IN CHANCERY

Of New-Jersey.

Between

Gilbert B. Ackerman

Complainant,

and

Isaac N. Voorhis and Cornelius Cadmus, Executors of Peter H. Ackerman, dec'd, Isaac N. Voorhis and Ann, his wife, Cornelius Cadmus and Rachel Elizabeth, his wife, John A. Bogert and Margaret Maria, his wife, and John E. Ackerman, Peter G. Ackerman, George Ackerman and Jacob Ackerman, infants,

Defendants.

ON BILL, ANSWERS, REPLICATION and PROOFS.

CHAS. H. VOORHIS,

Solicitor for Complainant.

M. M. KNAPP,

Solicitor for Defendants.

HACKENSACK:

NEW-JERSEY CITIZEN PRINTING-HOUSE.

1872.

IN CHANCERY

OF NEW-JERSEY.

Bill of Complaint.

[Filed Aug. 27, 1869.]

To the Honorable Abraham O. Zabriskie, Chancellor of the State of New-Jersey:

Humbly complaining, showeth unto your Honor, your orator, Gilbert B. Ackerman, of the township of Saddle River, in the County of Bergen, and State of New-Jersey, that your orator *10* is a farmer, and that he was engaged in that occupation upon the farm and five acres adjoining the same, whereon he now resides, in the said township of Saddle River, and hereinafter particularly described, and worked thereon with and for his father, Peter H. Ackerman, who had inherited it from his father, and had for many years resided upon it, until your orator attained his majority, in the year eighteen hundred and fifty-five, when your orator married a wife; and that after his marriage your orator resided with and continued to work with and for his father for *20* one year, or till the following Spring, to wit: the Spring of the year eighteen hundred and fifty-seven; that your orator, in the Spring of the year eighteen hundred and fifty-seven, at the solicitation and special request of his said father, entered into an arrangement with him under a verbal agreement, as follows: It was understood and agreed between them that your orator should cultivate the said farm and five-acre lot at his own cost and expense and for his own benefit, and should, at his own cost and expense, provide all the buildings and improvements he required; should keep all the buildings and improvements in repair at his *30*

own cost and expense; should pay all the taxes levied and to be levied against said farm, and should pay to his said father the sum of One Hundred Dollars in cash in each year, as long as he lived, and should allow his father one half of the chickens and take care of them, and should find him the feed for one horse for what use your orator had of the horse; and, in consideration thereof, that, upon the decease of his said father, the said farm and five-acre lot should belong to your orator.

Your orator further showeth unto your Honor that said farm may be described as follows: All that certain parcel of land and premises situate, lying and being in the Township of Saddle River, in the County of Bergen, and State of New-Jersey; beginning at the southeasterly corner thereof in line of land of Nicholas S. Demarest, in the middle of the Saddle-River brook, and running thence (1) north twelve degrees west along the middle of said brook nine chains to land of Adam Hubschmit; thence (2) south seventy-nine and a-half degrees west three chains to the middle of the road leading to Red Mills; thence (3) north ten degrees west along the middle of said road four chains and forty-five links to land of said Hubschmit; thence (4) south seventy-eight degrees west thirty-one chains and ninety-two links to land of said Hubschmit; thence (5) south nine and a-half degrees east five chains to the southerly line of the turnpike from Hackensack to Paterson; thence (6) north seventy-five and a-half degrees west along the southerly line of said turnpike twenty-two chains and ninety links to land of John Colwell; thence (7) south seventeen and three-quarters degrees west nine chains and fifty (50) links; thence (8) north seventy-seven degrees east five chains and ten links; thence (9) south seventeen and three-quarter degrees west ten chains and thirty (30) links; thence (10) north seventy-seven degrees west fifty-four chains and thirty links to the place of beginning; containing seventy-three acres and forty-three hundredths of an acre.

Your orator further shows unto your Honor that immediately after the said arrangement between your orator and his father, to wit: in the Spring of the year eighteen hundred and fifty-seven your orator took possession of the said farm and five-acre lot

(except such part of the house as his father was to occupy) under said arrangement and in pursuance thereof, and proceeded to cultivate the same, and to repair the fences and buildings, and to erect such additional buildings and fences as were needed, and as would, in the judgment of your orator, increase the comfort of his family and add to the substantial value of the said farm; and, at his own cost and expense, had the whole house painted, including the part occupied by his father, your orator having full faith and firmly believing that his father would faithfully carry out the arrangement between him and your orator, aforesaid, by 10 devising said farm to your orator, upon his decease.

And your orator further shows unto your Honor, that in the year eighteen hundred and sixty the said Peter H. Ackerman being of opinion that his farm, adjoining that above described and then in possession of your orator's brother, John Henry Ackerman, since deceased, contained less land than your orator was cultivating, the said arrangement between said Peter H. Ackerman and your orator was modified by their joint assent, so as not to include the five-acre lot above mentioned and to apply only to the farm, which is hereinbefore particularly described. 20

And your orator further shows unto your Honor, that afterwards, to wit, on or about the twenty-fourth day of October, in the year one thousand eight hundred and sixty, by the advice and urgent request of said Peter H. Ackerman, and in consequence of said arrangement between him and your orator, your orator bought of Cornelius S. Demarest, by deed dated on that day, and recorded in Bergen County Clerk's Office, in Book M, 5 of Deeds, pages 637 and 638, a parcel of land described as follows: All that lot of land in the township of Saddle River, aforesaid, beginning at the northwesterly corner of said lot, and in or near the 30 southerly line of the Hackensack and Paterson Turnpike Road; from thence running (1) south six degrees, east six chains and thirty-four links; thence (2) south eighty and three-quarters degrees, west sixteen chains and forty-one links; thence (3) south seventy-five and three-quarters degrees, west six chains and forty-one links; thence (4) north six degrees, west five chains and forty-seven links; thence (5) north seventy-seven and a quarter

degrees, east twenty-two chains and ninety-two links, to the place of beginning; bounded easterly, southerly and westerly, by land of Nicholas S. Demarest; northerly by land of Peter H. Ackerman; containing thirteen acres strict measure, and paid therefor, fourteen hundred dollars of his own money. Your orator further shows unto your Honor, that the Hackensack and Paterson Turnpike road runs through said farm diagonally in such way as to leave a long gore on the south side of said turnpike, bounded southerly by said thirteen-acre lot, and which gore was separated therefrom, 10 till your orator bought said thirteen-acre lot, by a heavy ancient stone fence; and that when your orator had bought said lot he removed said stone fence, by the advice and suggestion of his father, at great cost and labor, and erected new fences running from said turnpike, southwardly, through said gore, to the southerly line of said thirteen-acre lot, in such manner as to make several enclosed fields running from said turnpike, southwardly, to the southerly line of said thirteen-acre lot.

Your orator further shows unto your Honor, that from and since the Spring of (1857) eighteen hundred and fifty-seven, your 20 orator has had the exclusive possession of said farm, and has cultivated the same at his own cost and expense, and entirely in accordance with his own views, (the said Peter H. Ackerman and the mother of your orator having occupied such part of the house as they were to occupy) and has repaired the fences and buildings thereon, at great cost and expense; and has at great cost erected new buildings and fences thereon, and upon the faith of said agreement with his father, has bestowed great labor and large sums of money upon said farm, to improve said farm and add to its value, as if said farm actually belonged to your orator, your orator never 30 doubting that his father would faithfully keep said agreement on his part; that your orator, from the Spring of the year eighteen hundred and fifty-seven, has paid all the taxes assessed and levied against said farm, and has paid to his said father, the sum of one hundred dollars in cash in each year, as long as he lived, and has allowed his father one half the chickens, and has found him in feed for his horse, and your orator avers that he has in all respects fully and faithfully performed everything on his part, in accord-

ance with the said agreement; and your orator avers that the labor and money which he has expended upon the said farm during the past twelve years, have, in very large measure, contributed to the present value of said farm, and that such labor and money would not have been so bestowed by him, had not your orator relied upon said arrangement with his father that he would devise said farm to your orator, and so enable your orator to have the full reward of his own labor and money.

Your orator further shows unto your Honor that he is informed, and believes it to be true, that during the last twelve years the said Peter H. Ackerman, has, at different times, made two wills, in both of which he devised the said farm to your orator, in accordance with said arrangement. 10

Your orator further shows unto your Honor, that on the second day of June, in the year eighteen hundred and sixty-nine, the said Peter H. Ackerman, at the age of seventy years, departed this life, having first in due form of law to pass, real estate, made his last will and testament, which has been admitted to probate by the Surrogate of the County of Bergen, and letters testamentary have been issued thereon, by Isaac Wortendyke, the said Surrogate, to Isaac N. Voorhis and Cornelius Cadmus, the executors therein named, who have taken upon themselves the burden of the execution thereof. 20

Your orator further shows unto your Honor that said Peter H. Ackerman, at his decease, left his widow, Margaret Ackerman, and his daughters, Ann, wife of Isaac N. Voorhis; Rachel Elizabeth, wife of Cornelius Cadmus; Margaret Maria, wife of John A. Bogert; his grand-children, John Edmund Ackerman, Peter Gilbert Ackerman, George Ackerman and Jacob Ackerman (all infants under the age of fourteen years), the children of his deceased son John Henry Ackerman and your orator, his heirs at law him surviving. 30

Your orator further shows unto you Honor that said last will (a copy whereof is hereto annexed and marked Schedule A) is a fraud upon your orator, and your orator expressly charges that your orator is entitled to have the same set aside by this Honorable Court, so far as it applies to the said farm, which should have

been devised to your orator by the said testator, in accordance with the aforesaid arrangement between him and your orator.

And your orator further showeth unto your Honor that he is informed and believes that the widow of said testator, Margaret Ackerman, hath assented to accept what has been bequeathed to her in said will, and to take the same in lieu of her dower in the lands whereof said Peter H. Ackerman died seized.

And your orator further shows unto your Honor that since the decease of said testator the said devisees therein named, other than your orator and the said executors have all set up and claimed that your orator has no interest in the said farm under the said arrangement, because the said arrangement was not in writing, and because the said farm the said will orders the said executors to sell, and the said executors give out that they intend to sell the same under the power contained in said will, whereas your orator charges and insists that he is entitled to have his said rights under said arrangements enforced by this Honorable Court, and that the said actings and doings of the said executors and said devisees are contrary to equity and good conscience.

And your orator further shows that he has frequently, and in a friendly manner, applied to said devisees and said executors to recognize the said right of your orator to said farm and to convey the same to him in accordance therewith, and they have refused to comply with such reasonable request of your orator, for the reasons and upon the pretenses above set forth, and your orator hoped that such his request would have been complied with.

But now, so it is may please your Honor, that the said devisees and executors combining and confederating with each other and with persons unknown to your orator whose names, he prays, may, when discovered, be inserted herein, and they made parties hereto with apt and proper words to charge them, refuse to comply with such requests and give out and pretend that your orator had only a verbal lease of said farm, determined by the death of said testator, and sometimes pretend that the arrangement between your orator and said testator was null and void, because not in writing, and that said testator was not bound by it, and that said devisees and executors are not bound by it, the

contrary whereof your orator charges to be true; all which actings, doings, pretenses and refusals are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator in the premises.

In consideration whereof and forasmuch as your orator can only have adequate relief in the premises in a Court of Equity, where matters of this nature are properly cognizable and relievable, to the end therefore that the said Isaac N. Voorhis and Cornelius Cadmus, executors as aforesaid, Isaac N. Voorhis and Ann, his wife, Cornelius Cadmus and Rachael Elizabeth, his wife, John 10
A. Bogert and Margaret Maria, his wife, John Edmund Ackerman, Peter Gilbert Ackerman, George Ackerman and Jacob Ackerman, and their confederates, when discovered, may, upon their several and respective corporal oaths, to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every one of them distinctly interrogated thereto, and that the said will may, by the decree of this Honorable Court, be set aside so 20
far as the same applies to the said farm, and that said devisees and executors may, by the decree of this Court, in consideration of the premises, be ordered to convey the said farm to your orator, and that the same may be decreed to belong to him in accordance with said arrangement, and that your orator may have such other and further or further and other relief in the premises, as the nature of the circumstances of the case may require, and as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered to grant 30
unto your orator not only the State's writ of injunction issuing out of and under the seal of this Honorable Court, to be directed to the said Isaac N. Voorhis and Cornelius Cadmus, executors as aforesaid, to restrain them from selling or conveying the whole or any part of the said farm, but also the State's most-gracious writ of subpœna, to be directed to the said Isaac N. Voorhis and Cornelius Cadmus, executors as aforesaid, Isaac N. Voorhis and Ann,

his wife, Cornelius Cadmus and Rachael Elizabeth, hiswife, John A. Bogert and Margaret Maria, his wife, John E. Ackerman, Peter Gilbert Ackerman, George Ackerman and Jacob Ackerman, thereby commanding them at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this Honorable Court, and then and there, full, true, direct and perfect answer make to all and singular the premises, and further to stand to, perform and abide such further order, direction and decree therein, as to your Honor shall seem
10 meet, and as shall be agreeable to equity and good conscience; and your orator shall ever pray, etc.

CHAS. H. VOORHIS,
Solicitor for and of Counsel with Complainant.

Schedule A.

I, Peter H. Ackerman, of the Township of Saddle River, in the County of Bergen, and State of New Jersey, being of sound and disposing mind, memory and understanding, (blessed be God for the same,) and deeming it my duty, do therefore make, publish and declare, this as and for my last will and testament, in
20 manner and form following, that is to say: First, It is my will, and I do order and direct my executors hereinafter named, and the survivor of them, to pay my lawful debts, funeral charges, testamentary and other expenses, out of my personal estate not otherwise disposed of, in a convenient time after my decease.

Secondly, I give and bequeath unto my lawful wife, Margaret Ackerman, and to her heirs and assigns forever, the sum of ten thousand dollars, to be paid to her by my executors in one year after my decease, out of my money at interest; and I do also give unto her all my household and kitchen furniture, which said

bequests to my said wife I give unto her in lieu of her right of dower in my land and real estate.

Thirdly, I do hereby authorize, empower and direct my executors hereinafter named, to sell and dispose of all my land and real estate situate in the Township of Saddle River, aforesaid, either at public or private sale, and at such time or times as my said executors shall judge most conducive to the interest of my estate; and I do hereby empower my said executors and the survivor of them to execute and give good and sufficient conveyances in the law to the purchasers of my said real estate; and the money arising from the sale of my real estate as aforesaid, together with the residue of all my personal estate whatsoever, which shall be left remaining after paying to my said wife the sum of ten thousand dollars, and all charges and expenses as aforesaid, must be divided into five equal shares, of which the children of my deceased son John Henry must have one share equally among them. My son Gilbert, and my daughters Ann, Rachel Elizabeth and Margaret Maria, must each have one share, which I give to them and to their heirs and assigns forever.

And lastly, I do hereby nominate, constitute and appoint my sons-in-law, Isaac N. Voorhis and Cornelius Cadmus, my executors of this my last will and testament, hereby revoking all former wills by me at any time made.

In witness whereof, I have hereunto set my hand and seal, this twenty-second day of December, in the year of our Lord one thousand eight hundred and sixty-six.

PETER H. ACKERMAN. [L. S.]

Signed, sealed, published and declared by the said Peter H. Ackerman, to be his last will and testament, in the presence of us, who have hereunto subscribed our names as witnesses, in the presence of the testator and in the presence of each other.

SIMEON ZABRISKIE.
MARY S. ZABRISKIE.

A true copy. B. GUMMERE, Clerk.

STATE OF NEW-JERSEY, SS:

Gilbert B. Ackerman being duly sworn according to law, on his oath saith, that he is the complainant in the foregoing bill of complaint, and that the facts, matters and things set forth and alleged in said bill are true.

GILBERT B. ACKERMAN.

Sworn and subscribed this twenty-fifth day of August, A. D. 1869, before me.

W. S. BANTA,
10 Master in Chancery of New-Jersey.

Answer.

[Filed Dec. 2, 1869.]

The Joint and Several Answers of Isaac N. Voorhis and Cornelius Cadmus, Executors of the Last Will and Testament of Peter H. Ackerman, deceased, Isaac N. Voorhis and Ann, his wife, Cornelius Cadmus and Rachel Elizabeth, his wife, and John A. Bogert and Margaret Maria, his wife, Defendants, to the Bill of Complaint of Gilbert B. Ackerman, Com-
20 ***plainant:***

These defendants, saving to themselves all benefit of exception to the many errors, uncertainties and other imperfections in the said bill of complaint contained for answer thereunto, or unto so much thereof as they may be advised is necessary or material for them to make answer unto, answering, say as follows:

I. That they admit it to be true, as in said bill stated, that the said complainant was a farmer and was engaged in that occupation upon the farm (and five acres adjoining the same) whereon he now resides, and which is described in said bill, and that he

worked thereon with and for his father, Peter H. Ackerman (who had inherited it from his father), until said complainant attained his majority and was married, and that he continued so to work for one year thereafter; but these defendants, answering, deny that the said complainant at the time in said bill stated, or any other time, at the special instance and request of said Peter H. Ackerman, or in any other way, entered into any such arrangement with the said Peter H. Ackerman, as is in said bill stated, or that any definite or binding agreement or contract was ever made by said Peter H. Ackerman with the 10 complainant, by or under which the complainant was to have the farm, in said bill of complaint described, on the death of said Peter H. Ackerman; that, although the said Peter H. Ackerman may have frequently, or at one time, intended to have given and devised said farm to the complainant on his death yet he never made any agreement so to do; that the said Peter H. Ackerman had two sons—the said complainant and John H. Ackerman, since deceased, and three daughters—the said defendants, Ann, the wife of Isaac N. Voorhis, Rachel Elizabeth, the wife of Cornelius Cadmus, and Margaret Maria, the wife of 20 John A. Bogert; and that he had two farms, and not caring to cultivate them himself (he being a man near sixty years of age and having some income besides said farms), and his daughters having become married, he allowed his son, John H. Ackerman, to take and work one of said farms for a small yearly rent, and the other of said farms, being the one described in said bill and on which he, the said Peter H. Ackerman, himself, resided, he allowed the said complainant to take and cultivate for his own use and profit, and he also gave him, with his family, the use of a part of his dwelling house on said farm; and that for such use 30 of said farm and a part of said dwelling house, the said complainant was to pay his father, the said Peter H. Ackerman, the yearly rent of One Hundred Dollars, and to pay the taxes upon said farm and give him one half of the chickens, and was to keep the buildings and fences on said farm, and the farm itself, in good condition, under which said agreement, for the use of said farm the said complainant took possession thereof some time

during the year eighteen hundred and fifty-seven, and continued to occupy the same thereunder until the death of his said father; that such agreement was a very-favorable one to the complainant, for that the said rent paid by him to his father was but a small and inconsiderate part of the yearly value of said farm, and that the same would at that time, as these defendants believe, have been rented for at least five or six times the amount which the said complainant paid for the same.

