Phillips & Boswell, printers, No. 4 Chancery-court, Trenton.

New Jersey Court of Errors and Appeals.

Between

THE WEEHAWKEN FERRY COMPANY, appellants,

and

CHARLES G. SISSON and WIFE and others, respondents,

On appeal from decree of Chancellor.

BILL OF COMPLAINT.

[Filed March 19, 1853.]

IN CHANCERY OF NEW JERSEY.

To the Honorable Benjamin Williamson, Chancellor of the State of New Jersey.

Humbly complaining, showeth unto your Honor your orator, Francis Price of Weehawken, in the county of Hudson, and state of New Jersey.

That on or about the fifteenth day of March, A. D. eighteen hundred and nine, one Mindert Garrabrants, junior, of Communipaw, in the (then) county of Bergen, and state of New Jersey, being seized in fee simple of certain lands, hereinafter described, made, executed, and delivered a certain deed of trust of said land to one John Van Houten, junior, and Helmah Van Houten, of the township of Bergen, in the county 10 and state aforesaid, which said deed was so made in compliance and in conformity with an order and decree of this honorable court, made on the ninth day of September, A. D. eighteen hundred and nine, and to which order and decree, now of record in the office of the clerk of this honorable court at Trenton, your orator prays leave to refer, if it should become necessary for him so to do; and your orator further showeth, that the said Mindert Garrabrants, junior, duly executed the said deed of trust under his hand and seal, and delivered the same to the said John Van Houten, junior, and Helmah Van 20

Houten, which said deed is in the words and figures following, that is to say:

"This indenture, made the fifteenth day of March, in the year of our Lord one thousand eight hundred and nine, between Mindert Garrabrants, junior, of Gomonopaw, in the county of Bergen, and state of New Jersey, of the one part, and John Van Houten, junior, and Helmah Van Houten, of the township, county, and state aforesaid, of the other part, witnesseth, that the said Mindert Garrabrants, junior, as well
10 for and in consideration of the sum of one dollar to him in hand paid, as for and in consideration of the trusts, covenants, and agreements hereinafter contained, hath given, granted, bargained, and sold, aliened, released, enfeoffed, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey, and confirm unto the said John Van Houten, junior, and Helmah Van Houten, their heirs and assigns, all and singular that certain piece or parcel of land, situate, lying, and being at Gomonopaw, whereon the said Mindart Garrabrants now lives, bounded on the
20 east by the bay called Gomonopaw bay on the north, and west by lands of Cornelius Garrabrants, and on the south by the road that leads to Gomonopaw, containing three acres, be the same more or less. Also one other certain piece of land and meadow, situate at Gomonopaw, in the township and county aforesaid, on the east by lands of Cornelius Garrabrants, northwardly by the Mill creek, and westerly by lands of Henry Blinkerhoff and of Garret Van Horn and Michael Vreeland, and southwardly by the aforesaid road leading to Gomonopaw, containing one hundred and twenty acres, be the same more
30 or less. And also one other certain piece or parcel of land, situate, lying, and being at Slonga, in the said township and county of Bergen, bounded on the east by the North river, northwardly by lands of Cornelius Garrabrants, westwardly by lands late of Helmah Van Houten, deceased, and southwardly by lands belonging to the proprietors of a certain piece of meadow lying east of the same, containing fifty acres, be the same more or less: together with all and singular the messuages, houses, barns, buildings, improvements, hereditaments, and appurtenances, and all and singular the ways, waters,
40 woods, easements, profits, privileges, hereditaments, and ap-

purtenances to the same belonging or in any wise appertaining, and also all the estate, right, title, interest, property, claim, and demand whatsoever, as well in equity as in law, of him, the said Mindert Garrabrants, junior, his heirs or assigns, of, in, and to the same—to have and to hold all and singular the above mentioned and described pieces and parcels of land and premises, with the hereditaments and appurtenances, unto them, the said John Van Houten, junior, and Helmah Van Houten, their heirs and assigns, in trust nevertheless, that the said John Van Houten, junior, and Helmah Van Houten, and 10 the survivor of them, and the heirs of such survivor, shall permit the said Mindert Garrabrants, junior, and his family, and Mindert Garrabrants, senior, the father of the said Mindert Garrabrants, junior, during their joint and several lives, to use, occupy, possess, and enjoy all and singular the said messuages, lands, and tenements, and to take and receive the rents, issues, and profits thereof for the support and maintenance of the said Mindert Garrabrants, junior, and Mindert Garrabrants, senior, during their lives, respectively—and upon this further trust, that after the death of the said Mindert Garrabrants, junior, 20 and the said Mindert Garrabrants, senior, that then the said John Van Houten, junior, and Helmah Van Houten, and the survivor of them, and the heirs of such survivor, shall convey the whole of the said messuages, lands, and premises to Mindert Garrabrants the third, son of the said Mindert Garrabrants, junior, and to such other lawful issue as he, the said Mindert Garrabrants, junior, shall then have, share and share alike, in fee simple, as soon as he or they shall arrive at full age; and in case of no lawful issue, then to the heirs at law of the said Mindert Garrabrants, junior, share and share alike, 30 in fee simple, as soon as he or they shall arrive at full age, to the only proper use, benefit, and behoof of the said John Van Houten, junior, and Helmah Van Houten, their heirs and assigns for ever, in trust as aforesaid; and the said Mindert Garrabrants, junior, doth hereby, for himself, his heirs, executors, and administrators, covenant and agree to and with the said John Van Houten, junior, and Helmah Van Houten, their heirs and assigns, that he, the said Mindert Garrabrants, junior, is lawfully and rightfully seized in his own right of a good, sure, and indefeasible estate of inheritance in fee simple of 40

and in the said premises, without any limitation, mortgage, judgment, or other matter, cause, or thing whatsoever, to charge, alter, or encumber the same in title or estate or otherwise, and that he hath good right, full power, and lawful authority in his own right, to grant, bargain, and convey the same to the said John Van Houten, junior, and Helmah Van Houten, their heirs and assigns. And also, that they, the said John Van Houten, junior, and Helmah Van Houten shall for ever hereafter peaceably and quietly have, hold, use, occupy,
10 possess, and enjoy the premises, with the appurtenances, to and for the uses and trusts aforesaid, without the interruption, molestation, or denial of him, the said Mindert Garrabrants, junior, or any other person or persons claiming or to claim the same, or any part thereof. And also, that he, the said Mindert Garrabrants, junior, and his heirs the premises hereby granted, with the appurtenances, unto the said John Van Houten, junior, and Helmah Van Houten, their heirs and assigns, against him, the said Mindert Garrabrants, junior, his heirs and assigns, and against all and every other person and
20 persons whomsoever, shall and will warrant, and by these presents for ever defend; and the said John Van Houten, junior, and Helmah Van Houten do hereby, for themselves, their heirs, executors, and administrators, covenant and agree, to and with the said Mindert Garrabrants, junior, his heirs and assigns, that they, the said John Van Houten, junior, and Helmah Van Houten, will well, truly, and faithfully do, execute, and perform the trusts and conditions on their part to be done, executed, and performed."

And your orator further showeth, that on or about the fif-
30 teenth day of March, A. D. eighteen hundred and nine, the said Mindert Garrabrants duly acknowledged the said deed of trust before Philip Williams, he then being one of the masters in this honorable court, and that the said deed was afterwards duly recorded in the clerk's office of said County of Bergen, in Book C. 2 of Deeds for Bergen county, pages 391, 392, and 393, as by the said book of records will more fully appear, and to which, for greater certainty, your orator prays leave to refer, if it should become necessary so to do.

And your orator further showeth, that the said John Van
40 Houten, junior, and Helmah Van Houten are both deceased,

they having died before Mindert Garrabrants, the youngest (son of the said Mindert Garrabrants, junior,) came of age, leaving only one son, named John A. Van Houten, heir at law of the survivor and sole trustee.

