, and dated July 6, 1874.
- 40 Ex. D 11.—Deed from Louis Thomas to Wright Robins, dated March 20, 1879.

Ex. D 12.—Deposit book of Wright Robins in
Phoenix National Bank.

Ex.—Copy of Record of Loans from U. S. Treasury.

It is stipulated that the following testimony of
Wesley Benner, a witness produced on the part of 10
the defendants, may be used at the hearing of this
cause as if regularly taken :

WESLEY BENNER, of full age, being duly sworn
according to law, on his oath saith :

I am the grantor in the deed referred to in the bill
of complaint in this cause of the conveyance to 20
Wright Robins, deceased, of the property known as
the Ross property. March 23d is the date of the said
deed to the best of my knowledge. He gave me five
hundred dollars an acre, and according to the best
of my recollection there were nineteen 53-100 acres.

He paid me by his check for the whole amount at
the time of the delivery of the deed. The agreement
for purchase was about one month before delivery. 30

The check given me was his individual check to
the best of my knowledge. That is my recollection
of it.

Cross-Examined :

It is so long ago I can not say my attention was 40
specially called to the signature of that check.

Q. Will you swear from actual recollection that
the check referred to was signed by Wright Robins

as an individual, and not in capacity of trustee or executor?

A. I can not do any thing of the kind.

10 *Re-Examined:* _____

You, in response to a question on cross-examination, desired to give explanation as to why you had stated on your direct examination that Mr. Robins's check was his individual check. Will you now give your explanation?

20 A. I did not say it was; I said it was to the best of my recollection. The bargain was made about one month previous to the closing up of the business, and he said to me, "Come in and I will give you a check for \$1,000 on account of purchase." I says, "No; there is a mortgage of \$12,000 or more that is due, or will be due rather, in about a month or six weeks. The bond and mortgage is in the hands of Senator Robins and he will not make any discount of interest, and at the date that the bond and mortgage is due I will meet you at Senator's house at New Brunswick with your deed properly executed, and you then can give me your check for the full amount of the purchase money, and I will indorse
30 indorse it over to your brother and pay the balance, and your title will be perfect."

Mr. Robins met me there at that time and gave me his check. I indorsed it to his brother, paid the balance, and the clerk, Mr. Elmer Stout, was then
40 sent for, and he came in and canceled the mortgage there. That is according to my best recollection. It was his individual check.

Do not recollect what bank it was drawn on.

Amount, or as near as I can recollect, was \$9,775
consideration money.

WESLEY BENNER.

Sworn and subscribed before)	
me this 8th of April, A. D. }	
1884.	10

CHAS. T. COWENHOVEN.

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CHANCELLOR'S OPINION.

February Term, 1885.

10 MARGARET R. ROBINS & AL.

VS.

RIALTO O. ARNOLD, ADMNR.
ETC. & ALS.

Bill for relief. On final hearing on pleadings and
20 proofs.

MR. C. T. COWENHOVEN,
For Complainants.

MR. J. HENRY STONE,
For Defendants.

30 THE CHANCELLOR.

The bill is filed by two of the children of the
late Amos Robins to substantiate their claim to cer-
tain land in Raritan township, Middlesex county,
of which Wright Robins deceased died seized and
which they claim, was bought by him with money of
theirs in his hands as their trustee. He died insol-
vent March 10, 1882. Their right to the trust
40 fund arose under the will of John Robins deceased
who died in 1864, and by the will among other
bequests gave one-ninth of the residue of his estate
to his executors in trust, to invest it and apply the
interest and income thereof to the use of his niece