II. These defendants, answering, deny that at the time in said
10 bill stated, the complainant took possession of said farm and five-acre lot adjoining, under and in pursuance of the agreement or arrangements named in said bill, or under any arrangement or agreement made by said Peter H. Ackerman with him, whereby said farm was to belong to him, at the death of said Peter H. Ackerman, but that, on the other hand, the said complainant at the time aforesaid, took possession of said farm and said five-acre lot, except the part occupied by his father, under and pursuant to the agreement hereinbefore set forth, for the use of said farm for the rent aforesaid, and these defendants further deny that the said
20 complainant proceeded to cultivate said farm, and make such repairs and additional erections as were needed, and would increase the comfort of his family, and painted the house because he had full faith and believed that his father would carry out the arrangements in said bill named, by devising said farm to your orator upon his decease, for that as hereinbefore stated no such arrangements were made by his said father with the said complainant, but that all such cultivation, improvements and repairs as was made and done by him, under and on the account of the agreement above stated, made with his father for the use of said farm.
30 That such improvements made, repairs made, were of an inexpensive character, and such as any tenant, who occupied a farm on the terms that said complainant did, might or would make, for his own comfort and convenience.

III. These defendants admit that the five-acre lot mentioned in said bill, and which had been in the occupation and use of com-

plainant, was given up by him to his brother, John Henry Ackerman, because the farm in his possession was less in quantity than the land the complainant was cultivating, but they deny that it was done as a modification of said arrangements in said bill stated, but simply to give agreeably to the wish and discretion of said Peter H. Ackerman, both complainant and his brother a more equal quantity, and in more convenient location to cultivate.

IV. These defendants admit, that at or about the time in said bill stated, the complainant purchased of Cornelius S. Demarest, the piece of land described in said bill, containing thirteen acres, *10* but they deny that he purchased the same in consequence of the arrangement named in said bill between him and his father, for these defendants as aforesaid deny that any such arrangement was ever made between him and his father; and as to whether he made such purchase upon the advice of his said father these defendants cannot answer upon their belief or otherwise, but they deny upon their belief that such purchase was made at the *urgent* request of complainant's said father, but that it was bought by complainant for his own use, and was a profitable purchase for the complainant. *20*

V. These defendants admit that the Paterson and Hackensack Turnpike Road runs through said farm so as to cause a long gore on the southerly side thereof, and which until the complainant bought said thirteen-acre lot was separated from it by a stone fence, and that the complainant removed some part of said stone fence and erected some new fences, but they deny that it was at a great cost and expense to remove said fence; and although they admit that it might have been done by the advice and suggestion of the complainant's said father, they aver that it was done by the complainant for his own convenience in the use and cultivation of said lands, and was an advantage to the complainant. *30*

VI. These defendants admit that the said complainant has, since the Spring of the year eighteen hundred and sixty-seven, had the exclusive possession of said farm (except part of the

house occupied by the complainant's father and mother), and has cultivated the same at his own expense and in accordance with his own views; that he has repairedthe fences and building thereon to a small extent, and as far as was necessary to keep them up in good order; but they say that such repairs were made at no great expense or cost, or beyond what ordinary repairs on such a farm would or ought to cost. They admit that he erected new fences as far as such was necessary to keep the farm fences in good order, and nothing more. They admit that he erected one
10 more building, about ten by twelve feet square, one story in hight, being a wash house for his own use and convenience, added to the part of the house he occupied, and built a small extension to a kitchen occupied by him, at an expense of about six hundred dollars for the whole; and these defendants deny that the complainant bestowed great labor and large sums of money upon said farm to add to its value and improve the same on the faith of said agreement with his father as set forth in said bill. And they deny further that he spent or bestowed any money or labor upon said farm other or greater than he ought under the agreement for
20 the use of said farm herein above set forth, or greater than was necessary and proper to keep up said farm in good condition for occupancy and cultivation, except the building of said wash house for his own use and convenience, which might have easily been built and no doubt was built on the belief that the use thereof by the complainant and his family for the occupancy of said farm herein above set forth would amply repay him for the cost thereof. These defendants likewise admit that the complainant has paid all the taxes against said farm, and has paid his said father said yearly said sum of one hundred dollars, except the last year
30 preceding his father's death, but these defendants aver that said taxes were paid by complainant under the agreement for the use of said farm above set forth, and not as part of performance of said agreement named in said bill, by which said complainant pretends that his father agreed that said farm should belong to him on his said father's decease. And these defendants admit that the complainant allowed to his said father one-half of the chickens raised on said farm and found him the feed for one horse

for some part of the time ; but these defendants deny that the same was done by the complainant as or for a part of performance of any such agreement as is alleged in said bill, but simply in accordance with the agreement herein above set forth, giving to complainant for the consideration aforesaid use of said farm to cultivate, and these defendants deny that the labor and money expended on said farm by the complainant were of such a character or done to such an extent as to be referable to such pretended arrangements as is in such bill set forth, but that such labor and money might have easily been expended, and, as these *10* defendants aver, were expended in reference solely to said agreement above named for the use of said farm ; and that if the said defendant had any hope, belief or expectation that said farm might or would be given or devised to him by his father on his death, the same was not founded on any contract, promise or agreement or arrangement made or entered into by his said father with him for that purpose.

VII. As to the allegation in said bill containing, that the said Peter H. Ackerman has, at different times during the last twelve years, made two wills, in which he devised said farm to the com- *20* plainant in accordance with the said arrangement stated in said bill, these defendants deny that the said Peter H. Ackerman ever made any devise of said farm in accordance with or to carry out any such pretended arrangement, for they deny, as aforesaid, that any such arrangement was ever made by him.

But these defendants say, according to their information and belief, that the said Peter H. Ackerman had, a number of years previous to his death, made three or four wills, in some of which he had devised said farm to the complainant, and his other farm to John H. Ackerman before his death, and charged the same *30* with the payment of legacies, devised to his other children, in such a manner that his whole estate would be equally divided among all his children ; that, after the death of said John H. Ackerman, the said Peter H. Ackerman sold the said farm occupied and cultivated by his son, John, in his life time, and then made the said will, annexed to the complainant's bill of

complaint, being his last will, and that the defendants aver that it was always the intentions of the said Peter H. Ackerman to make, as far as possible, an equal division of his property at his death among all his children; that some years before the death of his said father the complainant applied to him for permission to erect a house upon said farm, but that his father refused to give such permission, and told him to build a house on the said thirteen-acre lot which complainant had purchased, which, as these defendants insist, is evidence to show that neither the com-
10 plainant nor his said father at that time considered that he has possession of the said farm under any such pretended arrangements or ageement, as is set forth by said bill, by said by which complainant was to become the owner of said farm on his father's decease, and that, since the death of his said father, the complainant has endeavored to purchase said farm of these defendants and has offered to pay the sum of Ten Thousand Dollars therefor, which offer was refused because it was less than the value of said farm.

VIII. These defendants admit that the said Peter H. Acker-
20 man died at or about the time in said bill stated, aged seventy years, and that he left a last will executed in due form of law to pass title to real estate in this State; that the same was proved before the Surrogate of the County of Bergen and letters testamentary thereupon issued, issued by him to Isaac N. Voorhis and Cornelius Cadmus, the executors therein named, who have taken upon themselves the execution thereof; and that the said testator at his death left a widow and also ten children and grandchildren, named in said bill as his heirs at law; that said grandchildren are infants and the children of said testator's
30 deceased son, John Henry Ackerman; and these defendants admit that Schedule A, annexed to said bill, contains a true copy of said last will, but they deny that the same is a fraud upon the complainant, so far as the same applies to said farm, or that the said farm should have been devised to complainant under any such pretended arrangements as in said bill stated; and these defendants also admit that the widow of the testator has

assented to accept the bequest made to her by said last will in lieu of her dower, as stated in said bill.

IX. These defendants deny that any such arrangements or verbal agreement as that stated in said bill, was ever in fact made between the complainant and his said father Peter H. Ackerman; and they are advised and insist, that even if such agreement ever was made it is void and of no binding force or effect, because the same or any memorandum or note thereof was not made in writing, signed by him or any person thereunto by law lawfully authorized; and also because there was nothing done or performed by *10* the complainant as or for a part of performanee of any such agreement, but that all the acts mentioned in said bill as having been done by the complainant under and on account of such pretended verbal agreement, were not done in reference thereto, but were done only in reference to said arrangement herein above stated for the use of said farm; and these defendants pray the same benefit of said defence as if they had demurred to said bill; and these defendants say that the refusal to execute and carry out said pretended verbal agreement, will not be a fraud upon the complainant, or operate unjustly or oppressively against him, for *20* that, if any such agreement had been made, the complainant could easily be compensated and allowed for the money and labor which as he alleges in his said bill he has bestowed upon said farm on account of said verbal agreement; and if such agreement has been in fact made, and said improvements put on such farm on account thereof by the complainant, the defendants hereto, who are the devisees under the will of said testator, would be willing and ready to contribute their proper share for a compensation for said improvements.

X. And these defendants submit, that instead of the refusal of *30* the devisees under said will to carry out said pretended verbal arrangements being a fraud upon the complainant, that to be compelled to carry out and specifically perform the same, by conveying said farm to the complainant, would work a great wrong and injustice against these defendants and the other defendants

to said bill, and would deprive them of a large and valuable portion of said testator's estate devised to them by said will, and would be the means of making an unjust and unequal division of said testator's estate among his children, contrary to his desire and intention and the provision of his will, and would give to said complainant a portion of said testator's estate greatly and unreasonably in excess of any of his children, and more than all his other children and grand-children together would receive. The said being worth at least twenty thousand dollars, while the per-
10 sonal estate of testator to be divided among all his children and grand-children will not exceed the sum of eighteen thousand dollars.

XI. And these defendants deny all unlawful combinations and confederacy, wherewith they are by the said bill charged; without this that there is any other matter or thing in said bill contained, material or necessary for these defendants to answer, and not hereby well and sufficiently answered, confessed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matter and things these defendants are ready and will-
20 ing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf sustained.

M. M. KNAPP,
Solicitor of and of Counsel with Defendants.

State of New-Jersey, County of Bergen, ss:

Isaac N. Voorhis, Ann Voorhis, Cornelius Cadmus, Rachel Elizabeth Cadmus, John A. Bogert and Margaret Maria Bogert, the defendants above named, each being duly sworn, upon his and her oath doth depose and say, that the matters and facts in the
30 foregoing answers set forth, so far as they relate to his or her

own acts, are true, and so far as they relate to the acts of other persons, he and she believes them to be true.

ISAAC N. VOORHIS.
ANN VOORHIS.
CORNELIUS J. CADMUS.
RACHEL E. CADMUS.
JOHN A. BOGERT.
MARGARET M. BOGERT.

Sworn to and subscribed this twenty-seventh day of November, A. D. 1869, before me at New-Barbadoes. 10

GARRET ACKERSON, M. C. C.

A true copy. B. GUMMERE, Clerk.

Answer.

[Filed Dec. 1, 1869.]

The Answer of John Edmund Ackerman, Peter Gilbert Ackerman, George Ackerman ahd Jacob Ackerman, infants under the age of fourteen years, by their Guardian, Defendants, to the Bill of Complaint of Gilbert B. Ackerman, Complainant: 20

These defendants, answering by their guardian aforesaid, say that they are strangers to all and singular the matters and things alleged in said bill, except that they are the children of John Henry Ackerman, the deceased son of Peter H. Ackerman, deceased; and that they are devisees named in the last will of said Peter H. Ackerman, and being infants of tender years these defendants humbly submit themselves to the judgment and decree of this Court, and humbly pray that their rights and interests will be protected by this Court, and that such decree only may be made against them as is equitable and just. And that they 30

may be hence dismissed with their reasonable costs and charges in this behalf sustained.

MARGARET ELLEN ACKERMAN.

M. M. KNAPP, Soliciter of, and
L. ZABRISKIE, of Counsel with Guardian ad litem.

STATE OF NEW-JERSEY, COUNTY OF HUDSON, SS:

Margaret Ellen Ackerman being duly sworn, upon her oath doth depose and say, that the facts and allegations in the said answer contained, so far as they relate to her own acts are true, *10* and so far as they relate to the acts of other persons she believes them to be true.

MARGARET ELLEN ACKERMAN.

Sworn to and subscribed this day of November, A. D. 1869, before me, at Hackensack.

GARRET ACKERSON, Jr.,
Min, N. J.

A true copy. B. GUMMERE, Clerk.

Replication.

[Filed Dec. 20, 1869.]

20 This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue and insufficient to be replied unto by this repliant; without that, that any other matter or thing whatsoever in the said answers contained, material or effec-

tual in the law, to be replied unto, confessed and avoided, traversed or denied, is untrue; all which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct, and he humbly prays as in and by his said bill he has already prayed.

CHAS. H. VOORHIS,
Solicitor and of Counsel with Complainant.

Depositions.

Examination of Witnesses, &c., in the above-entitled cause on the part of the Complainant, *10*

Taken before me, Isaac Romaine, a Master and Examiner of said Court, at my office, No. 7 Exchange Place, Jersey City, New-Jersey, on Friday, January 21, 1870, at 10 o'clock in the forenoon, in the presence of Charles H. Voorhis, Counsel of Complainant, and Manning M. Knapp and Lansing Zabriskie, Counsel for Defendants.

Whereupon the examination was adjourned to Tuesday, January 25, 1870, at 10 o'clock in the forenoon, at the same place.

At which time and place the examination was resumed, in the *20* presence of the counsel of the respective parties.

JOHN QUACKENBUSH,

a witness produced on the part of the Complainant, being duly sworn, on his oath saith—

I live in the Township of Harrington, in the County of Bergen, close to Hohokus.

I knew Peter H. Ackerman in his life time. I don't know how long I knew him—ten or eleven years since John Bogert got married with his daughter Margaret.

I had some conversation with Peter. He came over occa- *30*

sionally to see his daughter and son-in-law. Bogert and his wife lived at my house. Peter came over there on a visit to them.

Q. While Peter Ackerman was at your house, on any of these occasions, did he have any conversation with you in reference to his farm and the arrangement with his son Gilbert in regard to it.

Question objected to.

Yes. It was in June, at the time of ploughing corn. John was ploughing corn.

10 Q. What did he say?

Question objected to.

He and I walked out together to where John was ploughing corn. Then he said he wanted me to do as he had done. He said he had given his farms over to his sons. He said that he had quit work entirely and he didn't bother his head about any farming business any more at all. Then he said that Gilbert and John Henry had each a farm. He said they were young and could go to work as he had done. I believe nothing more was said about the places. He told me to give up my places as he had done.

20 At the time Peter told me this John Henry was alive and on his farm. I think John Henry died two or three years after the conversation. I did not ask Peter any questions about this property. He told me so of his own accord.

The old man was at my place one day pumping water for his horses out of my pump, and, says he, "Your pump goes fine." And he said their's was out of order, and he had told Gilbert two or three times to fix the pump but he hadn't done it yet.

He said Gilbert had bought some manure and he was drawing that on the farm.

30 I have visited Peter two or three times while Gilbert was living on the farm.

And being cross examined, he says—

I couldn't tell you what age Peter Ackerman was when he died.

I brought John Bogert up pretty near. At the time Peter Ackerman had the conversation with me he did not say what rent the boys were paying him for the farms.

I do not know they were paying him rent, only from what I have heard tell.

his
JOHN X QUACKENBUSH.
mark.

Taken, sworn to, and subscribed this 25th day of January, A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

PETER VAN EMBURGH,

a witness produced on the part of the Complainant, being duly *10* sworn, on his oath saith—

I live at Hohokus, in the County of Bergen. I used to know Peter H. Ackerman. I have known him, I suppose, for thirty or forty years. He occasionally talked with me about his farm. He would occasionally come over to see his daughter, who lived next door to me, and when he came there he would come over to my house and set and talk an hour or two He would talk about his business. He said that he had quit work and had given his farm over to his boys, and had retired and meant to live easy, and so on. *20*

Q. Did you, at any time, hear him say anything about the arrangement between him and his son Gilbert in regard to the farm?

Question objected to.

No, I heard no particular arrangement. I live next door to John Quackenbush.