And your orator further showeth, that the said Mindert Garrabrants, junior, since the execution of the said deed of trust, and as your orator is informed and believes, on or about the first day of August, eighteen hundred and forty-six, departed this life, having had only one child as his lawful issue, being a son named Mindert Garrabrants. And your orator 10 further showeth, that the said deed of trust gave to Mindert Garrabrants, senior, the father of the said Mindert Garrabrants, junior, and also to himself, the said Mindert Garrabrants, junior, the use, occupancy, rents, issues, and profits of the said lands during the terms of their natural lives, and by the terms of the said deed, as well as by the said decree of the Chancellor, directing the same to be made, to convey the said property to Mindert Garrabrants, the youngest of the three of the same name, upon his attaining the age of twenty-one years, and to such other lawful issue as the said Mindert the 20 second might then have, and whom your orator will throughout this, his bill of complaint, designate as Mindert Garrabrants the third, and his father as Mindert Garrabrants the second, and his grandfather as Mindert Garrabrants the first; and your orator further showeth, that the said trustees died before Mindert the third came of age, as before stated, and that the said John A. Van Houten, the now sole trustee, never has made any such conveyance conformably to the said trust deed, but although often requested, neglects and refuses so to do. 30

And your orator further showeth unto your Honor, that the said Mindert Garrabrants the third hath departed this life intestate—but when, your orator does not know—leaving only two heirs at law, named Mary Elizabeth, who hath intermarried with and is now the wife of Charles G. Sisson, and Effie Garrabrants, who hath intermarried with and is now the wife of James Van Buskerck.

And your orator further showeth, that Mindert Garrabrants, junior, (the second) and Effie his wife were divorced *a vinculo matrimonii* in the year eighteen hundred and eight, and that 40

she is still living, but has released her dower, and all right in and to the said lands to him, the said Mindert the second, in his lifetime, by deed bearing date the fifteenth day of March, eighteen hundred and nine, which deed was duly acknowledged by the said Effie Garrabrants, and recorded in the Clerk's office of the county of Bergen, on the thirteenth day of June, eighteen hundred and ten, in Book E. 2 of Deeds for Bergen county, pages 13, 14, and 15, as by reference thereto will fully appear.

10 And your orator further showeth, that the lands described in the foregoing trust deed and decree virtually belonged to the said Mindert Garrabrants the third, at and from the time of his attaining the full age of twenty-one years, encumbered only by the life estate of Mindert Garrabrants the first and second.

And your orator further showeth unto your Honor, that the said Mindert Garrabrants the third, during his lifetime, that is to say, on the eighth day of August, A. D. eighteen hundred and thirty-five, entered into a contract in writing with one 20 Joseph Danielson and William D. Garmo for the sale to them of all his right, title, and interest in the Slonga tract, being part of the lands described in said trust deed, for the sum of twenty-two dollars and fifty cents an acre (which at that time was a full and sufficient price therefor), and to be conveyed to them when demanded, and they at the same time paid to him the sum of twenty-five dollars to bind the bargain, which contract, otherwise called a receipt, is in the words and figures following, that is to say:

"Bergen, August 8, 1835, Received from Joseph Danielson 30 and William D. Garmo the sum of twenty-five dollars, which is a part of the consideration money for a lot, called Slonga lot, lying in Bergen woods, for the sum of twenty-two and a half dollars per acre, deed when demanded."

And your orator further showeth, that on the twenty-ninth day of August, A. D. eighteen hundred and thirty-five, the execution or signing of the said receipt was duly proved by Jasper Britten, the sole subscribing witness, before Jonathan D. Miller, esquire, he then being a master in this honorable court, as by a certificate thereof, duly signed by him on the 40 back of the said receipt or contract, will fully appear, and

that, on the sixteenth day of September, eighteen hundred and thirty-five, the said last mentioned paper was duly recorded in Book P. 3 of Deeds for Bergen county, page 384, as by the said paper, duly certified on by the clerk of said county of Bergen, and as by the record thereof will fully appear (which your orator contends is notice of the said contract to all claimants to said lands), and to both or either of which your orator prays leave to refer, if it should become necessary for him so to do.

And your orator further showeth unto your Honor, that the 10 said Joseph Danielson and William D. Garmo, on or about the first day of June, eighteen hundred and thirty-six, executed two instruments in writing, by which they transferred to your orator all of their right, claim, and title to the said lands called Slonga, which said two instruments, being on one piece of paper, are in the words and figures or to the effect following, that is to say: "Received, Weehawken, June 1st, 1836, from Francis Price, three hundred and thirty-seven dollars and fifty cents, in full for my one half part of a purchase of a lot of ground from me and Miçhel Saunier; said lot is situated on the 20 hill above Slonga meadow, being the lot purchased by us from Samuel T. Moore, and we warranting it to contain three acres and a half—if more, said Price to be benefited without charge; the deed to be free from lien or encumbrance—the deed to be delivered within ten days. Received, also, the additional sum of one hundred and fifty dollars, in full for a contract made between myself and William D. Garmo, on the one part, and Mindert Gąrrabrants, on the other, for a tract of land situated in the township and county of Bergen, containing about 33 acres, adjoining said William D. Garmo on the north, 30 on which thirty-one dollars has been paid; and the said Price is hereby authorized to act in the said matter, in my name or otherwise, with said Mindert and all parties concerned as fully as I could or might have done previous to making this contract, the same to be made and delivered at the same time as the deed."

"Mr. Jonathan D. Miller.—Sir: You will please deliver to Mr. Francis Price a contract, in your possession, made between us and Mindert Garrabrants for a tract of land, situated adjoining said William D. Garmo and Robert Ennitt, as expressed in 40

the accompanying receipt," as in and by the said instrument in writing, now in your orator's possession, and ready to be produced and proved as this honorable court shall direct, will more fully and at large appear, and to which your orator prays leave to refer, if it become necessary for him so to do; and your orator further showeth and humbly insists, that by virtue of the receipt or contract of the said Mindert Garrabrants the third, hereinbefore recited, and so given to the said Joseph Danielson and William D. Garmo, and recorded as
10 aforesaid, and by virtue of the two last papers hereinbefore set forth, he hath become entitled in equity to the fee simple in the said lands referred to in the said last mentioned writings.

And your orator further showeth, that he hath frequently and in a friendly manner applied to the said Charles G. Sisson and Mary Elizabeth his wife, and James Van Buskerck and and Effie his wife, and John A. Van Houten, to convey to him all of their right, title, and interest in the said lands, in conformity to and in concurrence with the said three last mentioned and hereinbefore recited papers, as in equity and
20 justice they ought to have done, but they always have utterly neglected and refused, and still refuse so to do.

And your orator further showeth, that on or about the sixth day of October, A. D. eighteen hundred and thirty-four, the said Mindert Garrabrants, junior, or the third, and Rachel his wife sold and conveyed, by deed with full covenants of warrantee, eight acres, or thereabouts, of the lands in the said contracts referred to, being part of the lands described in said trust deed, to one Samuel T. Moore, which said deed was duly acknowledged by them before Garret Sip, he then being
30 a commissioner of deeds for the (then) county of Bergen, as by a certificate of the fact, duly endorsed on the said deed and signed by him, will fully appear; and the said deed was duly recorded in Book N. 3 of Deeds for Bergen county, pages 217, 218, and 219, as by the record thereof, now remaining in the Clerk's office for Bergen county, will fully appear, and to which record and to the said deed your orator prays leave to refer, if it should become necessary for him so to do.

And your orator further showeth, that on or about the twenty-fourth day of August, A. D. eighteen hundred and
40 thirty-five, the said Mindert Garrabrants the third and Rachel

his wife sold and conveyed by deed, with full covenants of warrantee, thirty-two acres, or thereabouts, another part of the lands referred to in the said receipt-contract, and conveyed by the said deed of trust to one Thomas Biggs, which deed was duly acknowledged by the said grantors, and recorded in the Clerk's office of the said county of Bergen, on the thirty-first day of August, eighteen hundred and thirty-five, in Book P. 3 of Deeds for Bergen county, pages 219, &c., as by reference to said deed and book of deeds will fully and at large appear, and to which your orator prays leave to refer, if it 10
should become necessary for him so to do.

And your orator further showeth, that on or about the twenty-fifth day of August, eighteen hundred and thirty-five, the said Samuel T. Moore and Hannah his wife sold and conveyed to one Miçhel Saunier and Joseph Danielson jointly, by deed of warrantee, bearing date the day and year last aforesaid, three acres and seventy-five hundredths of an acre, or thereabouts, of the land so conveyed to said Samuel T. Moore as aforesaid, which said deed was duly acknowledged by said Moore and wife before Garret Sip, he then being a 20
commissioner of deeds for the (then) county of Bergen, as by his certificate thereof, duly endorsed on the said deed, and signed by him, will fully appear; and the said deed was duly recorded in Liber P. 3 of Deeds for Bergen county, pages 224, 225, and 226, as by the record thereof, now remaining in the Clerk's office for Bergen county, will fully appear, and to which record of which deed your orator prays leave to refer, if necessary.