Maria Robins, for her life and on her death to divide and pay over the principal and all unappropriated income thereof to his then living nephews and nieces; the issue of any deceased nephew or niece to take by substitution the share of the deceased parent. There was a like bequest of another ninth to Caroline McClure, with like limitation over. The 10
 executors who proved the will were George W. Robins and Wright Robins. The latter survived the former, who had the Maria Robins and Caroline McClure trust funds in his hands up to the time of his death. Wright Robins received them from the executors of George W. Robins October 12, 1868. The shares which so came to the hands of Wright Robins amounted together to about \$340,000. Maria Robins died in 1871. Amos Robins (father of the complainants) one of the testator's nephews, died June 27, 20
 1871, before her decease. Two of the children of Amos Robins received their shares of the principal of the Maria Robins fund from Wright Robins, but the complainants, the other two children, who were minors, did not receive theirs. He retained them in his hands, claiming a right to do so because the complainants were minors. The complainants allege that he invested the money (\$17,750) in land in Raritan township in Middlesex county and this suit is brought against 30
 his administrator *cum testamento annexo* and his widow and children to establish that claim. On the fifteenth of December, 1875, Wright Robins gave to the mother of the complainants as their guardian, his two promissory notes each for \$8,877.79, payable on demand with interest; and at the same time gave to her a statement in writing in reference to each note, that the note was given for money then in his hands be- 40
 longing to her ward named therein. The notes were given to her on her requesting him to give her some paper showing that he held the money in trust for her children and they were given merely as memoranda

accordingly. He paid her the interest on the money up to December 15, 1879, but he did not pay the six months' interest due then until some time after it became due. Mrs. Robins sent him several written notices to pay that interest, but he paid no attention to any of them. She finally told him that unless he
10 responded to her communications she would try to collect the money. He then came to her house and said he had come to have the matter settled up. He requested her to bring the memoranda. She understood him to mean that he was going to pay the money, both principal and interest. She brought the papers and laid them upon the table in the room. He then produced the checks for the interest and taking up the memoranda tore them in pieces and
20 put them into his pocket and told her to go and see her lawyer and tell him that he was trustee and had Vanderbilt to back him. William R. Robins testifies that Wright Robins in a conversation which he had with him referring to that transaction complained that Mrs. Robins had written to him threatening that if he did not pay the interest she would take legal advice and try to collect the principal and interest of the fund. He said she had no right to do
30 that; that he held the money as trustee and that the complainants' shares were entirely safe. The witness says he asked Mr. Robins where the money was and what he had done with it and the latter said that he had bought the Jones place with that money and (the witness thinks) some two or three acres opposite, and some lots which he had bought at the Jones sale near the Robinvale depot. He says Mr. Robins also said that he did not
40 know that he was bound to pay interest for the money, but he supposed he would be responsible for the rent of the house. This conversation took place in the spring of 1880. A week or ten days afterward the witness had another conversa-

tion with him on an occasion when an agent of the Safe Deposit Company of New York came to collect rent for the safe which Mr. Robins had kept there. Mr. Robins said he had no use for a safe anyhow, that he had nothing to put into it. The witness said, "There are the trust funds belonging to Dorry and Maggie" (the complainants), and Mr. Robins replied, "You know I told you they were in the Jones place, two acres opposite, and the lots near the Robinvale depot." The witness then said, "There are the trust funds of Mrs. McClure which you hold also," and Mr. Robins replied that they were all safe, that they were in the twenty acres he bought of Mr. Benner, a part of grandfather Ross's estate, and also the place where he, Robins, then lived, and a little cottage down in the village of Metuchen. The witness said, "How can that be, since you bought this place (the place where he lived) before the trust fund was created?" Mr. Robins replied that that was all right; that he had spent the money in improving the place and in building the new depot, that the property would rise in value, and that none of those who were interested in the fund would ever suffer any loss. The witness further says that Mr. Robins said "he took the money" out of the McClure fund to build the Robinvale depot, and that the depot had cost him between \$18,000 and \$20,000. He also testifies that a considerable length of time afterward he had another conversation with Mr. Robins in reference to a mortgage of \$12,000 which the latter gave about eighteen months or two years before he died (he died in March, 1882) on some of his real property. This conversation he says took place about the middle of the December next succeeding the date of the mortgage. He says he asked Mr. Robins why he had mortgaged the property where he lived, and why he had not mortgaged instead of that the part