And being cross examined, he says—

Ackerman frequently came up to my house, and would set and talk with me.

This continued nearly as long as he lived. He would always *30* come there when he visited his son-in-law.

He seemed to be a man that liked to hear himself talk. I don't know as he talked more than other people.

The conversation with Peter Ackerman happened five or six years ago. He would talk about it when he came there,

I don't know whether that was the last time he spoke to me about the farm.

He never said anything to me about the rent they paid.

P. VAN EMBURGH.

Taken, sworn to, and subscribed this 25th day of January, A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

ADAM HUBSCHMITT,

a witness produced on the part of the complainant, being duly
10 sworn, on his oath saith:

I live on John Henry Ackerman's place, as they call it, next door to Gilbert, in Saddle-River Township, Bergen County.

I have lived there two years on the fourteenth day of April next.

I bought that farm in March, one month before I moved there.

I bought it of Peter H. Ackerman.

I saw Peter Ackerman most every day, as long as he was healthy, when I lived next door to him.

He very often spoke to me about the arrangement there was
20 between him and Gilbert in regard to the farm.

The first beginning was when he told me about John Henry's wife was very hardly suited, and he wanted to buy a farm for his son John Henry, and he couldn't suit his daughter-in-law, so he built up on his own place; he thought it was big enough for two.

He told me then that he had only two sons, and he'll give each of them a farm.

I said he had told me that he had give each of them a farm.

It is more than I can tell when John Henry died. When Peter
30 gave me a deed, when I bought the place of him, he told me that the money was for John's children.

(Last answer objected to by defendants as irrelevant.)

Gilbert has been living on the farm he now occupies as long as I have lived next door.

There is some woodland on the farm that Gilbert has; the most of the wood is gum. There is no fencing material on it that I know. The old man told me there was no wood on it fit for barrack poles. I never looked through it.

The old man gave Gilbert the privilege to cut some barrack poles in his woods.

The old man had some woods, so they have always told me that didn't belong to Gilbert's farm.

There is a public road, the Saddle-River road, that runs through my farm and the farm Gilbert occupies. 10

That road has not been straightend or altered since I have lived there. Mr. Ackerman (the old man) has often spoke to me about its being straightened, and Gilbert has talked to me pretty frequently about it.

The old man told me last March that I and Gilbert ought to go to work and get the right from the Court to straighten the road before we set our fences.

He said nothing more about it, especially, only that I needed a new fence up there, and Gilbert ought to have one, too.

Gilbert was not by when this was said. Gilbert made prepa- 20 ration to yut up a new fence. He meant to put up a slat fence, the same as I, if the road was straightened. Gilbert rode some stones there.

I do not know of Gilbert's making any blind ditches on the farm while I was there.

Gilbert did not build any permanent improvements on this property while I was there

The cow yard was fenced by a board fence.

I do not known of his building any other new fence while I was there. 30

And being cross examined, he says:

I had conversation with Mr. Ackerman before I moved next door to him. It was in March, 1868, the month before I moved there.

I didn't know him before that month.

The first time that he told me that he had given his two sons a farm was when I made him an offer for his place.

That was the first time an offer had been made for the farm on my account; I did that myself.

That day he told me that he must get all he can for the place, because it was not for himself, but for his son's children; that is about all he said that time. This was in March, 1868.

The next time that Mr. Ackerman had a conversation with me about the farm, was along the Summer of 1868. It was on my
10 field. He came up there and set on the fence while I was working, and I would sometimes set by him. It was along the time of ploughing sweet corn, June or July. I talked with him half an hour or an hour; I can't say. He said that day that he gave his boys, each of them, a farm, and to work and improve the place as much as they could.

I next had a conversation with him along in September of the next year. I had no conversation with him after that, especially in regard to the place.

Ackerman told me that Gilbert had to pay him one hundred
20 dollars a year, and John Henry one hundred and fifty dollars as long as he lived. I don't know what the rent of my place is worth. I have about paid for my labor since I have been there. I have cultivated it—raised different crops. I cannot give any estimate of what Gilbert's farm would rent for.

Mr. Ackerman never offered to sell me either place; he only wanted to sell the place that I am on, and not Gilbert's.

Gilbert did not ask the old gentleman for a deed for a part of this farm, so far as I know; I do not know that anybody else did for him. Gilbert asked me once, but I did not ask the old man.
30 He asked me if I got in conversation with the old man, I might ask him for a deed for a little point adjoining Gilbert's land, that Gilbert bought of Mr. Demarest. I did not ask Mr. Ackerman, I asked his wife. I didn't ask him, because I thought it was enough to ask her. She told me that Gilbert must wait until the old man was dead. He did not ask me on any other occasion to speak to the old man about business. Gilbert and the old man lived in the same house.

I live about four hundred yards from Mr. Ackerman.

The old lady, when she said Gilbert must wait until the old man was dead, did not add, "and then he will get his share."

When the old man spoke about the fences he talked as if he expected Gilbert to make them. All the repairs that were done was done by Gilbert, so far as I know, while I was there.

I made a new fence on my part, but the road wasn't straightened and Gilbert thought he wouldn't make his.

And being again examined in chief he says:

Q. Why did Gilbert want a deed for the little piece in front of what he bought from Demarest. 10

(Objected to on the ground that it does not appear that witness knows.)

I can only tell you what Gilbert told me.

Q. What did Gilbert tell you.

A. Gilbert told me that he would like to sell that place that he bought, that he couldn't without having a front.

I asked Mrs. Ackerman for the deed because she was in our house.

I did not ask Mr. Ackerman because the old lady I thought was just as good, and she happened to be there. It just came to that—I did not mean to ask her. 20

ADAM HUBSCHMITT.

Taken, sworn to, and subscribed this 25th day of January, A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

JAMES D. BOGERT,

a witness produced on the part of the complainant, being duly sworn, on his oath saith:

I live in New Barbadoes Township. I knew Peter H. Ackerman in his lifetime. I can't tell how long I knew him. I have had some dealings with him in money matters. In 1858 is the first I had any dealings with him in money matters. I got some money of him at that time. 30

I continued my dealings with him about four years under that first arrangement.

Q. Did Mr. Ackerman ever have a conversation with you about the arrangement between him and Gilbert in relation to the farm occupied by Gilbert.

A. Yes sir. In 1858 for the first time. He wanted the interest money from me every six months, because Gilbert had the farm and he wanted that interest money to live of—that he had nothing to do with the farm. I took up money from him then.

10 This was at his house. Nobody was there but his wife. I don't recollect how long I had the money before I paid him off.

At the time I paid him I do not recollect that he said anything about the farm.

In 1868, in January or February, I wanted to build, and I asked him if he had any money to put out. He asked me how much I wanted. I told him $2000. He said he didn't know how it would be. He didn't think hardly that he could have the $2000 by the first of May. He asked me if part of it would do by the first of May and the balance in three months after. I told him it would,

20 so he let me have $1250 on the 5th day of May, and the balance in three months after.

Then he told me he wanted the interest every six months, because he had given his places to his boys, and he wanted the interest to live of. I don't recollect any conversation in regard to any other matters.

He never said anything about what would become of Gilbert's farm after his own death; he always said the farm was Gilbert's, and I didn't know any different; and he said he wondered why Gilbert didn't put up a barn on it, as the old one was worn out.

30 And being cross-examined, he says:

I am fifty-one years old; I live at New-Bridge, five or six miles from Mr. Ackerman's; my connection with him has been altogether in money transactions; my stays when I went to his house, were not very long; I done my business there and then went away; in all the money I borrowed from him I paid him the interest half-yearly; it was secured by mortgage; I never borrowed from anybody but Mr. Ackerman, and don't know the usage; I did not

charge my mind particularly with the words used by Mr. Ackerman; he gave that as a reason why he wanted to use the interest; the money and interest was the subject of the conversation.

JAMES D. BOGART.

Taken, sworn to and subscribed, this twenty-fifth day of January, A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

GARRET D. ACKERMAN,

a witness produced on the part of the complainant, being duly sworn, on his oath saith— 10

I live near Ridgewood, Franklin Township, Bergen County; I was born there, and am fifty-eight years of age.

I knew Peter H. Ackerman in his life-time; I had known him ten or fifteen years; I have seen him frequently for the last ten or twelve years.

I have had a conversation with him about the arrangement between him and his son Gilbert, in relation to the homestead farm, but no more than he told me of his own accord; he told me he had divided his property into two parts, and had given one to his son John Henry, and one to his son Gilbert, and showed me the 20 line fence between the two.

I can't exactly state the year or the date that he did that; it must have been in 1858 or 1859—but it was after John Henry lived on his farm, and after Gilbert lived on the farm where he now is.

He has not spoken to me about it on other occasions; I don't think anybody was present but himself and me when he told me this; it was between the house and barn near the pump, where he showed me the line that was talked of; he said "This is John Henry's farm, and this is Gilbert's, and they can now improve on 30 it as much as they like."

I don't know what the condition of the farm was when Gilbert first lived there; he lived in his father's house a year, and eat at his table.

After I had this conversation with Peter, Gilbert made some improvements on this farm; improvements of different kinds; I bought 200 fence posts for him; they were six feet long, and most of them split two from one log; I bought them up in Cherry-lane.

I bought the timber standing; we paid so much a hundred, and Gilbert carted them; me and Gilbert's hands made the posts; I have seen the posts since on the farm where Gilbert lives, already holed.

I know of his putting buildings on the place, such as a new
10 kitchen, and repairing the other buildings, making fences around the garden and along the road; I was there when he built a blind ditch across a certain lot near the barn—a good lengthy one.

Gilbert ordered the house painted; he had it painted and grained inside and outside; I saw the painter to work, and he told me that Gilbert had paid him; I don't know when this was; he has been at it two or three times, I think; I don't know of his buying large quantities of manure and putting it on the farm, only from hearsay; I have seen him cart manure, and he told me he had bought it; he got it from my brother's son, in Paterson.

20 I know only from hearsay of his carting a boat-load of manure from Hackensack to his place; I couldn't tell only from hearsay, whether there was any salt meadow belonging to this farm of Gilbert's: Gilbert told me there was.

I never bought any salt meadow from Peter Ackerman.

I only know from hearsay of Peter Ackerman selling salt meadow; he never told me himself that he had.

I have seen the land which Gilbert bought of Demarest; I have seen a fence taken up between that piece and the Ackerman farm; it was a stone fence with posts and rails stuck in it; the stone
30 fence I refer to was an inside fence on the farm on the north side of the turnpike; it was in the orchard on the hill, 200 or 300 yards from the house.

I don't know that I can state whether there is a fence between the Ackerman farm and the farm bought by Gilbert of Demarest.

And being cross examined, he says—

I couldn't state what time of year it was, in 1858 or 1859, that

I was at Peter H. Ackerman's. I think it was in the Summer.

I couldn't state how long I was there this time. I might have been there all day, for what I know. Part of my family was there with me. I never went alone.

I rather think my wife was with me there on this day. I think I am certain she was with me, because she always went with me when I went there on a visit.

That is the only reason why I think she was with me. There may have been more of the family there with me.

I couldn't say distinctly whether any more of the family were there with me at that time. There may have been a couple of my daughters. 10

I don't know what particular thing we talked about, beside the farm, at that time. I didn't charge my mind with it.

I don't know as I did charge my mind with anything we talked about on that day, beside the farm.

I did not make a memorandum at the time, or shortly after, of what Mr. Ackerman said to me about the farm and the boys.

I did charge my mind with the exact words used by Mr. Ackerman when he talked about the farm or the boys. 20

The reason why, was because he said I would have the same to contend with as he had. I had two boys as well as he had.

He stated that he had had a great deal of difficulty and lost nights' rest to get the thing right.

I thought a great deal about what he said then. I agreed with him that he had had those difficulties, which no doubt a father has who has property and children.

I am related to the complainant. He married my daughter.

I don't know what Gilbert did with the 200 posts.

I don't think Mr. Ackerman told me what rent Gilbert paid. 30 He never told me.

A person must maintain a fence somewhat to keep cattle in one lot and out of another.

Gilbert occupied one room on the southwest side of the house and a bed room in the garret. Mr. Ackerman occupied the main house.

Gilbert also occupied the kitchen jointly with his father, as near as I could see.

This outside building which Gilbert put up was used as a kitchen. He repaired the other kitchen by raising it and making it longer. This kitchen was the one they used together.

Mr. La Rue painted the house and grained it, and Gilbert paid for it. I know this from Gilbert and the man that painted it telling me. I don't know when this was. It was within the last eight or ten years, as near as I recollect. It might have
10 been eight years ago, and it might not. There has been painting done there since. My son-in-law, La Rue, did that. I don't know who had it done, only from hearsay. I never saw Demarest painting there. I have seen La Rue paint there more than once. The blind ditch that Gilbert built was in the upper lot, next the barn. I was there and helped work at it. It was not built in a day. Some parts of it was so deep that a horse could be put in and not be seen. Old Mr. Ackerman was there helping. I don't know as Isaac N. Voorhis was there. One of his hands was there with a team, helping.

20 Gilbert Ackerman had a supper and refreshments that afternoon. They had a kind of a 'bee.'

GARRET D. ACKERMAN.

Taken, sworn to, and subscribed this 25th day of January, A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

JACOB P. WESTERVELT,

a witness produced on the part of the complainant, being duly sworn, on his oath saith:

I live in Hackensack, Bergen County. I knew Peter H. Ack-
30 erman in his lifetime. I knew him forty years. He and I married sisters. I know the farm on which Gilbert lives. I knew it before ever I knew him.

I have heard Peter speak about the arrangement between him and Gilbert, in regard to the farm. I went over there on a visit,

in the year 1857—the first of June, I think. Gilbert was riding manure out, and I had put my horse out, and, in the first place, he and I walked in the house and sat awhile, and then we walked out doors towards the barn, half-way between the barn and the gate that goes in the yard. We were standing there talking, and then he told me how he had divided his farm. He had gave the upper farm to John Henry, and this farm I have given to Gilbert, if he lives after my death; and John Henry gives me one hundred and fifty dollars, and Gilbert must give me one hundred dollars, pay my tax and feed my horse, and I have half of 10
the chickens; so now they can go to work and improve the farm as they like. I have been on that farm occasionally since that time. Gilbert has made considerable change in that farm since that time.

He has bought a great deal of manure and made the farm much better.

He has made some improvements on it; he has made a great deal of fence—all the stone fences. He moved old stone fences, and brought them to the road, and laid them up.

Mr. Ackerman and I were one day walking up the field, and I 20
told him the removing of these stone fences had cost a great deal of work. He told me Yes, and he says he does it for himself. I have got nothing to do with it. I have told him that if he lives after me, the farm is his; he can buy as much manure as he is a mind to. He and John Henry, he says, spend a good deal of money for manure. John Henry, he says, goes 'way to Paterson for manure and coal ashes. But he says he raises a great deal of stuff and a great deal more grass than I used to. He says he raises the best of timothy now.

Mr. Ackerman said that Gilbert was pretty sloven about his 30
fence; but he had no fence in his woods, and after that he told me he had bought some posts, and they were laying on a heap. I saw them there myself on the heap, but what became of them I don't know.

There were some new buildings put up by Gilbert on this farm. Gilbert lived in the kitchen's kitchen, and they cooked in what they called the 'smoke house' at the time, and afterwards he got

tired of that and built the smoke house larger, and made a kitchen of it then. Soon as he had that done he built a smoke house right across the way from this, and that he built of brick. I came there at the time he was building. Mr. Ackerman said that Gilbert hadn't room enough. He could build, he said, (meaning Gilbert) that he (Gilbert) would have to pay for it, and it was nothing to him (Peter).

I have built several houses and know something about building.

In my estimation the new building put up by Gilbert cost be-
10 tween $1,100 and $1,200. I wouldn't like to have done it for less than $1200. That must have been in 1858. I think I know the land which Gilbert bought of Demarest. There was a wide stone fence, with a post and rail fence on top of it, between the Ackerman farm and the land bought by Gilbert. Gilbert moved that fence—brought some of it along the road and some along the other fences.

Gilbert put new rail fences through this farm from the turnpike.

And being cross examined he says—

I did not make any memorandum of the conversation I had in
20 1857 with Mr. Ackerman, or the other conversation. I got there often enough without making a memorandum.

The conversation I had with him in regard to moving the fences was in the spring of 1858, when he and I were walking out.

No person were present with us who could hear the conversation when Mr. Ackerman told me about the farm and moving the fences. I have told about having these conversation with Mr. Ackerman. I have talked about it because I thought there was no secret about it. I don't know who I talked with about it.
30 I have talked to Gilbert about it two or three times since he first came to me. It was about three weeks after Mr. Ackerman's death that I talked to Gilbert about it. Gilbert told me how the will was, and says I, "How can it be," because your father has told me over and over again that the farm belonged to you, Gilbert, if you lived longer than your father.

I don't know what Gilbert said. He seemed surprised to hear

that. I have talked to him two or three times after that. I have laughed at him, because he thought he had the farm and he hadn't.

I last talked with Gilbert about these conversations about two or three weeks ago, when he said he wanted me to go along with him. I told him I wasn't going, and, after all, I had to come.

The last time I talked with him about it, I asked him if they couldn't settle. He said it appeared not. I said I would advise him to settle and so I would advise them. I have advised Gilbert to settle and so I would them, if they had only spoke to me, but they wouldn't speak to me. 10

When Peter Ackerman told me that the farm would be Gilbert's after his death he did not say that he meant to leave it to him by his will. He said he had gave it to him then when he first spoke to me. He said that after his death the farm would be Gilbert's.