And your orator further showeth unto your Honor, that on or about the twentieth day of May, A. D. eighteen hundred 30
and thirty-six, the said Miçhel Saunier and Eliza his wife and Joseph Danielson and Rebecca his wife sold and conveyed to your orator, by deed bearing date the day and year last aforesaid, the said three acres and seventy-five hundredths of an acre of land, or thereabouts, conveyed to the said Saunier and Danielson by the deed last above mentioned, which deed is in the words and figures following, that is to say:

"This indenture, made the twentieth day of May, in the year of our Lord one thousand eight hundred and thirty-six, between Miçhel Saunier and Eliza his wife, Joseph Danielson 40

and Rebecca his wife, all of the township of Bergen, county of Bergen, and state of New Jersey, of the first part, and Francis Price, of the same place, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of six hundred and seventy-five dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part,
10 his heirs, executors, and administrators for ever released and discharged from the same, by these presents have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns for ever, all that certain piece, parcel, or tract of land, situated, lying, and being at Slonga, in the township and county of Bergen, and state of New Jersey, described as follows, *viz.* beginning at a stake standing for a corner on the line of land now belonging to the
20 party of the second part, lately to William D. Garmo; then north, thirty-six degrees and thirty minutes east, about ten chains, to the line of land of Robert Annett, late of Cornelius Garrabrants; then along said line south, fifty-four degrees east, five chains and eighty-three links, to a stake; thence south, fifty-eight degrees west, about seven chains and eighty-four links, along the line of the party of the second part, lately belonging to Samuel T. Moore; thence south, sixty-one degrees and thirty minutes west, along said line, two chains and twenty-two links, to a stake on the line of the land of the
30 party of the second part, late of said William D. Garmo; thence along said line, about two chains and sixteen links, to the first mentioned stake and corner, warranted to contain not less than three and a half acres: bounded as follows, *viz.* southwesterly by land of the party of the second part late of William D. Garmo; northwest by land of the party of the second part late of Mindert Garrabrants; northeast by land of Robert Annett, late of Cornelius Garrabrants; and southeast by land of the party of the second part, formerly of Samuel T. Moore—being the same tract conveyed to the parties of the
40 first part by Samuel T. Moore and wife, by deed bearing date

the twenty-fifth day of August, eighteen hundred and thirty-five, and recorded in the Clerk's office in the county of Bergen, in Liber P. 3 of Deeds, pages 224, 225, 226, on the first day of September, 1835—together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first 10 part of, in, and to the same, and every part and parcel thereof, with the appurtenances: to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof for ever.

And the said Michel and Joseph, for themselves, their heirs, executors, and administrators, do covenant, grant, and agree, to and with the said party of the second part, his heirs and assigns, that the said parties of the first part, at the time of the sealing and delivery of these presents, are lawfully seized 20 in their own right of a good, absolute, and indefeasible estate of inheritance in fee simple of and in all and singular the above granted, bargained, and described premises, with the appurtenances, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the said party of the second part, his heirs and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, 30 trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances, of what nature or kind soever.

And also, that the said parties of the first part, and their heirs, and all and every other person or persons whomsoever lawfully or equitably deriving any estate, right, title, or in- 40

terest of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them, shall and will, at any time or times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, heirs and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted,
10 in and to the said party of the second part, his heirs and assigns for ever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required; and the sad Miçhel Saunier and Joseph Danielson do, for their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person and persons whomsoever lawfully claiming
20 or to claim the same, shall and will warrant and by these presents for ever defend."

And your orator further showeth, that on the twenty-third day of September, eighteen hundred and thirty-six, the said Miçhel Saunier and Eliza his wife, and the said Joseph Danielson and Rebecca his wife, duly acknowledged the said deed before Peter Bently, esquire, he then being one of the masters in this honorable court, as by a certificate of said acknowledgment, duly endorsed on the said deed and signed by said master, will fully appear; and your orator further showeth,
30 that the said deed was afterwards, on the twenty-seventh day of September, eighteen hundred and thirty-six, duly recorded in the Clerk's office of said county of Bergen, in Book T. 3 of Deeds for said county of Bergen, pages 217, 218, and 219, as by the said record and by the said deed, now in your orator's possession and ready to be produced and proved as this honorable court shall direct, will appear, and to both of which your orator prays leave to refer, if necessary.

And your orator further showeth, that on or about the eighth day of August, eighteen hundred and thirty-six, the
40 said Samuel T. Moore and Hannah his wife sold and con-

veyed to your orator by deed, with full covenants of warrantee, bearing date the day and year last aforesaid, eight and one half acres, more or less, being the residue of the said land conveyed by the said Mindert Garrabrants the third and Rachel his wife to the said Samuel T. Moore by the deed above mentioned and set forth, which deed to your orator is in the words and figures following, that is to say:

"This indenture, made the eighth day of August, in the year of our Lord one thousand eight hundred and thirty-six, between Samuel T. Moore and Hannah his wife, of the town- 10 ship and county of Bergen, and state of New Jersey, of the first part, and Francis Price, of the same place, late of the city of New York, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of twelve hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators for ever released and discharged from the same 20 by these presents, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns for ever all that certain lot, tract, or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the township of Bergen, in the county of Bergen, and state of New Jersey, at Slonga, beginning at a stake standing in an old ditch, being a line ditch of said lot and a lot of meadow of William D. Garmo, being the south corner 30 of the following described lot; then running along the line of land of the said Francis Price, late of William D. Garmo, north, fifty-two degrees west, twelve chains from the edge of the meadow; then northeasterly, at right angles to the line of the land of Robert Annett, late of Cornelius Garrabrants; then southeasterly along said line to the meadow edge; then southwesterly along said meadow edge to the place of beginning, containing thirteen acres and seventy-five hundredths of an acre, being bounded as follows, *viz.* southwesterly by land of said Price, late of William D. Garmo, northwesterly by land lately 40

belonging to Mindert Garrabrants, northeasterly by lands of
Robert Annett, and southeasterly by Slonga meadow, except-
ing nevertheless therefrom all that portion of said tract here-
tofore conveyed by the parties of the first part to Miçhel Sau-
nier and Joseph Danielson, supposed to be in the month of
October last, as by reference thereto will more fully appear;
the portion herein conveyed is warranted to contain at least
eight acres and a half, and being the same tract of land con-
veyed to the parties of the first part by Mindert Garrabrants,
10 junior, and Rachel his wife, by deed bearing date the sixth
day of October, 1835—together with all and singular the ten-
ements, hereditaments, and appurtenances thereunto belong-
ing or in any wise appertaining, and the reversion and rever-
sions, remainder and remaiuders, rents, issues, and profits
thereof, and also all the estate, right, title, interest, dower and
right of dower, property, possession, claim, and demand what-
soever, as well in law as in equity, of the said parties of the
first part of, in, and to the same and every part and parcel
thereof, with the appurtenances—to have and to hold the
20 above granted, bargained, and described premises, with the
appurtenances, unto the said party of the second part, his
heirs and assigns, to his and their own proper use, benefit, and
behoof for ever.

And the said Samuel T. Moore, for himself, his heirs, exec-
utors, and administrators, doth covenant, grant, and agree, to
and with the said parties of the second part, his heirs and
assigns, that the said parties of the first part, at the time of
the sealing and delivery of these presents, are lawfully seized
in their own right of a good, absolute, and indefeasible estate
30 of inheritance in fee simple of and in all and singular the
above granted, bargained, and described premises, with the
appurtenances, and have good right, full power, and lawful
authority to grant, bargain, sell, and convey the same in man-
ner and form aforesaid; and that the said party of the second
part, his heirs and assigns, shall and may, at all times here-
after, peaceably and quietly have, hold, use, occupy, possess,
and enjoy the above granted premises, and every part and
parcel thereof, with the appurtenances, without any let, suit,
trouble, molestation, eviction, or disturbance of the said parties
40 of the first part, their heirs or assigns, or any other person or

persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances, of what nature or kind soever.

And also, that the said parties of the first part and their heirs, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest of, in, or to the hereinbefore granted premises, by, from, under, or in trust for them, shall and will, at any time or times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, his heirs and assigns for ever, as by the said party of the second part, his heirs and assigns, or his counsel learned in the law, shall be reasonably devised, advised, or required; and the said Samuel T. Moore, for himself, his heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will warrant and by these presents for ever defend."