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of his property where the little cottage is, and the twenty-acre lot, since if he had done so he would have had his home free from mortgage ; and Mr. Robins gave as his reason for not mortgaging that part of his property that he considered that as belonging to the trust fund, and added that it was his intention to cut streets through it and to cut it up into building lots, and he said that by that means he would be able to get back the trust fund that he had used, and in time would be able to get back all the money he had used, and "the heirs" would not lose any thing. The McClure fund is not involved in this suit, but the testimony just quoted in reference to it is important as showing how Mr. Robins dealt with the trust moneys in his hands, and that in saying that those funds were in the properties to which he referred, he meant that he had invested them there, and not merely that there was value enough in them alone as part of his individual property to secure those entitled to the funds against loss from his misappropriation thereof. He said he had spent the money of the McClure fund in "improving the place and new depot," that he "took the money out of the McClure fund to build the Robinvale depot," which had cost him between \$18,000 and \$20,000. Speaking with reference to the money belonging to the complainants, he said he had bought the Jones place with it, and some two or three acres opposite, and some lots near the Robinvale depot, which he had bought at the Jones sale. He also said he supposed he would be responsible to the complainants for the rent of the house, meaning the house on what he called the Jones property. It is worthy of note, that the declaration as to the investment of the complainants' money in the land was made two years before Mr. Robins' death. It is urged on the part of the defendants that he was then not only solvent,

but possessed of considerable wealth. If this was so in fact, it would give additional force to the declaration, inasmuch as in that case he would have had no reason at the time for making any false representation on the subject. It appears from the evidence that in October, 1873, he transferred government securities of the trust funds in his hands to the amount of \$50,000. On the same day (October 18th) on which the transfer was made, \$7,500 of government securities were issued to him individually. If they were part of the \$50,000, \$42,500 remains unaccounted for. He also transferred of the trust funds on the second of January, 1874, \$10,000, and the like amount August 20, 1874, which, with the \$42,500, are not accounted for, and are not traceable except as it appears according to his own statements, that he made the before mentioned investments of the trust money in lands. And here it may be remarked that he appears to have transferred to himself individually between January 2, 1874, and the 16th of July, 1879, government securities held by him as trustee, to the amount of \$145,000, of which \$120,000 appear to have been reissued to him individually, and the remainder, \$25,000, can not be traced. And he disposed of all the government securities issued to him individually (they amounted to \$127,500) by the 13th of March, 1880, two years before he died. The evidence of his statements that he had invested the complainants' money in the "Jones place, two acres opposite and the lots near the Robinvale depot" is clear and positive, and is in nowise contradicted or impugned. Those lands are property (about $5\frac{1}{2}$ acres) conveyed by David J. Ely to Wright Robins by deed dated July 1, 1873, and property conveyed by Laura E. Jones to him by three deeds, two of which are dated June 13, 1874, and the other two July 6, 1884. Part of the consideration (which was \$20,-

000) of the conveyance of the first mentioned property, was the conveyance by Robins to Ely of land known as the Himrod property, bought by Robins of Himrod in 1869. The rest of the consideration was \$5,000 in cash. This sum must be held to have been paid with the complainants' money.

- 10 The complainants insist that they are entitled to claim the sum of \$1,500 also, as having been paid out of their trust money by Robins upon the Himrod property (which he was to convey to Ely free of incumbrance), in discharging a mortgage thereon. It appears that Robins told Mr. Van Dyck, the attorney whom he sent to the holder of the mortgage to obtain the discharge, to say to the latter that he had paid the amount of the mortgage, and gave him his affidavit to that effect; but it does not appear with or out of what money the mortgage was paid off. The \$5,000 cash paid on account of the consideration of the Ely property will, with the interest thereon and the costs of this suit, be charged upon that property, and the properties conveyed to Mr. Robins by Laura Jones will be decreed to belong to the complainants.

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FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between

MARGARET R. ROBINS, et al.

Complainants.

and

RIALTO R. ARNOLD,

Administrator, etc., et als.,

Defendants.

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On Bill, etc.

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This cause coming on to be heard upon the Bill of Complaint, and the answer thereto filed and replication and the evidence taken in the cause in the presence of Charles T. Cowenhoven, of counsel with 30 the complainants, and of J. Henry Stone, of counsel with the defendants, in the term of February, A. D., 1885, before his Honor, the Chancellor, whereupon and upon reading the pleadings and proofs in said cause, and the Chancellor having duly considered the same and the arguments of counsel thereon, and it appearing to the Chancellor that the property described in said complainants' bill as the "Ely property," being the lands conveyed by David J. 40 Ely to Wright Robins by deed dated July 1, 1873, to the extent of five thousand dollars of the consideration money thereof was purchased with the money of the complainants' in this suit, held by

said Wright Robins in trust for them as their trustee.