I remember the words that Peter Ackerman used on the occasion of this conversation.

He said "I have given my farms to John Henry and Gilbert, if they live after me. This farm is Gilbert's, and the upper farm is John Henry's." He also said there were not many farmers 20 who had set their boys down as he had done—gave them each a farm clear, and outset. He did not say anything about providing for his other children.

The old gentleman did not say how he had given these farms to his sons, whether by lease or deed, or that he was going to give it to them by will. At this time he said that Gilbert had the farm and must give him $100 a year and feed his horse, and he meant to stay there.

Mr. Ackerman told me two or three times that he had given these farms to his sons. 30

I don't know when the second time was when he told me this, or the third time or the fourth time; but I am certain as to the first time, because the first year after Gilbert was married he worked the farm on shares.

When Mr. Ackerman first told me about this arrangement Gilbert was not working the farm on shares.

I fix the date of the first conversation, because we went over

there on a visit. Gilbert was riding manure for potatoes and he rode it all the way round the road. I asked Mr. Ackerman why Gilbert did not ride it through the field. He said, Oh I used to ride it that way. This was the first part of June. I don't say what day. I remember it well because I said it was late for potatoes Mr. Ackerman said that Gilbert had planted a little piece, but he wanted some more. That is the way I fix this in the year 1857.

I fix the date of the first conversation as being in the month of June, 1857, because they were engaged in carting manure for 10 potatoes. I don't know where the second conversation took place—whether at my house or at his house. I do not remember the words he used at the second conversation.

I don't know whether I had one or more or half a dozen conversations with him after the second.

I do not remember any of his words in these last conversations. I don't know that I remember where any of these conversations took place.

And being again examined in chief he says.

Gilbert did not seem surprised to hear that his father had told 20 me about the farm.

He was surprised at the way the will was made.

JACOB P. WESTERVELT.

Taken, sworn to, and subscribed this 25th day of January, A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

Whereupon the examination was adjourned to Monday, January 31, 1870, at eleven o'clock in the forenoon at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

30 JOHN LARUE,

a witness produced on the part of the complainant, being duly sworn, on his oath saith:

I live in Paterson. My business is painter. I know Gilbert Ackerman, the complainant.

I have done painting for him. In 1857 I did some painting for him at his place in Lodi. I grained his kitchen and did a little other work. Gilbert Ackerman, the complainant, paid me for that work. I couldn't tell how much he paid me. I can tell though. I have a book account of it.

I don't know as I can tell what amount he ought to have paid me for it. Ten dollars or somewhere around there—nothing less. He has employed me to do other painting around there. In 1858 *10* he employed me to paint the whole house outside—the part he occupied and the part his father occupied both. Gilbert Ackerman, the complainant, paid me for that. I couldn't say how much I was paid for that. I suppose somewhere about $40. I have done other painting there. In 1864 I painted a new addition he put up. I painted it outside and inside both. Gilbert Ackerman paid me for that. I do not recollect that I ever did any other painting there. I think I found the materials all three of these times, but I am not positive. The prices I have named were for the work and materials both. *20*

And being cross examined, he says—

I am related to the complainant. I am his brother-in-law. I don't know whether Mr. Peter Ackerman furnished any part of the money to pay me.

The kitchen which I grained first was the part in which Gilbert lived.

When I painted the house outside I painted it one coat, I think. I do not know what the amount of the last bill for painting (in 1864) was, probably about $10.

JOHN H. LA RUE. *30*

Taken, sworn to, and subscribed this 31st day of January, A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

NICHOLAS S. DEMAREST,

a witness produced on the part of the complainant, being duly sworn, on his oath saith—

I live in Saddle River Township, Bergen County. I live on the farm adjoining the one Gilbert occupies.

I have lived there since I was six years old. I will be sixty-seven years old the 8th of next March. I have had no conversation with Peter H. Ackerman in regard to the arrangements he had made with his son Gilbert in reference to his farm, except
10 what he told me himself. He told me that he had given his property over to Gilbert Ackerman. He could do with it as he was a mind to. That was in the year 1857 that he told me that Gilbert was living at home that time working the farm. Gilbert has continued ever since that time to work on that farm and to live on it. Peter did not work on that farm after he had the talk with me in 1857, only what he chose to do. It was managed entirely by Gilbert.

Peter was smart enough in one way—in another way he was not smart. He didn't improve his land.

20 The farm is worth more now than it was when Gilbert took it. Gilbert has made improvements on it. He has built a kitchen to help himself. He has built a smoke house. He has been fixing fences around his house and around his barn yard. I think he has built a new well house; but I am not sure whether he or his father built that.

The soil of the farm is better than when he took it. It has not run down any.

Gilbert has brought more manure on it than old Mr. Ackerman did.

30 I have observed Gilbert's farming there from time to time.

Q. How has he seemed to you to manage that farm; as the owner of it or as a tenant?

(Question objected to.)

A. Yes, sir, as the owner of it.

Q. How has he seemed to you to manage it; as the owner? Objected to.

A. He hired help, and managed it the same as his own. He hired help when he wanted it.

Q. Did he seem to work it for the benefit of the farm, or only for what he could get out of it from year to year?

Objected to.

A. For the benefit of the farm.

Q. If Peter Ackerman had let that farm to an ordinary tenant would it have been worked for the benefit of the farm?

Objected to.

A. No, sir, I don't think it would. 10

Q. Why not?

Objected to.

A. He wouldn't have cared so much about it; he would have got out of it all he could.

I could not give any idea what that farm would have let for ten years ago.

I do not know any farm in my neighborhood that has been let out for the last ten years.

I know the land very well that Gilbert bought of my brother.

It was separated from the Ackerman farm by a line fence—a 20 rail fence standing on a stone wall with a great deal of brush on and around it. No great stone wall.

Gilbert did not leave that brush and fence there; he moved the the fence. He brought this fence to the turnpike, and threw this land in with the land of his father; of course the land he got of his father.

He put fences in to make his lots square with the turnpike.

I guess Gilbert put new fences in the fields north of the turnpike. After he dug the brush out he put new fences in.

And being cross examined he says: 30

The lot which Gilbert bought of my brother was on the south side of the turnpike.

It was on the north side of the turnpike where Gilbert took up the brush fence. I can't tell when it was taken up. It was in Spring time, and some years ago. It was a cross fence, and was forty or fifty panels. There was some old fence on what he

bought of my brother, and he run them out to the turnpike to make his lots square.

I do not know whether or not he used the fence to build the new fence. The posts were rotten. He might have used a few rails. This was a few years back—five or six years I guess; perhaps not so long.

This partition fence was pretty well worn out; the posts were rotten and some of the rails were rotten.

I can't say about his moving the partition fence and taking it
10 along the turnpike. He might have taken a few rails there. I can't tell about that.

Gilbert has taken up fifty or sixty panels of the line fence, so far as I know.

He took up enough to open both fields.

He did not take up all the fence through the second field. What he did was done five or six years ago.

Some of the old brush fence is still on the second field. He took up enough to open both fields. Persons sometimes take up these brush fences for the purpose of clearing them up—it is a conve-
20 nient way of doing it.

The two fields do not extend over the whole land Gilbert bought of my brother.

While Peter Ackerman worked the farm he was a hard-working man. He made money off his farm. He cultivated it pretty close. Mr. Ackerman kept up his fences pretty fair; he was a little careless about cattle.

He bought no manure. He may have bought a little ashes. He made what he had.

While Mr. Ackerman was working his farm I did not buy any manure. We bought some lime and made manure from meadow hay.

Mr. Ackerman used meadow hay, but never used any lime. If
30 he had used lime there I would have known it. I do not know of his buying a boat load of lime.

Gilbert has done well out of the farm since he has worked it. He has bought manure. He has raised pretty good crops, and used pretty nearly all the land.

He has raised about as much on the land as could be raised. Raised as much as he had help to take care of.

He might may-be have raised more out of the land than he did if he had had help, but help was scarce.

Gilbert raised crops on the land every year. I mean to say he raised better crops on account of the manure he put on it.

It is an advantage to the yearly tenant to use manure. It is better to use it than not to use it.

I could not say whether Gilbert paid my brother for the property he bought of him. I heard Gilbert say he bought the land *10* of him.

Gilbert says he has paid for this land out of the profits of the farm. I believe it was a little over $1,400 he paid. He bought thirteen acres.

I did not see Peter H. Ackerman at work at any time on the fences they were removing. I don't think he did.

Gilbert put a picket fence on the road side of the house and in front, too. I couldn't say how many panel of fence, fifteen or sixteen or twenty panels for what I know. He put a slat fence in front of the house on line and line between him and me. I *20* don't know how many panels there were. He put a board fence around the barn yard. I suppose there was eighteen or twenty panels.

It is hard for me to say what the board fence cost.

The conversation I spoke of between Mr. Ackerman and me was by Mr. Ackerman's house. He has spoke to me in my own house beside. The conversation I spoke of was at his house first. I couldn't say how long it was after the first conversation that he was at my house. It wasn't long afterwards.

Peter H Ackerman told me at his house that he had given that *30* property to Gilbert Ackerman and he could work it just as his own, or, as he had a mind to, (I don't remember which). It was to be his own to work on and all the improvements he made on it were to be his own. Peter said he wasn't able to work any more, so he had given it to Gilbert. He said he meant to quit working any more. He said that he meant to let the boys work now, and he had given them each a farm to do as they liked.

He said nothing to me about what rent they were to pay, or on what terms they worked it.

The old gentleman after that did not do much work of anything worth mentioning, on the place. I haven't seen him do any work on the farm except little notions in the garden, for exercise.

We didn't talk about anything at his house that day except the farm. I told him I thought it was a very good plan.

I was there only a little while that day. I don't think I was
10 there for half an hour. I went for a little errand.

I made no memorandum of what he said at that time. I never thought of it again until lately. I never troubled myself about it until lately. It had not been out of my mind. I didn't speak to any body about it—not to him at least.

I first spoke about it after Peter was dead. I then spoke to my wife and the family in the house about it. I have spoken to the complainant about it, of course. I spoke to him about it before the old man was dead. It was last Summer some time.

I guess I was the first one that spoke about it. He (Gilbert)
20 was on the field and I was to. I don't recollect which spoke about it first.

Since this trouble commenced Gilbert has talked to me about it. Eeverybody has talked about it. Gilbert may have talked to me twice about it. I forget where he talked to me about it the first time after the trouble commenced. I forget what he and I said. I didn't trouble myself about it.

I don't remember any better what was said in 1857 than after this trouble commenced. I fix the time of the first conversation as being in 1857, because Gilbert and his father worked together
30 one year, and then the old man gave up—and this was in 1857.

Q. How do you remember this conversation was in 1857?

I can't tell you any more about it—that I know very well.

Q. Will you tell us how you fix it as occurring in that year?

A. No, sir. I have nothing more to say.

Q. Do you mean by that that you cannot answer, or will not answer, any more questions?

A. I can't answer any more questions. I have told all I know about it.

I know the conversation I have spoken of occurred in the year 1857, from Gilbert's being married. I do not know the date he was married.

Nobody has said to me this was in the year 1857. I do not recollect what year John Henry died.

I do not remember what year Gilbert built the out kitchen.

I made no note or memorandum of the time Gilbert was married. I know the time, though. 10

Q. How do you know the time Gilbert was married?

A. Mr. Knapp, I can't answer anything more.

Q. Will you not say whether there is anything to fix that time in your mind, and, if so, what is it?

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

I am certain that I have given to you the exact words of Mr. Ackerman in the conversation in 1857. I mean the words used by him.

And being again examined in chief he says—

My brother Cornelius is dead. 20

Since Gilbert has been on the farm he has been engaged in other business. He has been teaming in the Winter time—riding cord wood and piles. He did it two Winters in succession I know.

I have heard Gilbert say that he paid for the land he bought of my brother Cornelius.

(Objected to by defendants.)

He didn't say where he got the money.

(Objected to.)

He didn't say that he paid for it out of the profits of the farm. 30

And being cross examined he says:

I didn't say, in my cross examination, that Gilbert paid for the land out of the profits of the farm.

I know of one Winter in particular when Gilbert hauled cord wood. That was a couple of Winters ago. The Winter before that he hauled piles.

And being again examined in chief he says:

This farm is not worth more than $8,000 to farm on, the way times are now.

It is not, at present, good for anything except to farm on, unless it is laid out in lots.

I couldn't say what it would sell for.

And being again cross examined he says—

It depends on the kind of land, as to what its value is. When it comes to my land, that is an altered case. My land is not for 10 sale. I think my land is worth more an acre than the Ackerman farm. I think there is a little difference.

If I owned this Peter H. Ackerman's farm I would take two hundred dollars an acre for it. I feel pretty sure about that. I don't know how many acres there are in the Gilbert Ackerman farm. I have no idea.

Q. When you estimate the value of a farm, don't you take into account the quantity of land contained?

A. No, sir, I don't. I have told you all I know. I am going to quit answering questions. I want to get out of this chair.

20 When I say that farm is worth eight thousand dollars, I mean to farm on. I don't know what he pays for tax.

I don't know what the farm is worth to sell.

NICHOLAS S. DEMAREST.

Taken, sworn to, and subscribed this 31st day of January, A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

HENRY J. ACKERMAN,

a witness produced on the part of the complainant, being duly sworn, on his oath saith:

30 I live in Hoboken, in this County. I knew Peter H. Ackerman in his life time. I knew him thirty-six or thirty-seven years. I have been a farmer. I was brought up on a farm. I worked on a farm from the time I was old enough to work until I was twenty-four years old.

Peter H. Ackerman was a brother of my father. I have had two conversations with Peter H. Ackerman in relation to the arrangement between him and Gilbert about the farm—one before and one after.

The last conversation took place in Washington Market, New-York. The old gentleman came down with a load of market truck. When he got out of the wagon he told us there was a load of truck; we could unload it. It didn't belong to him; he only agreed to drive it down. He then told me that he had given up farming—divided his farm and given it to the boys, and *10* they could now work it the best they could. He had worked long enough. That is about the whole of the conversation at that time.

This was the Summer either of 1860 or 1861. That is the only time he had spoken to me about it since the arrangement.

I have not walked over the farm since Gilbert occupied it. I have been around the house and along the turnpike, and both roads, in fact.

I should estimate this farm, at the present time, as being worth ten thousand dollars. *20*

At the time Gilbert took this farm I should say it was worth from six thousand to six thousand five hundred dollars.

I never rented a farm. I once took some land from my father at a certain price per acre, and was to pay him interest on this valuation at six per cent., and improved it upon condition that he was to take it back and pay for the improvements.

That was in 1850. I took twenty acres of land upon those conditions. The valuation was $80 per acre. This land is about 200 yards from the Ackerman farm. I had it three years.

I should consider that $200 would be a large rental for the *30* farm and the portion of the house that Gilbert occupied—a big price.

Q. What was your experience as to the rate you paid your father. Was it a fair price, or too much or too little.

(Objected to.)

A. It was too much. I couldn't make my living and the interest out of it.

And being cross examined he says—

I suppose I went back, in the three years I was there, about $500. The rent amounted to $96 a year, and I went back more than the rent per annum. This is the same property on which my brother Stephen now lives. No portion of it was boggy. It was all tillable land and wood land.

When I said Gilbert's farm was worth $200 a year rent with the portion of the house he occupied I calculated its value ten years ago.

10 Q. What, in your judgment, at that time, was the yearly value of the part of the house occupied by Peter Ackerman?

A. I should say $50 to $75. I can hardly base rents there.

I should say the Gilbert Ackerman farm, at the present time, is worth $200 per acre.

I am a commission merchant in New-York in country produce. As such, I have sold for Gilbert Ackerman. I sold all his produce, except Winter crops—which I should call potatoes, corn and hay.

I sold all his market produce. I do not think I ever sold any 20 potatoes for him.

The principal articles I sold for him were strawberries, apples, sweet corn, Lima beans, and, perhaps, a little small stuff.

Last Summer a year ago I sold a load of corn for him for $45 —perhaps. I have sold strawberries that came to $50 a load. I have not sold loads of early corn and Lima beans for Gilbert for $100 a load and over, that I remember.

I have had seasons that I sold for $600 for him. I have sold for $500, and the lowest is about $400.

The words used by Mr. Ackerman in this conversation I speak 30 of were that he had divided his farm and had given it to the boys and they could now work it the best they could, he had worked it long enough.

He didn't say that he had divided the farm and let the boys take it. That was not the language.

I should think I would, at this day, remember whether it was one or the other.

I did not make any memoranda of his words or conversation at the time.

My attention might have been called to it 500 times. It was conceded in my own mind, and from what I heard, that the farm belonged to the boys, but I did not know whether they had a deed for it or not.

The first time I ever spoke about this conversation between Peter H. Ackerman and myself was on the first day of the meeting for examination in this case, and until that time no person had spoken to me about it. I hadn't spoken to Gilbert about it. *10* I was not here as a witness in that case at that time. I came from curiosity to hear it argued. I thought it was to be argued upon affidavits. It was then that I mentioned what I first knew about it. I have heard the testimony of the two witnesses examined in this case to-day.

HENRY J. ACKERMAN.

Taken, sworn to, and subscribed this 31st day of January, A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

Whereupon the examination was adjourned to Tuesday, February 15th, 1870, at 10 o'clock in the forenoon, at the same place. *20*

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

SIMEON ZABRISKIE,

a witness produced on the part of the complainant, being duly sworn, on his oath saith:

I reside in Hackensack, in the County of Bergen, in this State. I am a surveyor and commissioner of deeds. I write wills sometimes.