And your orator further showeth, that the said Samuel T. Moore and Hannah his wife duly acknowledged the said deed before Peter Bently, esquire, on the eighth day of July, eighteen hundred and thirty-six, he then being one of the masters in this honorable court, which acknowledgment he duly certified on the said deed, and that, on the eighth day of August, of the same year, the said deed was duly recorded in the Clerk's office of the said county of Bergen, in Book S. 3 of Deeds, pages 540, 541, 542, and 543, as by the said book of records, and as by the said deed in your orator's possession, and ready to be produced and proved as this honorable court

shall direct, and to both of which your orator prays leave to refer, if necessary for him so to do.

And your orator further showeth, that in causing search to be made in the office of the clerk of said county of Bergen, he hath discovered on record, in Book R. 3 of Deeds for said county, a deed, with full covenants of warrantee, bearing date the first day of March, eighteen hundred and thirty-six, from the said Thomas Biggs and Frances M. his wife to one Justus E. Earle, for the same thirty-two acres of land described in 10 the said deed hereinbefore mentioned, from the said Mindert Garrabrants the third and his wife to the said Thomas Biggs, to the record of which deed your orator prays leave to refer, if necessary.

And your orator further showeth, that on or about the seventh day of December, A. D. eighteen hundred and forty-eight, the said Justus E. Earle and Margaret E. his wife sold and conveyed to your orator the said thirty-two acres of land, by deed bearing date the day and year last aforesaid, which deed is in the words and figures following, that is to say:

20 "This indenture, made the seventh day of December, in the year one thousand eight hundred and forty-eight, between Justus E. Earle, of the city of New York, and Margaret G. his wife, parties of the first part, and Francis Price, of the city of New York, formerly of Weehawken, in the county of Hudson, and state of New Jersey, of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of fifteen hundred and fifty dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part at or before the 30 ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns for ever, all that certain lot, tract, or parcel of land and premises hereinafter particularly described, situate, lying, and being in the township of North Bergen, in the county of Hudson, and state of New Jersey, and at Slonga, beginning at a stake standing in the intersec- 40 tion of the lines of land of William D. Garmo and the line of the

lot of Garret Newkirk, part of formerly Van Houten lot, which stake is the westernmost corner of said lot, and running from said stake north, thirty-six degrees east, along the line of said Van Houten lot, eight chains and fourteen links, to a stone heap on the line of land of Robert Annett, which is the north corner of said lot; then along said line south, fifty-four degrees east, thirty-seven chains and ten links, to a stake for a corner on the line of land of Samuel T. Moore; then along said line south, thirty-six degrees west, nine chains and thirty-five links, to a stone heap; then northwesterly, thirty-seven 10 chains and ten links, to the first mentioned stake, the place of beginning, containing thirty-two acres, more or less, bounded southwesterly by a lot belonging to Francis Price, northwesterly by a lot of Garret Newkirk and others, northeasterly by a lot of Robert Annett, and southeasterly by a lot of Samuel T. Moore, as is mentioned and described in a certain deed, made by Mindert Garrabrants and wife to one Thomas Biggs, dated the twenty-fourth day of August, A. D. 1835, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, 20 and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances—to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns for ever. And the said Justus E. Earle, for himself, 30 his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said party of the second part, his heirs and assigns, that he hath not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby, or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or any time hereafter shall or may be impeached, charged, or encumbered, in any manner or way whatsoever."

And your orator further showeth, that on the said seventh day of December, A. D. eighteen hundred and forty-eight, the 40

said Justus E. Earle and Margaret G. his wife duly acknowledged the said deed before Peter Bently, he then being one of the masters in this honorable court, as by a certificate of said acknowledgment, duly endorsed on the said deed, and signed by said master, will fully appear; and your orator further showeth, that the clerk of the county of Hudson, in which the said lands now lie, duly recorded the said deed, on the thirteenth day of September, eighteen hundred and fifty, in Book 17 of Deeds for Hudson county, pages 149 and 150,
10 as by the said record, and by the said deed, now in your orator's possession and ready to be produced and proved as this honorable court shall direct, will appear, and to both of which your orator prays leave to refer, if necessary.

And your orator further showeth unto your Honor, that by the terms, true intent, and meaning of the said trust deed, the said Mindert Garrabrants the third was entitled to have the said lands, in said trust deed mentioned and described, conveyed to him in fee simple, and divested of the said trusts by the terms thereof, on his coming of the age of twenty-one
20 years, which has never been done; but the said lands were under his sole control from the time of his coming of age, which occurred on or about the twenty-ninth day of September, A. D. eighteen hundred and twenty-two; and that as long as Mindert the first and Mindert the second lived they were supported and provided for out of the said trust property.

And your orator further showeth, that the said Mindert Garrabrants the first hath departed this life, and as your orator is informed, and therefore charges to be true, before the making and signing of either of the said deeds of conveyance
30 from the said Mindert Garrabrants the third, above mentioned, but at what period your orator is unable to state.

And your orator further showeth, that Mindert Garrabrants the second was knowing to and was present at and assented to the sale of the said lands to the said Samuel T. Moore and Thomas Biggs, and gave his verbal consent that the said deeds should be executed and delivered to them, as is hereinbefore stated and set forth; and your orator further showeth, that the said John A. Van Houten also had knowledge of and gave his assent to the said conveyances from the said Mindert
40 Garrabrants the third above stated, all of which your orator

avers that he is able to prove to the satisfaction of this honorable court.

And your orator further showeth to your Honor, that the said John A. Van Houten, the sole and only trustee now living under the said trust deed, never has made any conveyance of the said lands mentioned and described therein, as in equity and justice he ought to have done and ought now to do to your orator.

And your orator further shows to your Honor, that peaceable possession of the said lands has followed the purchases 10 thereof, from the time of the delivery of the said deeds of conveyance from said Mindert Garrabrants the third to said Samuel T. Moore and Thomas Biggs, and that your orator, as the last purchaser aforesaid, has been in peaceable possession thereof from the time of the delivery or said deeds to him, which possession was taken by your orator, in pursuance of his said purchases, on or about the dates of the deeds to him aforesaid, with the full knowledge of the said Charles G. Sisson and Mary Elizabeth his wife, James Van Boskerck and Effie his wife, and John A. Van Houten, the sole trustee, and 20 that he has kept possession of the said lands known by the name of the Slonga tract ever since, and that he has expended thereon, at different times, the amount of ten thousand dollars, all of which your orator has done in good faith, and they permitted all of this to be done without any warning or notice to your orator, on the part of all or any of them, that they claimed title to the said premises, or any part thereof; and your orator further showeth, that he claims to have title to the whole of the said lands and premises so conveyed as aforesaid to him, not only by virtue of the said deeds—the first 30 two of them executed by the said Mindert Garrabrants the third after he came of age, and through the mesne conveyances direct to your orator, as hereinbefore stated, but also by the parol writings or contract hereinbefore set out executed by the said Mindert Garrabrants the third after he came of age, and the assignment thereof to your orator, all of which writings, deeds, and contracts were made with the knowledge and consent of the said Mindert the second (Mindert the first then being dead).

And your orator further showeth to your Honor, that the 40

said Charles G. Sisson and Mary Elizabeth his wife, and James Van Boskerck and Effie his wife, and John A. Van Houten, regardless of the rights and title of your orator, and relying, as your orator charges and believes, on the want of any deed having been actually made by the said John A. Van Houten to the said Mindert Garrabrants the third, after he came of age, for the said lands, and the said John A. Van Houten, now sole trustee, and the said Charles G. Sisson and Mary Elizabeth his wife, and James Van Boskerck and Effie his wife, re-
10 gardless of the full covenants of warrantee in the said two deeds from Mindert the third, the one to Samuel T. Moore and the other to Thomas Biggs, whose rights your orator has acquired by purchase as aforesaid, and regardless that they, the said Charles G. Sisson and Mary Elizabeth his wife and James Van Boskerck and Effie his wife, are estopped by the covenants of warrantee made by the said Mindert the third, through whom they derive title, if any they have, and all of them, regardless of the facts that they have allowed your orator to go into possession of the same premises, and to improve the
20 same as aforesaid, have, together with the said John A. Van Houten, instituted an action of ejectment against your orator in the Supreme Court of this state for the recovery of the said lands and premises so conveyed to your orator, which action of ejectment is now at issue in the said Supreme Court, and by means of it, they threaten to drive your orator out of the use and possession thereof.