And it further appearing that the property described in the said bill as the "Jones property," to wit: All those several lots known on a map entitled "Map of property belonging to Henry Homer Jones, Metuchen, N. J.," supplementary to a map of the same property as lots Nos. 68, 69, 70.

Also lots known on said map as lots 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47.

Also lots 54 to 57 inclusive, as laid down on said map.

Also lots 207 and 208 on said map.

Also lots 225 to 260, both inclusive, on said map.

Also lots 210 to 224, both inclusive, as laid down on said map.

Also lots 14 to 24, both inclusive, as laid down on said map.

Being the same as were purchased by said Wright Robins from Laura Jones, by three deeds, whereof the first was dated July 13, 1874, and the other two were dated July 6, 1878, was purchased by said Wright Robins with money belonging to the complainants, and that therefore a trust in their favor results from such purchase, entitling them to the ownership of said "Jones property."

It is on this seventh day of September, A. D., 1885, on motion of Charles T. Cowenhoven, of counsel with the complainants, ordered and decreed that the sum of five thousand dollars, with lawful interest thereon from and after July 1, 1873, that being the date of the purchase of said "Ely tract," with

the costs of this suit be charged upon said "Ely tract," and that said tract be sold unless redeemed, as hereinafter mentioned for the purpose of meeting such charge and costs ; and it is further ordered, adjudged, and decreed that the property aforesaid, known as the "Jones property," belongs to said complainants, and that the devisees of said "Jones property" under the will of the said Wright Robins, and his heirs-at-law and widow do make conveyance of the same in fee simple to said complainants. 10

And it is further ordered, adjudged and decreed that unless the heirs, devisees and widow of said Wright Robins, deceased, or some or one of them do, within ten days after the filing of this decree, pay said five thousand dollars and interest thereon as aforesaid and the costs of this suit to be taxed, said "Ely tract" be sold by one of the Masters of this Court, and out of the proceeds of the sale thereof, after payment of the expenses of such sale, there be paid to the complainants' solicitor their costs of this suit, and to the complainants' or their solicitor said sum of five thousand dollars as aforesaid, or if so much shall not be realized, then after payment of said expenses and costs, the balance that may be realized be paid over, and if after paying such expenses and costs and said principal sum with interest as aforesaid, there shall be a surplus, then said Master is to pay such surplus to the Clerk of this Court, to be distributed or disposed of as may be hereafter ordered. 20 30

THEODORE RUNYON, C.

PETITION OF APPEAL.

IN CHANCERY OF NEW JERSEY.

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Between

MARGARET R. ROBINS, et al.,

Complainants,

and

RIALTO O. ARNOLD, Adminis-

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trator, etc., et als.,

Defendants.

} *On bill, etc.*

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

30 The humble petition of Rialto O. Arnold, Ad-
ministrator, *cum testamento annexo* of Wright
Robins, Bridget Robins, Mary W. Fisher and Frank
Fisher, her husband, Elizabeth Hanlon and J. C.
Hanlon, her husband, Caroline Robins and Bridget
Robins, testamentary guardian of Caroline Robins,
an infant, the appellants in the above stated cause,
respectfully shows that your petitioners find them-
selves aggrieved by a final decree made in the Court
40 of Chancery by his Honor Theodore Runyon, Chan-
cellor of New Jersey, bearing date the seventh day
of September, in the year of eighteen hundred and
eighty-five, wherein the above-named Margaret R.
Robins and Theodore R. Robins were complainants

and your petitioners were defendants in this respect,
to wit :

That said decree adjudges that the sum of five thousand dollars, with lawful interest thereon from July 1, 1873, and the costs of this suit, be charged upon the tract of land known as the "Ely tract," and that said tract, unless redeemed, be sold for the purpose of meeting such charge, and that the property known as the "Jones property" belongs to the complainants in this suit, and that the devisees under the will of Wright Robins and his heirs-at-law and widow shall make conveyance of the same in fee simple to said complainants. 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. 20

J. HENRY STONE,

Solicitor of and of Counsel with Appellants.

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