I knew Peter H. Ackerman, of Saddle-River, in his lifetime. *30*

I knew him forty years and over.

I wrote a will for him. I wrote more than one will for him.

I suppose I have written, at least, four wills for him. I can't recollect the time when I wrote the first one.

I have written two or three wills for him since Gilbert has been grown up.

I wrote the last one, too.

I have none of these wills in my possession. Always when he made a new will the old one would be destroyed. He used to leave his will in my possession.

In the wills before the last one he gave the north part of his
10 farm to his son John Henry, and to Gilbert the south side—the part where he now lives.

This was so in all the wills before the last one as to the part given to Gilbert.

All these wills, including the last, were drawn and executed in my house. No one came with him on these occasions; he always came alone.

I have done surveying for Peter H. Ackerman. I surveyed all his land in that section, being his farm. He said he wanted it surveyed to know where to run the line between the farms, and to
20 ascertain how many acres were on each side; to run the division line between the two places—the one John Henry had and the one Gilbert had.

I don't know whether the boys occupied these places when I made the first survey. They did afterwards—John Henry the north side and Gilbert the south side. There were buildings on both sides. The homestead buildings were on the lower side—the side Gilbert now lives.

The south side had the most land—ten acres more. I don't recollect that Peter told me why he wanted the south side to
30 have more land; but he wanted it so. I suppose it was because the buildings on the south side were better.

I have drawn deeds for Peter Ackerman—one in particular that I know of. That was for some meadow land—about three acres, lying on the Saddle River. It was a short distance above the house of John Henry.

(All proof concerning the deed is objected to, unless the deed is produced.)

The deed was drawn from Peter H. Ackerman and wife to John Henry Ackerman. I took the acknowledgment of Peter and his wife to the deed. They came over to my place and I drew up the deed there and they executed it.

Peter H. Ackerman directed me to make the consideration of the deed $240.

When I surveyed the farm to ascertain the division line Peter Ackerman did not tell me what arrangement he had made with his boys in regard to the farm. He never told me what arrangement he had made with Gilbert and John Henry in regard to the 10 farm. I have lived in Hackensack I suppose forty years.

And being cross examined he says—

It is some fifteen years ago since I first wrote a will for Mr. Ackerman, as near as I can guess at it.

I don't think I had drawn any will at the time I surveyed for the division line. I afterward changed the division line.

I suppose it must have been some two or three years after the first survey was made that the division line was changed.

I don't exactly remember whether I had drawn any will for Peter H. Ackerman in the interval. 20

All these wills referred to this division line.

The first will I drew for him divided the farm. I believe they all divided it, invariably giving the north side to John Henry and the south side to Gilbert.

In the first will Mr. Ackerman gave his wife a legacy and his daughters also legacies. He gave none of them any real estate. In the first place I suppose he calculated that he had enough money on hand, or would have, to pay these legacies. In case his personal property wasn't sufficient to pay the legacies the boys were to make it up. I suppose it was made a charge on 30 the real estate. That is the way I generally do. I am particular about this.

The main difference between the first will and the others was that each time he increased the legacies to his wife and daughters.

In the second and subsequent wills I can't say that these legacies were made chargeable on the real estate. The legacies

in the second will to the wife and daughters were larger than in the first.

If there was not sufficient personal property to pay the legacies the boys were to make it up, and if there was a surplus the boys were to have it. This was a provision of the second will.

My habit in drawing wills was to make the payment of legacies a charge on the real estate, although he told me that he thought he had sufficient personal property to pay them.

He calculated that there would be sufficient personal estate to
10 pay the lagacies, but in case there was not, then the boys should be charged with it. I do not know if I made it a charge on the lands or not.

I always, where the whole legacy was to be paid, charged it on the land.

I do not exactly recollect the amount of the legacies mentioned in the several wills, but I know it was increased each time, and I made up my mind that the old man was making money.

Q. Didn't the increase in the legacies bear a proportion to the increase in value of the real estate.

20 A. I don't know about that; I don't know what the increase in value of the real property would be, but I know there has been an increase in the value of real property. There has been an increase in the value of that real property, I suppose the same as in all property in that neighborhood.

The third will was written about three years before the last will. In the third will the legacy to his wife was $6,000 or $7,000. It wasn't as much as in the last will by $2,000 or $3,000.

In the third will the legacies to the daughters were equal. In that will the legacies to the daughters were something like $4,000
30 to each—it wasn't less. I can't say that it wasn't $5,000 to each—it might have been.

I do not know what Mr. Ackerman estimated the value of his farm to be at the time of this third will.

The second will was made something like two or three years before the third one, though I don't recollect the date. I don't think the amount given to his wife in that will was over $5,000.

The third will, as in the others, had a provision that in case

there was a deficiencey to pay the legacies the boys should make it up.

Q. In making, and drawing, these several wills was it not the intention, and desire, of Mr. Ackerman, as expressed to you, to make his children about equal.

(Question objected to.)

Question withdrawn.

Mr. Ackerman never said anything to me on the subject of his children sharing equally in the estate. Not until the last will, and he then made it equal. 10

I have no rough draft of any of these wills.

When I drew the last will he ordered me to draw it so it would all be sold and equally divided. He didn't say anything else particular about it.

Mr. Ackerman sold the part which John Henry had after the last will was made.

And being again examined in chief he says,

In all these wills before the last the surplus, after payment of the legacies, was left to the boys. I can't recollect whether the executors named in the previous wills were his sons or sons-in- 20 law. I think Gilbert was not one of them. He did not make his widow an executor.

And being again cross examined he says—

I do not recollect if John Henry was named as an executor in any of them.

SIMEON ZABRISKIE.

Taken, sworn to, and subscribed this 15th day of February, A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

HENRY TERHUNE, 30

a witness produced on the part of the complainant, being duly sworn, on his oath saith:

I live in New-York. I am fifty-two years of age. I knew

Peter H. Ackerman in his lifetime. I knew him since I was five years old. He was my uncle. I was very intimate with him. In latter years I visited him every Summer.

He has talked with me about the arrangement between him and Gilbert in regard to the farm. The first was ten or eleven years ago, at his house.

The conversation commenced on my part. I told him that I understood that he had given up work and given the farms to the boys—the homestead to Gilbert and the upper portion to
10 John Henry. I then asked him if he had given the boys a deed. He said that he had not. I then asked him why. His reply was that he wanted to keep a roof over his head while he lived, but that it made no difference—that the farm belonged to Gilbert, and at his death he would get a deed for it. He further stated during that interview the arrangement he had made with the boys—that the boys had full possession of the farm to improve and do as they saw fit, and whatever improvement they made was solely for their own benefit, but (to use his own language) the boys must bring him up so much money during his life
20 time.

I then asked him how much, and his reply was, as near I can remember, that Gilbert was to give him $100 a year and John Henry $150. I asked him why he made the difference in these payments. His reply was that John Henry had new buildings, new barns, and that 'Gil' had lived in the kitchen; and that he would have such produce off the farm as he wanted for his living—part of the chickens and eggs, and Gilbert was to keep his horse. I think that was all at that interview of any importance.

30 He did talk to me about surveying the land. It was some time after that interview. I met him in the door yard in the morning. I said "Good morning" to him, asked him how he felt this morning. Said he did not feel well. I then asked him what was the matter. He said he was troubled in his mind. I then asked him what his trouble was. He said it was about his boys. He then said, "You know I have told you how I have given this farm to the boys—set them down better than any man within

ten miles of here, and yet they are not satisfied"; and then I asked him who was dissatisfied. He said that John Henry was, because he thought that Gilbert had more land than he had. I then asked him if such was the case. He replied that such was the case, as he intended Gilbert to have some more land than John Henry.

I asked him if he had the land surveyed at the time he made the division. He answered "No."

As near as I can remember he the nsaid he thought it was very hard after doing so well by his boys that they should be dissatisfied. *10* He then said he didn't know what to do. I then advised him to have the land surveyed. He told me he should do it. I think that was the close of the conversation, of any importance.

He has talked with me on other occasions (a number of times) about this arrangement. I will add to what I have said about the arrangement between Peter H. Ackerman and his boys in regard to the farm, that the boys were to pay the taxes.

I am not much of a farmer. I couldn't tell you the condition of this farm when Gilbert took it. I do not think I am a competent judge. The portion of the house which Gilbert occupied was in *20* a very bad condition. They called it a 'kitchen's kitchen,' a 'bake house.'

On another visit of mine to Peter Ackerman's, after Gilbert had made these additions there, I said to him that Gibert had made a great improvement. He said, "Yes, but you know that all that Gilbert does on this place here is for his own benefit." I guess that is about all of any importance at that time.

I had other conversations with him at other times about Gilbert's getting along and making money on the farm. I told him that I thought Gilbert wasn't getting along very well—wasn't *30* making much money. He said it cost a great deal every year in keeping up the farm—getting manure; he didn't suppose Gilbert was making very much. He has said repeatedly that the farm had improved very much since Gilbert had taken it. He said some years he supposed he would makea little money, other years he would hardly pay expenses.

It was my habit to visit Peter Ackerman every year since I

was a boy. I remained there generally a week or two weeks.

Cadmus, one of the defendants, was married after Gilbert was married.

And being cross examined he says:

I don't know that Mr. Ackerman ever changed his mind about giving his farm to his boys. I was in the habit of seeing him every Summer up to the time he died. He never said anything to me about having changed his mind on the subject of giving his farm to his boys.

10 I talked to him more or less every Summer on the subject of his property.

He never intimated to me in the least that he had changed his mind since the first conversation.

He never told me that he had made a will or wills.

He never told me what he meant to give to his girls. He never told me what he meant to give to his wife.

In the first conversation he told me emphatically that he had given the farms to his boys; not that he had let them have it.

He told me so time and time again, and I so understood it up 20 to the day of his death.

I am positive about the word "give." I should think it most likely I should have noticed the distinction between "give" and "let them have."

He said "I have given the farm to my boys". He didn't say "To Gilbert, and John Henry." He then said what portion he had given to Gilbert and which to John Henry, for the reason that the boys had worked hard since they were boys and he was going to do by them as his father had done by him.

I think the next conversation of any importance was, I asked 30 him if he had given the boys a deed for the farm.

He used the word "roof" when he said he wanted to keep a roof over his head. He didn't say "house." I would have noticed and remembered the difference between "roof," and "house." I did not make any memorandum of that conversation at that time.

Gilbert was at that time working and living on the farm. He had been working the farm perhaps a couple of years.

I had been up there each year before this conversation, while Gilbert was working the farm. I think Mr. Ackerman was at home each time.

I don't know as my recollection was called to this conversation by any person.

I think I first repeated the conversation years ago to my father and to my own family. I repeated a good deal of the conversation to my father. It was during that fall after I returned from 10 the country that I repeated that conversation to my father. The occasion was this: My father having been up there some time previous to myself, stated to me that Uncle Peter (using these words) had given the farm to his boys. This was the first that I knew anything of this giving of the farm; and after my return from my visit I told him of the conversation I had had with Uncle Peter—I mean by that that I recited over to him my conversation, and Uncle Peter's replies to that conversation. I give this conversation in the words of the conversation as near as I can remember. 20

On the occasion of the first conversation, the last that he said was, "It didn't make any difference; the boys would get a deed on his death." We talked over a great many things beside. This conversation took place at his supper table in his room, on an evening in August. I think his wife and my wife were present.

They were talking over family affairs, his family and mine, and my business and various other things.

The next subject that was talked over there after the subject of the farm was talked over, was, I think, my own business. 30

I was asked how I succeeded in my business; if I was making money; how I was getting along, and various particulars about it. He inquired about my two brothers and my sister. This was the first day that I came up there; I got up there in the afternoon. As near as I can remember I stayed up there, on that visit, a week.

I should think it was 1859 or 1860 that I spoke to him about

having the farm surveyed. I think this was the second day after I got there on another visit. It was on the morning of the second day after I got there. I was staying with Gilbert then. I spoke first to Peter. I said: "Good morning" to him. I remember that fact. He replied "Good morning." I remember that as a distinct fact. I busied myself at nothing particular that day. I suppose I was in the house part of the day, and in the barn and lounging around. I came from the barn when I first saw Peter.

10 He did not say that Gilbert was dissatisfied. He first mentioned that the boys were dissatisfied, and upon my asking the question, he said John Henry was dissatisfied. He said nothing after that, that the boys were dissatisfied.

I never heard what was in this last will of Mr. Ackerman before it was opened.

I did not say before the will was opened that Mr. Ackerman had given his property equally among his children.

I did not have a conversation with Isaac N. Voorhis in New York in regard to the contents of the will before it was opened.

20 I had a conversation with him at my store, but not about the contents of the will—that is before the will was opened.

I did not say to him that the property would have to be sold. I told him that the furniture would have to be sold; that the old man had told me so. I did not say that everything would have to be sold.

I did not say that I thought everything would have to be sold.

I did not say anything about the children coming in equally or that they would have to come in equal, or words to that effect.

Since the will has been opened I have talked to some of the

30 heirs about selling this property. I made to them an offer of a price. I did it for the purpose of having the property closed, at my instance. I proposed it to Gilbert Ackerman before I did it. I made it to Mrs. Bogert and Mr. Bogert, Isaac N. Voorhis and his wife, and to the widow, his mother. As near as I can remember it was ten or twelve days after the opening of the will.

Gilbert said he was willing to settle, if he could, in that way.

(All testimony regarding a settlement objected to by complainant.)

No suit had been commenced at that time. They didn't refuse to accept the offer.

I offered $10,000 for the farm. That is the amount I proposed to Gilbert to offer them. They agreed to accept my offer, and promised to meet on the Monday following to consummate it. Mr. Bogert and his wife, and Isaac N. Voorhis and his wife, agreed to meet.

I don't know why they didn't come there on that day. Isaac *10* and his wife came there; the other parties did not. I did not see John Henry's widow at that time. I did not see Cadmus and his wife. It was understood that Isaac N. Voorhis was to see them and have them there then.

I think Gilbert was to see the mother, who was the guardian of the minor children, and have her there.

And being again examined in chief he says:

The conversation with Isaac N. Voorhis at my store, in relation to that will, was, I said to Isaac that I was surprised—

(This conversation objected to by defendants.) *20*

—in relation to the will. During the conversation I said to Isaac that the old man said all the furuiture would have to be sold. I then told him why the old man told me so; I told him I had asked the old man to sell me a standing clock. He said that he would not sell it to me then; that at his death the furniture would all be sold, and that I would have as good a chance for the clock as anybody. That is all was said in relation to it.

I am a dealer in French and American clocks.

And being again cross examined he says:

I do not remember that I ever had any conversation with Isaac *30* N. Voorhis in relation to the will, other than I have stated.

I have had conversations with him in regard to a settlement.

The will had been opened at the time of the conversation at my store. Isaac N. Voorhis stated to me, in one conversation at the store, that if he had his way he would settle it.

The conversation that I had with Isaac N. Voorhis at my store,

in which I stated to him that the old man had said the furniture would have to be sold, took place after the will was opened.

HENRY TERHUNE.

Taken, sworn to, and subscribed this 15th day of February, A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

Whereupon the examination was adjourned to Friday, February 25th, 1870, at 10 o'clock in the forenoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

MARGARET ACKERMAN,

a witness produced on the part of the complainant, being duly sworn, on her oath saith:

My son Gilbert is living on the old homestead. He has lived there since he was married.

The old homestead buildings are on the part of the farm that Gilbert occupied.

Gilbert has put up an addition to the kitchen since he has lived there and has put up an outside kitchen. He has put down a brick pavement from the kitchen door to the back gate. I suppose he did that at his own expense. He put a roof over the well; there was a pump in it. He has altered some fences—that is, repaired some.

I know of Gilbert having bought some land of Cornelius Demarest. I have heard talk of it. I can't say that I heard my husband talk of it. All I know about it is that Cornelius came over to the house and talked about it. I don't know that Cornelius wanted my husband to buy it.

I know of a piece of land of about three acres that my husband and I sold to John Henry. It laid close to John Henry—and we sold it to him. I can't tell whether Gilbert had it before it was sold to John Henry. John Henry paid for it. I can't tell how much. John Henry paid it to Gilbert—Mr. Ackerman paid

it to him. When I say Mr. Ackerman gave it to Gilbert I mean my husband gave it to him.

This was the only piece we deeded to John Henry. I suppose Simeon Zabriskie drew the deed. He sometimes did business for Mr. Ackerman.

Gilbert planted some pear trees on the place, but they didn't come to anything. I do not remember when he did that.

I believe he planted some apple trees back of the barn. I don't know anything about his planting apple trees along the side of the old orchard. 10

I don't know on what bargain Gilbert had the place, except that his father gave it to him to work on and make all he could.

Mr. Ackerman helped the boys in working. He would work for Gilbert for a day or two and then for John Henry a day or two; he would help around. At first Gilbert paid him for working, the same as he did any other man, afterwards he didn't.

Gilbert never worked the place on shares only the first year afterhe was married; he worked for half. After the first year he (Gilbert) hired it. I do not know what the bargain was that he hired it on, but I know what he was to give—my husband told 20 me. I think it was $100; and Gilbert was to pay the taxes on the land. He told me nothing else about it. I can't tell whether Gilbert was by when my husband told me this. I can't tell you how long Gilbert was to have it. I can't tell whether he was to have it one year or more.

I do not know whether there was any understanding between Gilbert and his father that Gilbert was to have the farm after his father's death. I never heard what was to become of it after my husband's death—he never told me.