And your orator further showeth, that all of the said actings and doings of the said Charles G. Sisson and Mary Elizabeth his wife, and James Van Boskerck and Effie his wife, and
30 John A. Van Houten, are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises—in consideration whereof, and forasmuch as your orator is remediless at and by the strict rules of the common law, and cannot have adequate relief save in a court of equity, where matters of this and like nature are properly cognizable and relievable—

To the end, therefore, that the said Charles G. Sisson and Mary Elizabeth his wife, James Van Boskerck and Effie his wife, and John A. Van Houten, may, upon their several and
40 respective corporal oaths, and according to the best and utmost

of their several and respective knowledge, remembrance, information, and belief, full, direct, and perfect answer to all and singular the matters and things herein stated in every respect, as if they were interrogated thereto paragraph by paragraph, and more especially whether your orator and all the preceding owners of the said lands have not been in peaceable possession of the said premises from the times that they were sold by the said Mindert Garrabrants the third as aforesaid, making now over seventeen years, and whether they have ever given your orator any notice of any claim they had to the 10 said premises, and if they have, when, where, and how, and whether your orator has not expended and laid out in improving the said premises the sum of ten thousand dollars at least, and if not how much, and this, too, with their knowledge and permission and without any notice on their part to him that they claimed the said lands and premises or any part thereof.

But now so it is, may it please your Honor, the said Charles G. Sisson and Mary Elizabeth his wife, and James Van Boskerck and Effie his wife, and John A. Van Houten, combining and confederating with divers others persons to injure and ag- 20 grieve your orator, to your orator at present unknown, but whose names, when discovered, your orator prays may be made parties hereto, with proper and apt words to charge them as such, sometimes give out and pretend that your orator has no title to the said lands, nor any part thereof, and never had, and that they will get possession of said thelands, and eject him therefrom, and take and keep all his improvements, without allowing or paying him anything for them—all of which actings and doings are contrary to equity and good conscience, and tend to the manifest injury and oppression of 30 your orator.

May it please your Honor, the premises considered, to restrain by an injunction, issuing out of this honorable court, the said Charles G. Sission and Mary Elizabeth his wife, and James Van Boskerck and Effie his wife, and John A. Van Houten, from proceeding at law any further in prosecuting the said action of ejectment, or any other action at law against your orator touching the premises, and that your orator's title may be decreed to be confirmed by a decree of this honorable court, and that they, the said defendants, may be decreed to 40

convey to your orator and his heirs, by quit-claim or otherwise, all of their right, title, and interest in the said lands and premises, and that your orator may have such further and other relief in the premises as to your Honor may seem meet and be agreeable to equity and good conscience.

And that your Honor will grant unto your orator a writ or writs of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Charles G. Sisson and Mary Elizabeth his wife, and James Van Boskerck and
10 Effie his wife, and John A. Van Houten, therein and thereby commanding them and each of them, on a certain day and under a certain penalty, therein to be inserted, to be and appear before your Honor in this honorable court, and then and there to answer all and singular the premises, and to stand to and abide by and perform such order and decree therein as to your Honor shall seem meet and be agreeable to equity and good conscience, and your orator, as in duty bound, will ever pray, &c.

J. DUNN LITTELL,
20 *Solicitor of complainant.*

WM. PENNINGTON,
Of counsel.

State of New Jersey, *ss.*—Francis Price, the complainant in the foregoing bill of complaint mentioned, being duly sworn according to law, deposeth and says, that the matters, facts, and things in the foregoing bill mentioned and set forth, so far as the same relate to the acts and deeds of this deponent, are true of his knowledge, and so far as the same relate to the acts and deeds of any other person or persons, this deponent
30 believes them to be true.

FRANCIS PRICE.

Sworn and subscribed before me, at Trenton, this 18th day of March, 1853.

B. WILLIAMSON, *C.*

ORDER FOR INJUNCTION.

[Filed March 19, 1853.]

Upon reading the bill of complaint in this cause, and the affidavits thereunto annexed, and on motion of William Pennington, of counsel with complainant—It is ordered, that upon filing the said bill and affidavit an injunction do issue, according to the prayer of said bill.—Dated this 18th day of March, 1853.

B. WILLIAMSON, *C.*

INJUNCTION ON BILL. 10

[Served March 24, 1853.]

New Jersey, to wit.—The State of New Jersey to Charles G. Sisson and Mary Elizabeth his wife, James Van Boskerck and Effie his wife, and John A. Van Houten, their counsellors, attorneys, solicitors, and agents, and each and every of them, greeting:

Whereas it hath been represented to our Chancellor, in our Court of Chancery, on the part of Francis Price, complainant, that he has lately exhibited his bill of complaint against you, the said Charles G. Sisson and wife Mary Elizabeth, James Van 20 Boskerck and wife Effie, and John A. Van Houten, and others, defendants, to be relieved touching the matters therein contained, 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—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 Charles G. Sisson 30 and wife Mary Elizabeth, James Van Boskerck and wife Effie, and John A. Van Houten, and all and every the persons before mentioned, 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 all further proceedings at law against the said Francis Price, in a suit or action of ejectment now at issue, commenced by you, Charles G. Sisson and wife Mary Elizabeth, James Van Boskerck and wife Effie, and John A. Van Houten, in our Supreme Court of Judicature, for the recovery of the land and premises mentioned and described in said bill of complaint, and by which said action you, the said defendants, threaten, as is alleged in the said bill, to drive the said Francis Price out of the use and possession of
10 said premises, or any other suit at law, until you, the said defendants, and each of you, shall have fully answered the said bill of complaint, and our said court shall make other order to the contrary.

Witness Benjamin Williamson, esquire, Chancellor, at Trenton, the nineteenth day of March, in the year eighteen hundred and fifty-three.

DAN'L B. BODINE, *Cl'k.*

J. DUNN LITTELL, *Sol.*

ANSWER TO BILL OF COMPLAINT.

20 [Filed June 29, 1853.]

IN CHANCERY OF NEW JERSEY.

The joint and several answer of Charles G. Sisson and Mary Elizabeth Sisson his wife, and James Van Boskerck and Effie Van Boskerck his wife, four of the defendants to the bill of complaint of Francis Price, complainant.

These defendants, reserving to themselves all manner of benefit of exceptions to the many insufficiencies in the complainant's bill, for answer thereunto, or to so much and to
30 such parts thereof as it is necessary for them to make answer unto, answering say—

That they admit it to be true that Mindert Garrabrants, junior, did execute to John Van Houten, junior, and Helmah Van Houten, a deed of trust, bearing date the

fifteenth day of March, eighteen hundred and nine, of the tenor as in said bill set forth, and that the same was acknowledged and recorded as in said bill set forth, except that said deed did not contain, in the trust to convey to the general heirs at law of Mindert Garrabrants, junior, in case of there being no lawful issue of said Mindert Garrabrants, junior, living after the death of Mindert Garrabrants, junior, and Mindert Garrabrants, senior, the words "as soon as he or they shall arrive at full age," as set forth in the fourth page of said bill. 10

And these defendants further answering say and admit, that there was a decree made in this honorable court, on the ninth day of September, in the year eighteen hundred and eight, in a certain cause therein pending between Mindert Garrabrants, junior, complainant, and John Van Houten, junior, Helmah Van Houten, Effie Garrabrants, and Mindert Garrabrants the third, defendants, by which it was adjudged, decreed, and ordered that the complainant, Mindert Garrabrants, junior, should, on or before the third Tuesday in November, then next, make, seal, execute, and deliver to said John Van 20 Houten and Helmah Van Houten a conveyance of the lands, tenements, and hereditaments described in the bill in said cause (which were the same lands, tenements, and hereditaments as there described in the deed of trust herein above mentioned) in trust, that they, the said John Van Houten and Helmah Van Houten, and the survivor of them and the heirs of such survivor, should permit the said Mindert Garrabrants, junior, and his family, and Mindert Garrabrants, senior, the father of said Mindert Garrabrants, junior, during their lives, respectively, to occupy and possess the messuages and tene- 30 ments, and the rents, issues, and profits thereof, for the support and maintenance of the said Mindert Garrabrants, junior, and of his father Mindert Garrabrants, senior, during his life; and upon the further trust, that after the decease of the said Mindert Garrabrants, junior, and of his father, Mindert Garrabrants, senior, that then the said trustees, the survivor of them, and the heirs of such survivor, should convey the whole of said premises to Mindert Garrabrants the third, son of said Mindert Garrabrants, junior, and Effie Garrabrants his wife, and to such other lawful issue as he, the said Mindert Garra- 40

brants, junior, might then have living, share and share alike in fee simple, as soon as he or they arrive of age, reserving to the widow of said Mindert Garrabrants, junior, if any he should have, the said widow's legal estate of dower in said premises; and these defendants are advised that, by force of the statute in such case made and provided, and without any conveyance actually executed, said decree, on the third Tuesday in November, eighteen hundred and eight, vested the said lands and premises in said trustees for the trusts and
10 purposes therein set forth; and these defendants suppose this to be the same decree as that stated in the complainant's bill to be made on the ninth day of September, in the year eighteen hundred and nine, which year they suppose to be a clerical mistake in drafting or copying the complainant's bill, and they know of no other decree on that matter.

And these defendants further answering say, that they admit that said deed of the fifteenth of March, eighteen hundred and nine, was executed in compliance and in conformity with said decree, and that it was further intended for the purpose
20 of limiting over the remainder of said property in case of the death of said Mindert Garrabrants, junior, without any issue living at his death, the trustees of said trust deed being directed in such case to convey said property to the general heirs at law of said Mindert Garrabrants, junior, which the said Mindert Garrabrants, being the owner of the fee of said property, had power and right to do, the same not being contrary to said decree.

And these defendants further answering say, that they are advised and insist that, by virtue of said deed, or the decree
30 upon which the same was founded, no legal or equitable estate could vest in said Mindert Garrabrants the third until the death of his father and grandfather, and that the trust in said deed was to convey, at the death of said Mindert Garrabrants and Mindert Garrabrants, junior, to said Mindert Garrabrants the third and such other issue as said Mindert Garrabrants, junior, might then have, if all were living, or to such of them as should be then living, in equal shares in fee when they should arrive at full age; and that the interest of said Mindert Garrabrants the third was wholly contingent on his
40 surviving his father and grandfather, above named; and that

had he survived his father and grandfather, he would have in such case have been entitled to the conveyance of only an equal share of said land so conveyed in trust with such other issue of said Mindert Garrabrants, junior, as were living at his death.

And these defendants further answering say, that said John Van Houten died some time before the year of our Lord eighteen hundred and twenty-three, but that the year of his death is unknown to them; that said Helmah Van Houten died on or about the fifth day of March, eighteen hundred and twenty- 10 three; and that Mindert Garrabrants the third was born on the twenty-ninth day of September, eighteen hundred and one, and was at the death of Helmah Van Houten above the age of twenty-one years; that Mindert Garrabrants the third died on the first day of May, A. D. eighteen hundred and thirty-seven, intestate, leaving the defendants, Effie Van Boskerck and Mary Elizabeth Sisson, his two daughters, his only issue and heirs at law, his grandfather, Mindert Garrabrants, having died some time before him, but how long is unknown to these defendants; that Mindert Garrabrants, junior, sur- 20 vived his son, Mindert Garrabrants the third, and died on the sixth day of August, A. D. eighteen hundred and forty-seven, leaving at the time of his death the defendants, Mary Elizabeth Sisson and Effie Van Boskerck, his two grand daughters, and his lawful issue then living, and leaving no other issue then living; and that the defendant, Mary Elizabeth Sisson, was born on the seventh day of December, eighteen hundred and thirty-four, and the defendant, Effie Van Boskerck, on the seventh day of March, A. D. eighteen hundred and thirty-three. 30

And these defendants further answering say, that said Helmah Van Houten, the survivor of said trustees, left John H. Van Houten his only son and one of his heirs at law, and as they are advised his only heir at law, so far as this trust property is concerned; and further, that said John H. Van Houten did by deed, dated May the seventeenth, A. D. eighteen hundred and fifty-two, between him and Richard Tice and Jane his wife and Jacob Greenleaf and Eliza his wife, of the first part, which Jane Tice and Eliza Greenleaf were the only surviving daughters of said Helmah Van 40

Houten, and the defendants, Effie Van Boskerck and Mary Elizabeth Sisson, of the second part, and reciting that the same was in execution of the trusts contained in said trust deed and directed by said decree, convey in fee simple to said Effie Van Boskerck and Mary Elizabeth Sisson said lands in said trust described and conveyed, the execution of which deed was duly acknowledged by said parties of the first part thereto, and the same was recorded in the clerk's office of the county of Hudson on the twenty-fifth day of September, eighteen
10 hundred and fifty-two.

And these defendants further answering admit, that Mindert Garrabrants, junior, and his wife Effie Garrabrants were divorced, as in said bill stated, and that she released her right of dower in the said lands, as in said bill stated.

And these defendants further answering say, that they have no knowledge of the contract in said bill stated to have been made between said Mindert Garrabrants the third and Joseph Danielson and William D. Garmo, except by hearsay and report and said bill of complaint, and therefore cannot admit or
20 deny the same, or the giving of the receipt therein set forth, and the acknowledgment and recording of the same, but leave the complainant to make such proof thereof as he may be advised is proper and necessary.

And these defendants further answering say, that of said contract and agreement between said Joseph Danielson and William D. Garmo, on the one part, and said complainant, on the other part, set forth in said bill, these defendants have no knowledge, save by said bill of complaint, and therefore can neither admit nor deny the same, but leave him to make such
30 proof thereof as he may be advised is proper.

And these defendants further answering say, that as to the deeds in said bill of complaint mentioned and set forth, one from Mindert Garrabrants the third and Rachel his wife to Samuel T. Moore, one from said Mindert Garrabrants the third and Rachel his wife to Thomas Biggs, one from Samuel T. Moore and Hannah his wife to Joseph Danielson and Michel Saunier, one from said Saunier and Danielson and their wives to said complainant, one from Samuel T. Moore and wife to the complainant, one from Thomas Biggs and
40 wife to Justus E. Earle, one from Justus E. Earle and wife to

the complainant, and the acknowledgments of the execution thereof, and the recording the same and the contents thereof, they have no knowledge, except by hearsay and the said bill, and therefore cannot either admit or deny the same, but leave the complainant to make such proof as he may be advised is necessary.

And these defendants deny that said Mindert Garrabrants, junior, knew of any of said attempted contract for sale or sales of the said trust property made or pretended to be made by his son, Mindert Garrabrants the third, until after the same 10 had been made or entered into, or that when he heard of them that he assented to them; but on the contrary they answer and insist, that when he heard that any such contracts or sales had been made or attempted to be made he protested against the same and the power of his said son to make such sales; and these defendants further answering deny that said John H. Van Houten ever knew of said attempted sales until long after the same were made, if ever, or that he ever in any way assented to the same.

And these defendants further answering say, that said com- 20 plainant is in possession of said tract called the Slonga tract, and has been in such possession for some years past, but how long is unknown to these defendants; that at the time when said complainant charges that he took possession thereof, and for a long time afterwards, these defendants, Effie Garrabrants and Mary Elizabeth Sisson, were infants of tender years, and if anything was said about it in their presence, were not able to comprehend or appreciate the import or effect of it, and that the defendants, James Van Boskerck and Charles G. Sis- son, were not then intermarried with said Effie and Mary 30 Elizabeth, and had no interest in said lands; that these de- fendants do not know or believe that said complainant has put improvements on said premises to the value of ten thousand dollars or of two thousand dollars; that said lot of land is situate some eight miles from the residence of the defendants, on a road unfrequented by them or any of them, and that until within three years the defendants, Effie Van Boskerck and Mary Elizabeth Sisson, did not know the location of said premises, and had never seen the same, nor have they yet seen the same; and that until the death of Mindert Garra- 40

brants, junior, they had no right to meddle with or claim possession of said premises; and that said complainant has made all said improvements with full knowledge of the provisions of said deed of trust, which was duly recorded shortly after its date, and through which, alone, Mindert Garrabrants the third is contended by complainant to have any claim to said property; and that a considerable part of the improvements thereon were made by the complainant, after written notice given to him on part of these defendants that they claimed
10 and intended to prosecute their claim to said property.

And these defendants further answering say, that said John H. Van Houten resides, and has resided for some ten years, in the state of Wisconsin, and as they are informed and believe, had no knowledge of the sale of said Slonga property by said Mindert Garrabrants the third, or of any improvements put upon the same by the complainant, until within two years past, and they admit that he never conveyed said trust property, or any part of it, to said Mindert Garrabrants the third after he became of age, or at any other time.

20 And these defendants insist that, by virtue of said deed of trust, no legal or equitable estate ever vested in said Mindert Garrabrants the third that he could convey to any one, and that none would have vested in him until after the death of his father; and that such estate was a mere equitable right to have the same, or some part thereof, conveyed to him after the death of his father, in case he survived his father, and that it would have been only a right to have an equal share with the other issue of his said father who were living at his death, and that the number of such issue was contingent until the
30 death of his said father, and that these defendants, Effie Van Boskerck and Mary Elizabeth Sisson, were lawful issue of said Mindert Garrabrants, junior, living at his death, and being the only issue living at his death, were by the force of the trust entitled to a conveyance of the whole property; that no part thereof, nor any right to have the same conveyed at the death of his father, vested in said Mindert Garrabrants the third in his lifetime, and that if any such right vested, it was only to have an equal share conveyed to him jointly with such other issue as his said father might have living at his death.