My husband never told me what was to become of this place 30 after his death. He never consulted with me about making his will. He never told me how he was going to make his will. He never consulted with me about his business affairs—about that.

He never consulted me about the distribution of his property, only I have heard him say that his children were all even, near.

I can't remember when he said that; he has always said that when talking about his children. Henry Hopper was our family

doctor. I don't remember that he was at our house once when my husband talked to him about his having given the farms over to his boys.

I don't remember hearing him tell Doctor Hopper that he had made the farms over to his boys. I don't know why my husband gave the money he got from John Henry, for the three acres, to Gilbert; to help him along, I suppose. He didn't give it to John Henry, because I guess he had his. He gave Gilbert and John Henry his farming utensils. I do not remember of any-
10 thing else, except that he gave each of them two cows, a horse and a team of oxen. He never gave the girls anything but their outsets, and he gave each of them a cow. I don't remember whether he gave one of them two cows. He did not give the girls anything else.

He gave a wedding party to each of his children, except Gilbert. He did not want any. I do not know what these parties cost. I do not think they cost over twenty-five dollars each. I never spent my money in such ways. I had to work too hard for it.

20 I do not remember of any trouble between Gilbert and his father. Sometimes his father would find fault with him because he did not keep the farm in order.

The trouble about locking the granary wasn't between Gilbert and his father. Gilbert didn't do it. I don't know that there was any trouble about three years ago about locking the granary. Mr. Ackerman didn't like it much. I don't know who did lock it. I don't know who Mr. Ackerman blamed for it. I don't know anything about there being visitors to the house that day or the day before. I do not know that Cornelius Cadmus and
30 his wife were there on that day or the day before. Cadmus and his wife used to visit at our house. Shouldn't they visit there?

I don't exactly live anywhere. I am with one of my children, and then with another. I am not able to keep house.

I am now staying with my daughter, Mrs. Cadmus. I have been there but a few weeks.

Before I went there I was with my daughter Ann (now Mrs. Voorhis).

I stayed there three or four weeks, too.

Before I went to Ann's I stayed with my daughter, Mrs. Bogert.

I stayed with Gilbert after Mr. Ackerman's death; and as soon as the will was opened he and his family left me all alone, and I couldn't stand that. He and his family went to Hackensack, I think. I don't know where they went. It was all but midnight when they came home. It was after dinner when they went. They took the children along with them.

I kept house up to the time of my husband's death. He was 10
sick about six weeks before his death. I have not been sick at all since his death, except as I am now—nothing but rheumatism and feeble.

The will was opened at the homestead. I can't tell who brought the will there to be opened. Simeon Zabriskie came with it. I think all the children but one were there. I don't remember which one was away. I can't tell you if Cadmus was there when the will was opened. I don't know whether there was a time fixed to open the will. I think John Henry's widow was there at the opening of the will. 20

I don't know anything about who took her home. I can't tell whether she went away with Gilbert and his wife. I can't say whether Cornelius Cadmus and Isaac Voorhis stayed after Gilbert went away that afternoon. I can't tell you who stayed or who didn't stay. I was by when the will was opened.

I can't tell what Gilbert said abuot the will after it was opened. I can't tell whether he said anything about it. I can't tell anything about it. (Objected to.)

I can't tell what he said.

Gilbert was dissatisfied some. I don't know what he called it. 30
I don't know what he said. I can't tell you what Gilbert went to Hackensack for. I am sixty odd years of age. I am older than Isaac Voorhis's mother; she is my sister.

And being cross examined he says:

When the boys took these farms to work I don't know what plan or purpose my husband had. He said they could take it

and work it and reap off of it what they could. I can't tell whether Mr. Ackerman had made any will at the time the boys took the farm to work it.

He had not said anything to me at that time about his will. He told me once that he had been to Simeon Zabriskie's to have some writings made; to have his will made. He told me afterwards that he had had it done; not right away after he came back.

I can't tell how long this was after the boys had taken the farm. I wouldn't like to say it was three years. I don't know whether he
10 ever told me about his making another will; he never told me about his wills.

My husband never told me that he meant to make his children equal in his property. He has told me that they were even near. I never heard him say anything about giving the boys more than he did the girls.

When Gilbert was working the farm on shares John Henry was working on the other part. I can't say whether he was working on shares.

John Henry began to pay his $150 a year as soon as Gilbert
20 began to pay rent.

I never heard Mr. Ackerman say he was going to give the boys the farms out and out. I never heard him say anything of that kind.

Mr. Ackerman would say once in a while that the farm was not kept in order. He said the fences were not kept up.

The ground between the barn and granary would sometimes wash away, and Mr. Ackerman would 'shonk' about that and say that ought to be kept up.

Mr. Ackerman didn't like it because somebody locked up the
30 granary.

It was somewhere about a month after Mr. Ackerman's death that the will was opened; during that time I lived in the house and kept my own table. I kept house. I occupied the main part of the house. Mr. Ackerman had the house painted about three years ago, inside and outside.

I remember that at one time Gilbert wanted to build a tenement house on the farm. Mr. Ackerman told him he must build

up on the hill on his own property. Mr. Ackerman told me and I so understood him.

(Objected to.)

I never heard of any arrangement between Gilbert and his father by which Gilbert was at any time to have this farm out and out.

Q. If there had been such an arrangement, would you have known of it, do you think?

(Question objected to.)

A. I think I would. 10

And being again examined in chief she says:

When Mr. Ackerman had the house painted he had all the outside painted, but not the inside part that Gilbert occupied.

Nicholas Demarest did the painting work. The picket fence was painted too.

The carriage house was painted outside—Gilbert had that done.

Gilbert had had the whole house painted once before with one coat.

Mr. Ackerman has told me that the farm was not kept in order; 20 that the fences were not kept up. I can't tell whether Gilbert was by.

My husband told me about the tenant house. It was two years or more ago. I never charged my memory with it.

All I know about it was what my husband told me. I can't tell whether my husband and I were alone when he told me, or whether Gilbert was by.

Gilbert never built the tenant house.

MARGARET her X mark ACKERMAN 30

Taken, sworn to, and subscribed this 25th day of February, A. D. 1870, at Jersey City, before me

ISAAC ROMAINE, Master in Chancery.

DANIEL ROMAINE,

a witness produced on the part of the plaintiff, being duly sworn, on his oath saith:

I live at Lodi, Bergen County. I am 53 years of age. I knew Peter H. Ackerman. I knew him about 52 years. I live about half a mile from his place. I know this farm on which Gilbert lives.

I know of Gilbert having bought trees and planted them on that place.

10 I bought some at the same time, and, I think, planted at the same time. I don't know what varieties he bought, but I know he bought apple trees. I suppose there were seventy-five trees. They were standard trees—at least I think so, because I got mine of the same man and out of the same lot, and they resembled mine. I have exchanged fencing material with Gilbert. I have given him chestnut for oak. I have bought standing timber from John Henry. I should judge it was twelve or fourteen years ago that I bought the timber.

I don't know anything about John Henry's buying the three 20 acres from Peter Ackerman, except from hearsay.

I think that farm has improved in condition since Gilbert took it. Gilbert has used considerable manure, and the general condition of the ground is better now than it used to be.

Q. Have you noticed his manner of farming, whether he managed it as a tenant would, who hires by a single year at a time, or like a person having an ownership in the land.

(Objected to.)

Like an ownership in the land, if we take into consideration the way leased farms are run. I will explain: the custom is in 30 our district that when a farm is leased for a year, there is no provision for after crops, in gathering manure and meadow hay. In Gilbert's case, he has provided for following crops.

Gilbert used meadow hay on the farm, he cut it from meadow, but whether from his father's or his own I don't know.

I have heard Gilbert say that he had bought some meadow from Garett Odell from which he cut meadow hay.

Gilbert has been employed by me considerable during the last

ten or twelve years. He has done considerable teaming for me every winter more or less; sometimes in the summer.

I paid him, generally, a certain price for a cord of wood, a certain price for piles, and a certain price for logs. Sometimes I paid him by the day, as low as $4.00 and as high as $6.00 a day.

I couldn't tell how much I have paid him yearly for this service without looking at my books. I suppose from $100 to $200 a year.

D. ROMAINE.

Taken, sworn to, and subscribed, this 25th day of February, 10
A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

Whereupon the examination was adjourned to Monday, March 7th, 1870, at ten o'clock in the forenoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respetive parties.

GILBERT B. ACKERMAN,

the complainant, was offered by counsel of complainant, to be sworn as a witness, in his own behalf, to which counsel for defendants objected on the ground of incompetency. 20

Counsel for complainant offers in evidence a certified copy of a deed given by Peter H. Ackerman and Margaret his wife to John Henry Ackerman, dated June 8, 1860. Recorded in Book M, 5 of Deeds, pages 161 and 162, which is marked 'Exhibit C, 1,' on part of complainant.

Also offers in evidence a deed from Cornelius S. Demarest to Gilbert B. Ackerman, dated October 24, 1860. Recorded in Liber M, 5 of Deeds, for Bergen County, pages 637 and 638, which is marked 'Exhibit C, 2,' on part of complainant.

Whereupon the examination was adjourned to Monday, October 17, 1870, at 10 o'clock in the forenoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

HENRY A. HOPPER,

a witness produced on the part of the complainant, being duly sworn, on his oath saith—

I live in Hackensack. I am a physician. I have practised medicine between 22 and 23 years. I knew Peter H. Ackerman
10 and Margaret his wife, of Saddle River. I was their family physician for upwards of twenty years.

I had a conversation with Mr. Ackerman and his wife about the ownership of the farm on which Gilbert now lives. We three were together. This was at his house in May, 1861. The conversation was on the occasion of a professional visit, in which I enjoined upon Mr. Ackerman the necessity of avoiding severe exercise or hard work. He replied that he did not work hard; that what he did was merely for pastime—for exercise. Mrs. Ackerman immediately replied that Mr. Ackerman did not
20 work the farm—

(What Mrs. Ackerman said objected to by counsel for defendants.)

—and that he had given the farms to the boys. Mr. Ackerman joined in the conversation by saying "Yes, he had made over the farms to the boys; that he was getting too old to work and did not mean to work any more."

The further conversation that related particularly to that subject I think came from Mrs. Ackerman, in which she remarked that she and Mr. Ackerman had worked hard enough—that the
30 boys must do it now, and if there wasn't enough left the boys must make it up to the girls. Very little further occurred on that occasion—Mr. Ackerman confirming, by desultory remarks, the statements that had been made.

That is the only time I have been present at a conversation concerning the ownership of the farm on which Gilbert lives.

And being cross examined he says—

The farms Mr. Ackerman spoke of were understood by me, and I thought very distinctly understood by both of us, to mean the two farms on which the boys were then living.

He spoke of the two farms collectively; and the names of the boys, Gilbert and John Henry, were mentioned in that conversation.

I did not understand from him how he had made the farms over. There was nothing specific in the conversation, only that he had made the farms over to the boys, Gilbert and John Henry. 10

The language conveyed to me more than possession. There seemed to be surprise that I did not know it.

Q. Might not his language used have applied as well to the possession of the farms as the title.

It didn't make that impression on my mind. From what he said I supposed he must have given some kind of a written or other agreement from the decided manner in which it was spoken.

I suppose he might have spoken as decided if he had devised the farms by his will then made. 20

Q. What did you understand by the expression, "If there was not enough left the boys must make it up to the girls?"

A. The impression left upon my mind was that if there was not enough property left to equalize the thing the boys should do it with the girls. I presume by paying to the girls.

The impression that I gathered from Mr. Ackerman's conversation was that there was to be equality in the division. We were conversing on this subject probably ten or fifteen minutes.

I am certain that at the time of this conversation the boys, Gilbert and John Henry, were in possession of the farms. 30

In this conversation we all joined—Mrs. Ackerman as well as Mr. Ackerman. Mrs. Ackerman did most of the talking in regard to the girls, but Mr. Ackerman gave his assent. In this conversation I was more of a listener than a questioner. I asked no questions about it. It was not a matter in which I was in any

way interested, only for Mr. Ackerman's welfare; his health was bad.

H. A. HOPPER.

Taken, sworn to and subscribed, this 17th day of October, A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

JOHN CHRYSTAL,

a witness produced on the part of the complainant, being duly sworn, on his oath saith:

10 I live at West Hackensack. I am fifty years of age. I knew Peter H. Ackerman of Saddle-River.

I have had a conversation with Mr. Ackerman regarding the ownership of the farm on which Gilbert now lives. It was in April, 1865. I was about purchasing a place in Jersey, and was introduced to Mr. Ackerman by Captain Tyson. My business there was to buy the farm of the son, who is now deceased. While going over the place he showed me the house, and said he had it built by days' work.

This is John Henry's farm that I speak of—the 'North Farm' 20 I call it. And in speaking of the house being built by days work he spoke about how good the house was built and said he had built it expressly for him, and as he was getting old he wanted to sell it, that he didn't want the trouble of the farm. And said he "The other farm I have given to my other son." And he lived there with his son. He said that he lived there with his son. He impressed on me that we would all be neighbors there—he and his son and their wives; and he said he would sell the farm $4000 less than the asking price if he could get a good neighbor.

There was no one living on the North farm at that time. 30 John Henry was then dead.

He showed me the lines between the two farms.

I did not speak of buying the South farm.

He did not say whether he could sell the other farm or not. His conversation as to sale was wholly in regard to the North farm.

And being cross examined he says:

Mr. Ackerman said to me that he had given the North farm to John Henry while he was alive. He said "This farm belonged to my son who is now dead and that farm belongs to my other son, "pointing to the Sotuh farm. He showed me the south line of the North farm, which he wanted to sell.

He said he was tired of the North farm; didn't want to work any more; he was tired of the trouble, and wanted to sell it.

I didn't inquire anything about buying the South farm. It was already occupied by his son. He said his son lived there, *10* and I suppose he meant Gilbert.

JOHN. CHRYSTAL.

Taken, sworn to, and subscribed this 17th day of October, A. D. 1870, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

The counsel for complainant not having any more testimony to offer declared the case on his part closed.

The following is a List of Witnesses examined in the within cause,

and the number of the page on which the testimony of each one *20* begins:

Depositions.

Examination of Witnesses, &c., in the above-entitled case, on the part of the Defendants,

10 taken before me, Isaac Romaine, a Master and Examiner of said Court, at my office, No. 31 Montgomery street, Jersey City, N. J., on Tuesday, February 21st, 1871, at ten o'clock in the forenoon, in the presence of Lansing Zabrskie and Manning M. Knapp, counsel for the defendants, and Charles H. Voorhis, counsel for the complainant, by consent of the counsel of the respective parties.

NICHOLAS C. DEMAREST,

a witness produced on the part of the defendants, being duly sworn, on his oath saith:

20 I reside at Hackensack. I am a painter. I was carrying on business there in the summer of 1867. I knew Peter H. Ackerman in his life time, and knew the premises where he and Gilbert lived at the time of his death. I did some work for Peter Ackerman in the summer of 1867.

Witness being shown a paper says: That is the bill for the work I did at that time. It amounted to $295.50. It is a bill for painting the house in which Mr. Ackerman and Gilbert lived, part inside and all outside, and the fence. Mr. Ackerman employed me to do that work, and Mr. Ackerman paid me.

30 The house was in pretty good condition, but it needed paint. A couple of coats of paint would put it in very good condition.

I received my pay for the work as soon as it was done—in July. July 15th, I guess. Mr. Peter H. Ackerman, the old gentleman, paid me for the work.

The part of the house which Gilbert occupied was not painted inside, except one mantel, and that Gilbert paid me for. I think that was all—but whatever was done in Gilbert's apartment he paid me for.

The bill referred to above, is offered in evidence and marked 'Exhibit D, 5,' on part of defendants.

And being cross examined he says: *10*

Mr. Peter H. Ackerman employed me to do the painting specified in this bill. He came to Hackensack and I was not at home. He left word that he wanted to see me about painting, and I went to his house, and there the arrangement was made.

He said he wanted me to paint it—that it needed paint. He said Gilbert ought to do it, but he could not afford to, it appeared, and so he (Peter) would do it himself (the house part) and pay me for it.

The out-buildings, he said, wanted painting, but Gilbert must do that; I must keep a separate account, and Gilbert must pay *20* me; which he did.

Gilbert paid me for painting the out-buildings.

I gave the outside of the house two coats; the whole of the outside as far as I know. There may have been a back kitchen which Gilbert occupied. One side of this may have had only one coat, but the rest of the building had two coats, I am certain.

I don't recollect whether I had done any other painting. I can't think that I did any painting there before. I may have, but it is so long ago that if I have it has slipped my memory. *30*

And being again examined in chief he says:

Gilbert paid some fifty dollars for painting the house, or his part of it—either a little less or a little more. I did some other painting for him—a wagon, which made the whole bill about sixty dollars.

NICHOLAS C. DEMAREST.

Taken, sworn to and subscribed this 21st day of February, A. D. 1871, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

WILLIAM DE WOLFE,

a witness produced on the part of the defendant, being duly sworn, on his oath saith:

I reside in Hackensack village. I have resided there 65 years—since I was born.

I was acquainted with Peter H. Ackerman in his lifetime. I
10 knew him more than fifty years. He assisted at my house—he and his wife, sometimes. Mrs. Ackerman was a cousin of my wife.

I remember of his being at my house about the time of making his last will. He was at my house at a time when he told me he was altering his will.

I can't say when that was. It was after the death of his son John Henry, and after the sale of that place.

Mr. Ackerman had some conversation with me in relation to his property and affairs and the disposition of it by his will. This
20 was altogether unsolicited on my part.