40 And these defendants further answering say, that said Min-

dert Garrabrants the third, from the time he came of age until his death, was of very intemperate habits and of a mind weakened, enfeebled, and disordered by such habits, and incapable of doing any business with discretion; that he did not know the value of his property; that he was poor, always in want of money, and very improvident, and the greater part of the time intoxicated; that he did not know whether he could give any good or sufficient conveyance for said property, having been always told that it was in the hands of trustees, and did not of his own accord offer it for sale, but that contracts and deeds for the same were wrongfully and fraudulently sought after by other parties, who were willing to pay a nominal consideration for the same, knowing his improvidence and ignorance of the value of said lands, and that, by reason of the title being held in trust and his right doubtful, no fair purchaser would buy the same; and that said deeds and contracts that were signed by him were obtained and procured, solely by reason of his weakness of intellect and improvidence, at prices greatly below the value of the land at the time of such sales or contracts.

And these defendants further answering say, that said eight acres of land, alleged to have been conveyed by the said Mindert Garrabrants, junior, to said William T. Moore, was at the time of said pretended sale worth, at the least, one hundred dollars per acre; that the deed for said eight acres, worth at least at that time the sum of eight hundred dollars, recites the consideration of eighty dollars only; and these defendants aver that said sum of eighty dollars was never paid, and that the only consideration that said Samuel T. Moore paid, or that said Mindert Garrabrants the third received for the same, was that Samuel T. Moore was a carpenter, and built and furnished materials for a cellar door and entrance, which in the whole was worth less than twenty dollars; that the lot alleged to be conveyed by said Mindert Garrabrants to said Thomas Biggs, by deed dated the fourth day of August, eighteen hundred and thirty-five, was at the date of said deed worth over two hundred dollars per acre, at the ordinary selling price of lands in that neighborhood; that said thirty-two acres in said deed described was at the date thereof worth, at fair selling value of lands in that neighborhood, over six thousand dollars,

and that the consideration in said deed was ten hundred and twenty-four dollars, which was not one-sixth of the value of said lands; and that the price in said pretended contract with Joseph Danielson and William D. Garmo was not more than one-tenth of the value of said lands; and that said Thomas Biggs and said Danielson and Garmo, knowing the imbecility and improvidence of said Mindert Garrabrants the third, fraudulently emulated each other in obtaining said contracts and deed at nominal prices, taking advantage of said imbecility and improvidence; and that the complainant, knowing said facts, and the imbecility, situation, and incompeteney of said Mindert Garrabrants the third, bought said title of said Biggs and said contract of said Danielson and Garmo, and obtained deeds for the part conveyed to Samuel T. Moore, well knowing all the facts and circumstances above set forth, and obtained said conveyances for prices far below the value of the land, because all the parties to said transactions were aware that the validity of said conveyances were doubtful on account of the situation and imbecility of said Mindert Garrabrants the third and the manner in which they were obtained.

And these defendants insist, that if this court should be of opinion that any interest, either at law or equity, in said lands and premises in said original trust deed contained, or any share therein or in the reversion thereof, vested in said Mindert Garrabrants the third that he was entitled to convey, that said conveyances thereof ought to be set aside by this court as obtained by fraud from him, when imbecile and improvident, for a mere nominal consideration, and they pray that in such case this court will order said conveyances to be set aside, and said premises reconveyed and confirmed to the said Effie Van Boskerck and Mary Elizabeth Sisson upon such terms as this court may deem equitable and just; and they further insist, that the aid of this court, being a court of equity, will not be given to carry out and perfect such unjust and inequitable transactions as said pretended purchases from said Mindert Garrabrants the third set forth herein and in the complainant's bill.

And these defendants further answering say and admit, that they claim said lands of Slonga, in the complainant's bill mentioned, and also in said original trust deed, as the property of the defendants Effie Van Boskerck and Mary Elizabeth Sis-

son, by virtue of said original deed of trust and said conveyance by said John H. Van Houten, and that they claim the same by the form of said trust, as being the only issue of said Mindert Garrabrants, junior, living at his death; and that they have instituted an action of ejectment in the Supreme Court of this state against the complainant, in the name of John Den as plaintiff, upon the demises of these defendants and of the said John H. Van Houten, by his consent, and that they do intend by said action, to drive the complainant out of the use and possession of said lands, and to obtain and procure the same for themselves. 10

And these defendants deny all and all manner of unlawful combination and confederacy in said bill charged, without that, that any other matter or thing material for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, or avoided, traversed or denied, is true, to the knowledge or belief of these defendants—all which matters and things these defendants are ready to aver, maintain, and prove as this court shall direct; and they humbly pray that a decree may be made by this court ordering all 20 said conveyances and contracts made, or pretended to be made, by said Mindert Garrabrants the third, as in said bill stated, may be set aside and cancelled as obtained by fraud, and that said complainant may, by the decree of this court, be compelled to release his title or claim to said premises to these defendants; and that, as to the complaints made, and relief sought in said bill, these defendants may be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

A. O. ZABRISKIE,
Solicitor of and counsel with said defendant. 30

New Jersey, *ss.*—Charles G. Sisson and Mary Elizabeth his wife, James Van Boskerck and Effie his wife, the above named defendants, being duly sworn each for himself, on his oath saith, that the matters and things set forth in the above answer, so far as they relate to the acts of other persons, he believes them to be true.

CHARLES G. SISSON,
MARY ELIZABETH SISSON,
JAMES B. VAN BOSKERCK,
her
EFFIE ✕ VAN BOSKERCK.
mark.

Sworn and subscribed this twenty-seventh day of June, A.D. 1853, at Jersey City, before me, by Charles G. Sisson and Mary Elizabeth Sisson.

JACOB R. WORTENDYKE, *M. C.*

And sworn and subscribed this twenty-eighth day of June, A.D. 1853, before me by, James Van Boskerk and Effie Van Boskerck.

EDGAR B. WAKEMAN, *M. C.*

REPLICATION.

10 [Filed July 26, 1853.]

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without that, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed 20 and avoided, traversed or denied, is untrue: all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

J. DUNN LITTELL,
Solicitor of complainant.

WM. PENNINGTON,
Of counsel.

DECREE PRO CONFESSO.

[Filed November 28, 1853.]

30 This cause being opened to the court by William Pennington, of counsel with the complainant, and it appearing the

process of subpœna for the defendants to appear and answer the complainant's bill hath been duly issued, and returned served by the sheriff of the county of Hudson, on Charles G. Sisson and Mary Elizabeth his wife, and James Van Boskerck and Effie his wife, four of the defendants, and that the order of this court, made on the seventeenth day of May last, directing John A. Van Houten, another of the defendants, to appear, plead, answer, or demur to the complainant's bill, on or before the eighteenth day of July, then next, has been duly published in the manner and as in said order directed and 10 prescribed, and that the said defendant, John A. Van Houten, has not appeared, pleaded, answered, or demurred to the said bill within the time limited by the said order, or at any other time, but that he has wholly failed and neglected so to do—It is therefore, on this twenty-eighth day of November, in the year eighteen hundred and fifty-three, ordered and directed that the complainant's bill be and the same is hereby taken as confessed against the said defendant, John A. Van Houten, to the end that such decree may be made against him as the Chancellor shall think equitable and just. 20

B. WILLIAMSON, *C.*

EVIDENCE ON PART OF COMPLAINANT.

[Filed February 15, 1859.]

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the State of New Jersey, wherein Francis Price is complainant, and Charles G. Sisson and Mary his wife, James Van Boskerck and Effie his wife are defendants, taken at my office, in the city of Hoboken, on the fifth day of September, A. D. eighteen hundred and fifty-six, before me, Frederic B. Ogden, one of the masters and 30 examiners of this court, in the presence of J. Dunn Littell, esquire, solicitor for the said complainant, and of Abraham O. Zabriskie, esquire, solicitor for the said defendants, the said examination having taken place with consent of all parties, complainant and defendants.

Complainant's counsel offered in evidence—

A certified transcript of certain proceedings in Chancery, marked *Exhibit A*, on the part of the complainant.