He stated at the time that he was about to make his will. The conversation then related to the farm on which he lived and died.

Q. What did he then say, respecting that farm: its ownership and his intended disposition of it by will? Give us the conversation.

(Question objected to.)

A. He said that he had intended those two farms for his two sons—one farm for each son; but since his son John Henry had
30 died, and he had disposed of that farm, it was now necessary for him to make an alteration in his will, as he wished to give his children an equal share in his property. He talked many other things, but nothing of any importance. This was unsolicited on my part.

Q. Did he tell you whether or not in his former will he had

charged the payment of legacies to the other children on the farms intended for the boys?

(Question objected to.)

A. No, sir.

Q. Did he give you to understand how he had provided for equality in division amongst his children?

(Objected to.)

A. No, sir. He said that as he had intended the farms for his boys—one for each—and as one had died, and the farm had been sold, he would have to make an alteration in his will to *10* make each child alike, as he had intended to make each child equal. I think those were the words he expressed himself in.

Mr. Ackerman said he went over to Mr. Simeon Zabriskie's to have his will drawn, as Mr. Zabriskie was doing it for him.

Mr. Simeon Zabriskie lives nearly opposite me. Mr. Ackerman spent the afternoon and took tea with me. He went in the early part of the afternoon to Mr. Zabriskie's and came back to tea, and after that went over to Mr. Zabriskie's again—to finish it, I suppose. In the evening he went to a festival.

And being cross examined he says— *20*

Dr. Hopper lives opposite me, and Mr. Zabriskie lives the next house south—about 150 feet from me. John Henry's farm was sold to a German named Hubschmit.

WM. DE WOLFE.

Taken, sworn to, and examined this 21st day of February, A. D. 1871, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

RICHARD TERHUNE,

a witness produced on the part of the defendants, being duly sworn, on his oath saith— *30*

I live at Lodi. I am a farmer. I know the two farms formerly of Peter H. Ackerman, in Saddle-River Township. I knew Peter H. Ackerman in his lifetime. I knew the farm where Peter H. Ackerman lived only by passing along the road. I

thought the farm was kept in pretty good condition—as far as I could see. He was considered a pretty good farmer. The road between Hackensack and Paterson runs triangularly through this farm.

I noticed the farm while Gilbert was working it—during the life of the old man. I have noticed the farm since his death. When one of the executors called me there previous to his death I noticed it about the same as the old man kept it.

I did not notice any improvement in the place under the 10 management of Gilbert over the management under the old gentleman.

I did not see any difference in the fences on the place.

When the executors sent for me I went over the farm. That was some time after the inventory was taken. The same year that the old man died. I was one of the appraisers, and, with Mr. Zabriskie, made the inventory. I walked around the farm and observed the condition of it. The condition of the farm then was about the same as in Peter H. Ackerman's lifetime. I had never been on the place before and had only observed it in 20 passing along the two roads.

At this time some of the fences were down and some of them were up; most of them were up.

To the best of my recollection the fences along the road were in as good condition during Gilbert's control as during the control of the old man. While Mr. Ackerman was alive I only saw the outside fences. I mean the fences along the road.

I could see some of the cross fences from the road. The fences along the road and the cross fences I could see from the road were kept in good condition during Peter H. Ackerman's 30 control—that is, good condition for a farm.

When I was there the fences around the house were about in the same condition as when Mr. Ackerman was alive. Some of them were down and some up. Around the cow yard some of the fences were down.

I live about two miles from the farm in question. I have some reason to know the value of farms in the vicinity where I live—more so than where these farms are.

As far as my judgment goes I can form an estimate of the value of this farm where Peter. H. Ackerman died. At the time I was over the farm to appraise it at the call of the executors I would consider it worth from $12,000 to $14,000, at a bona fide sale, which I would call a sheriff's sale. It's market value now, to sell at private sale, would be fancy. I could not answer that. I have no judgment to make whatever, because I don't see anything in it myself personally.

RICHARD TERHUNE.

Taken, sworn to and subscribed this 21st day of February, A. D. 1871, at Jersey City, before me. *10*

ISAAC ROMAINE, Master in Chancery.

PETER VAN DELINDA,

a witness produced on the part of the defendants, being duly sworn, on his oath saith—

I live at Saddle River—I suppose between 400 and 600 yards from the farm on which Peter Ackerman died. I live on the third place north of the farm of Hubschmidt.

I have lived there 24 years right along. I have lived there all my life except a couple of years I was away. I knew Peter H. *20* Ackerman. I have had a little conversation with him about the farm on which he lived; not a great deal. I had a conversation with him at my house in the spring as he died in the month of June. The conversation related to this farm.

Q. State what that was.

(Objected to.)

Well, he was sitting talking to my wife as I came in. I sat down there a few minutes talking to him. He asked me if I ever heard Gilbert say, "If whether he should die, he (Gilbert) would sell the farm and live easy." I told him "No." He said he had *30* heard it to be pretty correct. He said "Our Gilbert will never see the day that he will sell that farm." Then my wife said to him: "Well, Mr. Ackerman, I have always been in the habit of hearing that the boys had more than the girls;" so he raised up his head and says: "My girls have worked as hard for me as my boys." He

seemed to be a little angry when he spoke and I shook my head to my wife to be still.

I never heard much about any diffuculty between Gilbert and his father in regard to working the place.

I heard about some difficulty in regard to some feed for the old gentleman's horse: that was, Gilbert said he fed his horse too much. I don't know whether Gilbert refused to give him feed for his horse, but he locked the granary door so he could not get up there—his horse feed was kept in the granary. I don't know
10 whether Gilbert fed the horse after that or not; but afterwards he furnished his own feed—that is, the old gentleman. The old gentleman raised grain on John Henry's farm, or had it raised on shares, and his share he used for his horse.

The old gentleman kept his grain in the granary on the upper farm. After he sold the upper farm he put a lock on a bedroom over the carriage house, and kept his grain there. I have seen him feed his horse from that grain. I have heard Gilbert speak about a tenant house—if my memory serves me right it was the Spring, as the old man died in June. It was on the road
20 by Gilbert's house. I happened to be there because I went down to Romain's. Gilbert was in front of the barn. He came walking out to the road to me, and he said to me: What do you think the old man said to me this morning? I said, I don't know. Well, says he, You know I was going to build a tenant house. Yes, says I, I know that. He said: The old man asked me where I was going to set that house; I told him on the hill between there and Hubschmidt's. Then he said the old man told Gilbert that if he wanted to build a tenant house, to build it on his own (Gilbert's), not on his (the old man's) land.

30 Then I said to him, Gilbert, that don't look as if the farm is going to be yours. No, he says. I saw Mr. Demarest when he was painting the house. I had a conversation with Gilbert about painting it before or at the time it was done. I think that conversation was down at Gilbert's—some where around there. Gilbert told me, the old man said he wanted the house painted. Gilbert said he wouldn't put a brush to it before the old man gave him a deed for it.

I never knew who had the painting done, except that Gilbert said the old man had it done. I did not see any money paid.

This conversation was some time before the house was painted. I couldn't say whether it was three, six, or nine months before. The house wanted paint pretty bad.

I had some conversation with Gilbert about the price John Henry's farm would bring. I don't know whether it was at his house or mine. I guess it was after the old man had offered it for sale. I don't know how long before.

He said he didn't want that farm to bring too large a price, *10* for then the old man would value the lower farm at the same price and he would have to put up too much money to the girls. I know the piece of land that Gilbert bought on the south of the turnpike. There was a point—three cornered—lying between Gilbert's land and the road. Gilbert told me that if he could buy that three cornered piece square out to the road he wouldn't care anything about the farm, but the old man wouldn't sell it. I don't think I have heard Gilbert say that he had asked the old man to sell it, but he wouldn't sell it.

Gilbert manured this farm, while he had it, about the same as *20* all the rest of the farmers. Latterly he put more manure on his own land than he did on the old man's. He used to ride a good deal of manure on his own land and the rest on the old man's. He said he wanted to get his own so it would raise grass. It was light.

Q. Would there have been any profit to him as a tenant if he had put on less manure.

A. I don t think there would; it needed all it got.

I don't know how much manure he got. He and John Henry had a boat load between them. He got some from Union Hill *30* and Paterson, and wherever he could pick up a load in the neighborhood. That is all I know he had, unless he had some poudrette.

I can't tell exactly whether it was a year or two years before John Henry died that they had the boat load.

For my part I would take the farm in the Spring of the year and give $500 a year for it, and keep it in repair as it is now.

I should think it has been worth $500 a year for the last ten years—the tenant to keep it in repair.

I know of Gilbert digging a ditch on the place. It was what is called a 'blind ditch,' and extended from nearly up to the upper fence all the way through by the granary.

I never saw a ditch there. There might have been a drain along the fence.

I was there one day helping when the ditch was being made. It was done by a bee.

10 It is pretty hard telling what that cost Gilbert. I can't tell what it cost to make a bee and finishing it up. It might have cost fifty dollars—maybe more. That ditch prevented the overflow of the lot. I don't know whether there was a crop on the field. It drained the middle down to the brook, and made the land better for producing. Gilbert built an addition to the back kitchen of the house on that place.

He put on either four or five feet on the end of it. The building is one story and attic. I think it may have cost $100 or $150, or maybe more. I should think it could be put there for $150,
20 at the most.

I couldn't tell the width of the building. It may be fifteen feet wide, or a little more. He has put up an outside kitchen—a brick one. It may be fifteen feet square, or more; I can't tell. It stands separate from any other building—by itself.

The brick building is eight or nine feet high. I don't think it is over nine. I don't know what the thickness of the wall is. It is shingle roof, double pitch. I couldn t tell what it was worth to put up such a building. I couldn't tell what bricks were worth then. It might have cost $200; it may have cost more or less.
30 I can't tell what wages were then.

Gilbert has put some new fences on the place. He has put up a new fence along the south side of the turnpike; that is, in front of the strip that is in front of his own land. He has put up some above the old orchard. It may be forty panel as far as I know; that is, above the orchard. The fence along the south side of the turnpike was all new—that I helped put up myself. The other, I think, was only new posts.

I know where some of the posts and rails came from—he bought some of them new and he swapped some white-oak timber with Daniel Romaine for chestnut. The white-oak timber he got out of Mr. Ackerman's woods.

The old gentleman would help Gilbert one day and then John Henry one day—first one and then the other. First off he was pretty busy; the last year or two he didn't do much.

And being cross examined he says:

The last years I have been working on my own place. I suppose it is three or four years since I made it my business to stay *10* home altogether. I have somewhere between seven and eight acres.

Before that I used to work in the timber business. Sometimes I would work on a farm for either people on wages, never on shares.

No person was present beside my wife at the conversation between her and myself and Mr. Ackerman. My wife is dead.

At that time Mr. Ackerman asked me if I had heard Gilbert say "If he came to drop off if he (Gilbert) would sell the farm and live easy." He said he had heard that pretty correct, and *20* says he, "Our Gilbert will never see the day when he will sell the farm." I do not know who had told Mr. Ackerman that. I did not ask him. I do not know where that story came from.

Nothing more was said about that affair after I shook my head to my wife to be still. I don't know what time in the Spring it was. I was picking stones off the field, and came home for a drink of water and found him there.

Gilbert locked the granary door. I know that because I was working there. The way I know he locked it was because his wife asked him if he had locked the granary door; he said "No," *30* and she told him to go and lock it before the old man came. He went, and came back with the key, and his wife asked him if he had locked it and he said "Yes." I was in the kitchen by Gilbert's wife, taking breakfast. I don't know where the old man was—whether in his own part of the house or at the barn. I did not see him.

This was before John Henry died.

I do not know that they had any visitors that day at Mr. Ackerman's; there may have been somebody there but I don't remember it. I couldn't tell you what company there was there that day—whether Cadmus and his wife (the old man's daughter) were there or not. I cannot tell exactly what year that was in. It was two Summers before John Henry died—if I remember right.

I worked for Gilbert Ackerman from Spring time of com-
10 mencing ploughing, and continued working there until after harvest. It may have been one or two Summers before John Henry died. I could tell if I was home and looked at my accounts. I do not read or write. That is the only year I have worked steady for Gilbert.

It seems to me that Gilbert has bought some salt grass, if my memory serves me right. It was used either on the Ackerman farm or on his own farm. I suppose it was used as manure. I couldn't tell you if Peter Ackerman owned any meadow land or not. I have heard people say that he paid a certain price per
20 load for it.

I know where the woodland of Peter Ackerman lays, but I can't tell how many acres there are. The oak wood that Gilbert traded with Daniel Romaine was cut on the south side of the turnpike. His other woodland lay up in the big swamp, just above my house. The woodland which went with the farm Gilbert has lay on the south side of the turnpike. Gilbert did not have the woodland in the big swamp. He did not cut wood there, unless his father gave him permission.

I have seen Gilbert haul bean poles and barrack poles from the
30 upper woods, and Gilbert told me he got them there. I told him the old man would give him fits. No, he wouldn't, he said, because the old man didn't know anything about the bean poles. He said the old man gave him leave to go and cut the barrack poles. I thought the old man would give him fits, because he wouldn't allow anybody to cut in there.

I guess the old man got all his firewood there. I have seen Gilbert hauling firewood from there, and he said he was hauling

it for the old man. Gilbert did not get any from there for himself, except what the old man told him he could have. As I have said before, I mean the barrack poles. Gilbert told me that the old man told him he could get the barrack poles there.

Gilbert always cut his own firewood in the woods south of the turnpike. I remember Gilbert cleared a part of the woods on the south side of the turnpike, and the old man told me it was time for Gilbert to stop cutting that wood off.

I can't tell what Gilbert did with that wood, or where he took it. It seems to me that Daniel Romaine took a part of the hemlocks; but I won't be sure. 10

I know that Peter Ackerman once had a piece of meadow land, near John Henry's, that Gilbert used to use. It was about three acres—maybe more, maybe less.

All I can say as to what became of it is, that Gilbert said he had sold it to John Henry.

I don't know as Peter Ackerman ever told me anything about this meadow. I have heard Gilbert and John Henry talk about it.

I think I had the conversation with Gilbert about the tenant house in the Spring, as the old man died in June. 20

The old man's health wasn't very good for some time before he died. He said he felt well at times, but he had a great deal of fluttering about his heart, and he was plagued in his bowels. He said he was pretty well worn out. He used to be a hard worker. He did as much work in one year, when he had his health, as his boys did together in one year.

Gilbert did not build the tenant house; it wasn't built.

Gilbert and I had a little spat together two years and a half or three years ago. 30

Q. You haven't been on good terms with him since, have you?

A. I have to him; I always speak to him and talk to him when I see him, the same as ever. I have no hard feelings toward him. I don't know what he has toward me.

I know a man named Henry Leswing in Saddle River Township.

I know Adam Hubschmidt.

I had no difficulty with Gilbert just before the old man died on the road at the bank. I had a difficulty with Leswing; he was road master.

Q. Did you ever tell Leswing or Adam Hubschimidt that you would do all against Gilbert you could.

(Question objected to.)

A. I don't know as I ever said that. I said if I was called up as a witness, I wouldn't take a false oath for either side; I didn't care which it was.

10 Q. Was there any difficulty between you and Gilbert just before his father's death.

Q. No difficulty other than this: We were working on the road there. The road-master wanted to plough down a hill. Gilbert said if he did he would prosecute me and Leswing both. I told Leswing to go ahead and do it, that the law gave him the right. Gilbert carried on so that Leswing stopped and went to work again.

I believe Gilbert has got a pair of mules. I know of their being in the pound. I put them in myself. I think it is two years 20 ago this Spring. I found them pasturing on the road, with the harness on—their checks were off. I knew whose they were, of course. I only did it for deviltry, because Gilbert said that every hoof he found on the road he would put in the pound. I don't know where the mules came from. I was coming from below and I saw them when I was coming up. I was two or three hundred yards from them, and when I came up to them I took them by the bits and gave them to Gilbert and said, there are a couple of mules to put in the pound. Gilbert was pound-master. He said he would never pay me and I never asked him 30 for the pay.

I think I was born in 1821.

And being again examined in chief he says:

I mean when I say that Mr. Ackerman was broken down, a couple of years before his death, that he complainad of a fluttering about his heart and trouble in his bowels. I suppose he had worked too hard in his young days.

He used during the last few years to work some around the place, except the last two years, when he did not do much.

He did considerable on John Henry's place after John Henry died; cutting brush and making fences and hoeing.

He did not do a great deal the year before his death, or after he sold John Henry's place.

PETER his X mark VAN DELINDA

Taken, sworn to and subscribed, this 21st day of February, A. D. 1871, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery. 10

Whereupon the examination was adjourned to Friday, March 3d, 1871, at 10 o'clock in the forenoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

DEMAREST HOPPER,

a witness produced on the part of the defendants, being duly sworn, on his oath saith:

I reside at Passaic. I am a carpenter. I have been engaged in that trade from 16 to 17 years. I know the house where Peter H. Ackerman used to live, and where his son Gilbert now lives. 20 It is at Saddle River.

I have known the place nigh to 12 years.

There is an addition built to this building, and it is said that Gilbert built it. I don't know whether he did or not.

This addition is what I would call a kitchen to the main building. There was a kitchen, and it was made larger.

I can't say whether the kitchen was an addition to the main building or whether it was built with the building.

I don't know what this addition is used for. I do not know when this addition—said to have been built by Gilbert—was 30 built. It was said eight or nine years ago.

I have lately examined the addition said to have been built by

Gilbert. I examined it last Wednesday, I think. I examined it for the purpose of seeing what the buildings were worth to put up eight years ago.

As near as I could find out, the kitchen was enlarged in length four feet and three inches. The gable of the old building was fifteen feet eight inches; the addition was carried out four feet three inches. That was the width of the new addition.

I mean to say it was extended out this width—a distance of four feet three inches. The hight of the addition is 12 feet—that is, 10 the posts. It is two stories—a story and garret; a story and a half they call it. It has a shingle roof.

I have made an estimate of what it would cost to erect this addition, of which we have been speaking, some eight or nine years ago.

According to my estimate it ought to have cost, at that time, to erect it, $50.

I have examined a brick building standing near this house, used for a kitchen or wash house. I examined that, I think, last Thursday or last Wednesday. I do not know by whom this was 20 built. I have heard it was built by Gilbert Bogert. I don't know who it was built by. This is the only wash house I saw on these premises. I made an examination of this brick wash house to find out what it was worth to build eight years ago.

I made an estimate of what it was worth to build at that time.

According to my estimate it was worth $154 to build at that time.

This building is in size twelve feet front and rear and thirteen feet deep. The brick work is carried up seven feet. It has a span 30 roof, and of shingle.

I have been accustomed to erect buildings of the character of those I have described. In my judgment these additions are worth $408 in that neighborhood if it was to be done now—I mean if they were built new now.

They seem to be in good order and as they now stand would be worth $350.

And being cross examined he says:

I looked inside the brick building. I have never been inside either of these buildings.

I am about thirty-four years old.

The executors of the estate employed me to look at these buildings. Mr. Cadmus employed me to do it this week. He has not paid me for my work. There was no bargain made as to what he should pay me.

I don't know what I expect to be paid for it. Most anything does me. 10

I have not been personally acquainted with Mr. Cadmus, the executor more than a few days. I have known him some time—how long I can't say. I think Gilbert Bogert lives at Saddle River, Bergen County. I have never taken any notice of these buildings until this week. The estimates that I made, I made this week.

And being again examined in chief he says:

In estimating the cost of these buildings, and what they ought to have cost eight years ago, I took into account the work that was done on the inside of the buildings. 20

DEMAREST HOPPER.

Taken, sworn to, and subscribed this 3d day of March, A. D. 1871, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

Whereupon the examination was adjourned to Tuesday, October 31, 1871, at 10 o'clock in the forenoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

RICHARD VAN DER HOOK,

a witness produced on the part of the defendants, being duly sworn, on his oath saith— 30

I knew Peter H. Ackerman. I did not work for him. I

worked with Gilbert Ackerman. I lived in the house on the upper farm where John Henry had lived. I worked for Gilbert two years and two months—that was five years ago when I came there. The old man was alive when I left. He (Peter) sold the upper place while I lived there. I moved to Lodi when I went away from there.

I was the one who Gilbert wanted to build the tenant house for on the lower farm. Gilbert told me he would build a little house for me there, and the old man would not let him do it. 10 When I went to Lodi I stopped working there. I left when the old man sold the upper farm, where John Henry used to live. The old man kept a horse all the time I was working there with Gilbert. The old man furnished the corn and oats for the horse; the hay was furnished by Gilbert. That was so all the while I was there. I think it was in April that I came there—the last of April. The corn and oats which the old gentleman fed his horse were kept in the granary, on the upper place. Sometimes I brought the grain down from the upper place, and sometimes he brought it himself. The old man tended to feeding his own 20 horse. He had corn and oats in the granary, on the upper place, when I went there. The first year I was there the old man raised plenty of corn and oats; the second year, too. He raised them on the upper place.

And being cross examined he says:

A little over six years. I came from Holland.

Q. Where did you learn English; in Holland or in this country?

A. I can't understand that.

I live now at Lodi. I work on the railroad for Mr. Rennie. I 30 put ties in and take them out—put rails down. I am a laborer. I never had any trouble with Gilbert. I don't know whether it was in June or July that I left Gilbert. My year was not up when I left.

I left because my wife and children were living in Lodi, and it was too far for me to walk every morning and night. I had some potatoes in the ground at that time on Gilbert's place; a little. I

did not take them. I asked Gilbert one time on the car for them, and he told me he would not give them to me; he would not let me have them. He did not say why. I am forty-one years old.

While I worked with Gilbert I got my firewood from him. I made the bargain with him that he must give me his firewood. I cut it myself; sometimes Gilbert helped me. I don't know in whose woods this was cut. I guess it was in Gilbert's.

Peter Ackerman and I had no misunderstanding. I had no business with Peter Ackerman. I worked for Gilbert.

I don't know that the old man was not very friendly to me. *10*

Peter Ackerman asked me to bring some corn over for him from the granary. He did not ask me to do anything else.

I recollect of telling the old man I was working for Gilbert, and not for him.

his
RICHARD VAN X DER HOOK.
mark

Taken, sworn to, and subscribed this 31st day of October, A. D. 1871, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

JAMES CADMUS,

a witness produced on the part of the defendants, being duly *20* sworn, on his oath saith:

I live in Bergen County, on the Passaic River. I knew Peter H. Ackerman when he was alive. I know his son Gilbert, and knew his son John Henry when he was alive. My son married a daughter of Peter H. Ackerman. I remember of Peter H. Ackerman selling the upper farm where John Henry lived. Gilbert was at my house shortly after the sale of the upper farm. I could not say how long. It was not long. It was before the death of Peter Ackerman. I had some conversation with Gilbert about the sale of this farm. We were having conversation and *30* I said to him: So your father has sold his farm at last? Yes, said he, and now he can sell his other farm, the quicker the better. I then said: What are you going to do? He said he would make the best he could of it, or something like that. Then

we got talking of farming after that. My wife and the whole family were with me, except the children, who were at school. Cornelius was there, and, I think, Gilbert's sister, Cornelius's wife.

I am acquainted some with the value of lands in the Township of Saddle River. I could not tell what the lower farm would sell for. I could not tell what the farm is worth now. At the time of Peter's death it was worth from $12,000 to $14,000 for farming purposes. I don't know what land is selling for around
10 there per acre. I live, I suppose, about two miles and a half from there. I am a farmer.

And being cross examined he says:

I am sixty-six years of age. My son Cornelius is one of the defendants in this suit—he lives with me.

Peter Ackerman's widow did not live with Cornelius after Peter's death. She came there on visits—sometimes long visits, but she did not have her home there. She died there. I don't remember when she died there. I haven't charged my mind with it. Shortly after she was a witness in this case. I can't
20 tell how long after. She committed suicide.

And being again cross examined in chief he says:

Mrs. Ackerman was not out of her mind. She was sensible enough a little while before she died. She was very-much worried just before her death.

Q. Was she insane; out of her mind, or wasn't she for a little while before her death?

A. It began to look so.

JAMES CADMUS.

Taken, sworn to, and subscribed, this 31st day of October,
30 A. D. 1871, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

Counsel for defendants offer in evidence a certified copy of the

will of Peter H. Ackerman, which is marked 'Exhibit D, 6,' on part of defendant.

The following is a List of Witnesses examined in the foregoing cause,

and the number of the page on which the testimony of each one begins:

Injunction.

NEW-JERSEY, TO WIT:

{ L. S. } To Isaac N. Voorhis and Cornelius Cadmus, executors of the last will and testament of Peter H. Ackerman, deceased, and each and every of them greeting:

WHEREAS, It hath been represented to us, in our Court of Chancery, on the part of Gilbert B. Ackerman, complainant, 20 that he has lately exhibited his bill of complaint against you, the said Isaac N. Voorhis and Cornelius Cadmus, executors of Peter H. Ackerman, deceased, and Isaac N. Voorhis and Ann, his wife, Cornelius Cadmus and Rachel Elizabeth, his wife, John A.

Bogert and Margaret Maria, his wife, John Edmund Ackerman, Peter Gilbert Ackerman, George Ackerman and Jacob Ackerman, defendants, to be relieved touching the matters set forth in the said bill, in which said bill it is—among other matters—set forth that you, the said defendants, are combining and confederating with others to injure the complainant, touching the matters set forth in the said bill, and that the actings and doings of you, the said defendants, are contrary to equity and good conscience.

10 We therefore, in consideration of the premises, and of the particular matters set forth in the said bill, do strictly enjoin and command you, the said Isaac N. Voorhis and Cornelius Cadmus, executors of Peter H. Ackerman, deceased, and each and every of you, under the penalty that may fall thereon, that you, and every of you, do absolutely desist and refrain from selling or conveying the whole or any part of the farm described in said bill, to wit: All that parcel of land and premises situate, lying and being in the Township of Saddle River, in the County of Bergen and State of New-Jersey: beginning at the southeasterly
20 corner thereof, in the line of land of Nicholas S. Demarest, in the middle of the Saddle-River brook, and running thence (1) north twelve degrees west along the middle of said brook nine chains to land of Adam Hubschmidt; thence (2) south seventy-nine and a-half degrees west three chains to the middle of the road leading to Red Mills; thence (3) north ten degrees west along the middle of said road four chains and forty-five links to land of said Hubschmidt; thence (4) south seventy-eight degrees west thirty-one chains and ninety-two links to land of said Hubschmidt; thence (5) south nine and a-half degrees east five
30 chains to the southerly line of the turnpike from Hackensack to Paterson; thence (6) north seventy-five and a-half degrees west along the southerly line of said turnpike twenty-two chains and ninety links to land of John Colwell; thence (7) south seventeen and three-quarters degrees west nine chains and fifty links; thence (8) north seventy-seven degrees east five chains and ten links; thence (9) south seventeen and three-quarters degrees

west ten chains and thirty links; thence (10) north seventy-seven degrees east fifty-four chains and thirty links to place of beginning; containing seventy-three acres and fifty-three hundredths of an acre, until you, the said defendants, shall have fully answered the said bill of complaint and our said Court shall make other order to the contrary.

Witness, his Honor, Abraham O. Zabriskie, our Chancellor, at Trenton, the twenty-seventh day of August, in the year of our Lord one thousand eight hundred and sixty-nine.

BARKER GUMMERE, Clerk. *10*

CHARLES H. VOORHIS, Solicitor.

A true copy. H. S. LITTLE, Clerk.

On Bill for Relief.

Interlocutory Decree.

This cause having been regularly noticed and set down for hearing at the term of February last, and the hearing thereof having been duly referred to the Vice Chancellor, and the said Vice Chancellor having heard the bill, answers, replication and proofs of the respective parties, and also the arguments of the counsel of the respective parties therein, and having duly considered the same, and being of opinion that the complainant is not entitled to a conveyance of the land described in said bill as thereby prayed, and that the 10 injunction heretofore issued in this cause should be dissolved, and that the complainant has erected buildings upon the premises of a permanent nature, and that he did this under the belief that the farm would be his, and in good faith, and that he should be allowed a proper sum for their value, it is thereupon, on this third day of February, eighteen hundred and seventy-three, on motion of Charles H. Voorhis, of council with complainant, ordered, adjudged and decreed by the Chancellor that the prayer of said bill for a conveyance be denied, and that the injunction heretofore issued in this 20 suit be dissolved, and that the defendants are entitled to be allowed for rental value of said premises, to be paid by the complainants for the use and occupancy thereof, according to the provisions of the rental contract between the complainant and Peter H. Ackerman, as admitted in the defendant's answer in this suit; and that it be referred to William S. Banta, Esquire, one of the masters of this court, to ascertain and report the proper sum to be paid to said complainant for the value of said buildings, and also the amount due for the complainant for the rent aforesaid, and 30

what part of said rent accrued previous to the death of the testator, and what part thereof subsequent thereto.

A. O. ZABRISKIE, *C.*

I respectfully advise the Chancellor to assign the above decree.

AMZI DODD, *V. C.*

February 3d, 1873.

A true copy. H. S. LITTLE, Clerk.

Opinion.

10 THE VICE CHANCELLOR.

The complainant, Gilbert B. Ackerman, brings this suit against the executors and devisees in the will of his father, Peter H. Ackerman, deceased, to compel a conveyance to himself of a farm of about seventy-four acres, situate in Saddle River, in the county of Bergen. His father died on the second of June, eighteen hundred and sixty-nine, at the age of seventy years, leaving a last will and testament, which has been duly proved in the surrogate's office of said county. The testator was possessed of a considerable 20 estate, personal and real, though the precise value of it does not certainly appear in the cause. After a bequest of ten thousand dollars and of his household furniture to his wife, he directs all his real estate in Saddle River to be sold, and the proceeds, together with the residue of his personal property after the legacy to his wife, to be divided into five equal shares—one share to go to his son, the complainant, one share to each of his daughters, and one share to be divided equally among his grand-children, the children of his deceased son, John Henry Ackerman. Isaac N. 30 Voorhis and Cornelius Cadmus, the sons-in-law of the testator, are appointed the executors of his will.

The complainant receives an equal share with the other children of his father, but is dissatisfied with this equality,

and charges that the will is a fraud upon his rights. He alleges that he worked upon the farm in question, being his father's homestead, till he became of age, in eighteen hundred and fifty-five, when he married, and continued to live there and work with and for his father till the spring of eighteen hundred and fifty-seven, when he made an arrangement with his father, under a verbal agreement, which is set out as follows: "It was understood and agreed between them that your orator should cultivate the said farm and a five acre lot at his own cost and expense, and for his own 10 benefit, and should, at his own cost and expense, provide all the buildings and improvements he required; should keep all the buildings and improvements in repair at his own cost and expense; should pay all the taxes levied and to be levied against said farm, and should pay to his said father the sum of one hundred dollars, in cash, in each year as long as he lived, and should allow his father one-half of the chickens, and take care of them, and should find him the feed for one horse, for what use your orator had of the horse; and in consideration thereof, that upon the decease 20 of his said father, the said farm and five acre lot should belong to your orator."

The agreement thus alleged was afterwards, as complainant says, modified by omitting from its operation the five acre lot. He further says that he took possession of the farm under this agreement, and cultivated the same, repaired the fences and buildings, erected such additional buildings and fences as were needed, and had the whole house painted, including the part occupied by his father, firmly believing that his father would carry out said 30 arrangement by devising said farm to him upon his decease. He alleges that he fully performed the agreement on his part, and prays that the devisees and executors may be ordered to convey the farm to him in pursuance of the agreement on the part of his father.

There are several aspects of this case which, in my judgment, are unfavorable to the claim set up by the complainant, and which, if not decisive against it on strictly technical grounds, do not commend it to the exercise of that discretion on which alleged contracts of this 40

nature depend in a court of equity for compulsory specific performance But I shall not advert to these aspects, or to any point presented by the pleadings and proofs, except the single and primary point that the alleged contract, in pursuance of which the farm was to belong to the complainant, has not been sufficiently or satisfactorily proved. I am of opinion that the agreement or understanding set out in the bill was not, in fact, made by the father and the complainant. It may be true that the expectation existed on the
10 part of the son that the farm would be his, and that such a result was contemplated by the father as not unlikely or as altogether probable in the final division of his estate, but no definite, positive and binding contract, even of a verbal description, was entered into which can now be enforced.

The yearly value of the premises which the complainant had possession of, was largely in excess of what he was to pay—his payments, in fact, being inadequate as rent, and the advantages of the arrangement, in respect to such possession, being manifestly on the side of the son. The
20 improvements of a permanent nature, put up by the complainant, are not of such value or extent as to furnish any strong argument in support of the view that he relied, as he claims, on the validity of the contract that the land should ultimately be his. But inasmuch as some improvements were made, not such as an ordinary tenant would be likely to erect, and the defendants in their answer, while denying that the verbal agreement was ever made as alleged and asserting its invalidity, if made, still tender themselves ready and willing to contribute their proper share for a
30 compensation for said improvements. I am willing to advise a decree, that it be referred to a master to ascertain and report what the fair allowance is that would meet, in this respect, the conceded equity of the case, and that such allowance be accordingly made. To decree more than this would, I am satisfied, be inequitable and wrong. I am entirely unable to perceive any grounds on which the complainant can be held to have suffered injustice at the hands of his father, or to have established the charge that the large and equal provision made for himself in the will

of which he complains, was in violation of good faith and a fraud on his rights.

I shall advise as above.

On Bill for Relief.

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

The humble petition of Gilbert B. Ackerman, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by an interlocutory decree made in the Court of Chancery by Abraham O. Zabriskie, Chancellor of New Jersey, bearing date on the third day of February, in the year one thousand eight hundred and seventy three, wherein the said Gilbert B. Ackerman was complainant and the said Isaac N. Voorhis and Cornelius Cadmus, executors of Peter H. Ackerman, deceased, Isaac N. Voorhis and Ann, his wife, Cornelius Cadmus and Rachel Elizabeth, his wife, John E. Ackerman, Peter G. Ackerman, George Ackerman and Jacob Ackerman, were defendants, in this respect, to wit:—that the said decree adjudges that the prayer of the complainant's bill for a conveyance be denied, and that the injunction theretofore issued in said suit be dissolved, and that the defendants are entitled to be allowed for rental value of said premises, whereof conveyance was prayed to be paid by said complainant for the use and occupancy thereof.

And your petitioner humbly appeals from said decree of the Chancellor, on the ground that the same is erroneous, for that the said prayer for conveyance should have been granted, and your petitioner is entitled to the specific relief sought and prayed for in his said bill of complaint, and the reference set forth in said interlocutory decree ought not to have been ordered, and the said injunction ought not to have been dissolved.

Your petitioner therefore prays that the said decree of said Chancellor may be reversed, set aside, and for

nothing holden; and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

CHAS. H. VOORHIS,
Solicitor and of Council with Appellants.

Dated August 4th, 1873.