Also a certified copy of a deed, between Mindert Garrabrants, junior, and John Van Houten, junior, and Helmah Van Houten, marked *Exhibit B*, on the part of the complainant.

Also, a paper, marked *Exhibit C*, on the part of the complainant. This exhibit is objected to by defendants' counsel,
10 as evidence of the contents of the paper; but not as evidence of the fact of its being recorded.

Also, a deed from Mindert Garrabrants, junior, to Samuel T. Moore, marked *Exhibit D*, on the part of the complainant.

Also, a certified copy of a deed from Mindert Garrabrants and wife to Thomas Biggs, marked *Exhibit E*, on the part of complainant.

Also, a deed from Samuel T. Moore and wife to Miçhel Saunier and Joseph Danielson, marked *Exhibit F*, on the part of complainant.

20 Also, a deed from Miçhel Saunier and wife and Joseph Danielson and wife to Francis Price, marked *Exhibit G*, on the part of complainant.

Also, a deed from Samuel T. Moore and wife to Francis Price, marked *Exhibit H*, on part of complainant.

Also, a certified copy of deed from Thomas Biggs and wife to Justus E. Earle, marked *Exhibit I*, on part of complainant.

Also, a deed from Justus E. Earle and wife to Francis Price, marked *Exhibit J*, on the part of complainant.

30 Also, a certified copy of a deed from Effie Garrabrants to Mindert Garrabrants, junior, marked *Exhibit K*, on the part of complainant.

Benjamin C. Taylor, of the township of Bergen, in the county of Hudson, a witness produced on the part of the aforesaid complainant, being duly sworn, deposeth and saith—

I am and have been the pastor of the Reformed Dutch Church in Bergen for twenty-eight years.

I was acquainted with Mindert Garrabrants the second and Mindert Garrabrants the third; they lived in the township of
40 Bergen.

I was not acquainted with John Van Houten and Helmah Van Houten.

I have a record of all the burials made in my church-yard since 1664.

I have the custody of these records; I have a private record of all my ministerial services.

From the baptismal record, Mindert Garrabrants, son of Mindert Garrabrants and Aegge Van Houten, was born the twenty-ninth of September, A. D. eighteen hundred and one.

This is Mindert Garrabrants the third whom I knew; he 10 died May the first, A. D. eighteen hundred and thirty-seven; I attended his funeral on the second, as the minister.

Mindert Garrabrants the second died the third of September, A. D. eighteen hundred and forty-six; I attended his funeral, as the minister, on September fourth.

Mindert Garrabrants the first died the twenty-ninth of July, A. D. eighteen hundred and twenty-five.

John Van Houten died August tenth, A. D. eighteen hundred and fourteen.

Helmah Van Houten died March fourth, A. D. eighteen 20 hundred and twenty-two.

[It is admitted by both parties that the last two named persons, to wit, John Van Houten and Helmah Van Houten, were the trustees named in the trust deed, marked *Exhibit B*, on the part of the complainant.]

John Van Houten, son of Helmah by his wife Catlyntye Van Rypen, was born the twenty-seventh of August, A. D. eighteen hundred and three.

I have always understood that Aegge is the Dutch name for Effie. 30

John Van Houten resides in the state of Wisconsin; he left the town of Bergen several years ago—at least ten years ago.

Exhibit E, on the part of complainant, being shown to witness, and a description of the land in the same being read to him, he says, I know nothing about it.

Mindert the third, at the time of his death, lived in Communipaw; I never knew him to reside anywhere else.

Mindert the second died at Communipaw; he lived in Bergen township, most of the time in the neighborhood of Mindert the third. 40

BENJAMIN C. TAYLOR.

Sworn and subscribed before me, this 5th day of September, A. D. 1856.

FRED'C B. OGDEN, *M. C.*

Abraham Vreeland, of the township of Bergen aforesaid, a witness produced on the part of the aforesaid complainant, being duly sworn, deposeth and saith—

I am past sixty years of age—I am sixty-one years of age; I have always lived in Bergen township.

I knew Mindert Garrabrants the first, second, and third.

10 Mindert the first lived at Communipaw, on the old homestead; after him Mindert the second lived on the old homestead; after him Mindert the third lived there.

Mindert the first lived on the homestead farm when Mindert the second had the control of it; Mindert the second lived there when Mindert the third had the control over it.

John Van Horne had a lease on the property, and supported Mindert the first and second.

Mindert the third lived with his grandfather, John Van Houten, the trustee, until he was married; after that he lived 20 on the Communipaw farm until he died.

Exhibit E, on the part of the complainant, being shown to the witness, and a description of the property being read to him, he says—

I have been on that land; it was woodland—cedars upon it; I understood this was a part of the Mindert Garrabrants property.

Exhibit D, on the part of complainant, being shown to the witness, and a description of the property being read to him, he says—

30 I know the lot; it adjoins the one I have just spoken of; it was a part of the old Mindert Garrabrants place.

Mindert the third, I think, married before he came of age, after he took possession of the place at Communipaw; he lived there until his death.

I leased a part of the Communipaw estate from Mindert the third; I think the lease began in 1830, and expired in 1840; Mindert the second knew of this lease given by Mindert the third to me; the board of Mindert the second was paid out of this property, so long as I had it; one lot I had for the

board of Mindert the second, the other lot I worked on shares with Mindert the third.

Mindert the second got nothing but his board from the land I leased, that I know of.

I understood that Mindert the third was going to sell the property to Mr. Moore at the time I saw Moore down there; I heard of the sale to Biggs at the time of the conveyance.

Mindert the second lived with Mindert the third at the time of these conveyances, and I suppose he knew of it then.

When I was on the Slonga property, there was some timber on it; there were cedars and other wood on it; it was not at that time of much value; it was rocky and stony; the value of the land at that time is more than I can tell—perhaps it was worth twenty dollars an acre, and a little more. 10

There were very few houses about there—none on the top of the hill, and one small house below the hill.

When I took my lease, Mindert the third had the management of the residue of the farm.

Pretty much all the farms at Communipaw had some woodland, at Slonga or in Bergen woods, appended to them. 20

I took the lease from Mindert the third, understanding that he had the control of the property; I supposed he owned it; Mindert the third had the control of the property after he came of age.

Cross-examination.

It is some years ago I was on the property; it was some time before Mr. Price was there; I suppose it was a few years before.

In 1835 and 1836, the property in that vicinity sold for two hundred dollars an acre. 30

I understood Van Horne sold for five hundred dollars an acre; the land in this vicinity was all known as Bergen Commons; the lots ran, I suppose, from the Bergen line to the meadow; it was so understood; the Van Horne property was the same kind of woodland, but better wooded.

From 1835 or 1836 to this time the land has gone up; at one time since, the land did not seem to sell.

Mindert the first did not live at the homestead until his death; he lived a part of the time with his daughter Tryneje, the widow of Garret Van Horne, for some years previous to his death; he died there. 40

Mindert the second lived with John Van Horne, who had the control of the Communipaw farm, I think, at the death of Mindert the first and while he boarded with his daughter; this John Van Horne was no relation to Mindert the second, but had control of the farm, and paid the rents and board of Mindert the first and second, as I always understood.

Mindert the second had control of the Communipaw farm while the old man was living.

Mindert the second did not continue to live there after his 10 father's death.

There was some difficulty between Mindert the second and his wife, and John Van Horne took a lease on the property, as I understood, during the lifetime of Mindert the first, until Mindert the third came of age.

I did not know that Mindert the second was entitled to the use of the property for his life.

I don't think Mindert the second controlled the property after the difficulty with his wife; it is so long ago I can't tell.

Mindert the second was a very intemperate man; his in-20 temperance was such that he was not capable of taking care of his property; Mindert the third was not either.

The intemperance of Mindert the second was the cause of the difficulty between him and his wife; Mindert the second never married again after he parted from his wife.

Mindert the third was very intemperate; I think he was intemperate young, before he came of age; I did not know him then so well as I did afterwards, but I understood then that he was very intemperate.

After he was married, he came to live near me, and I knew 30 him better; he then was very intemperate; I can't say whether he was worse than his father Mindert the second; he was so intemperate as to be incapable of managing and controlling his property.

After I took the farm, he was quite a man for a spell, until a few years before he died, when he took to drinking again, and was as bad as ever he was; he was better after I took the farm, until he sold his property and got some money, and that made him worse; during the time he held up he was not entirely sober—he was occasionally intoxicated.

40 Mindert the third died first; he had two children at the

time of his death, Effie, the wife of James Van Boskerck, and Elizabeth, the wife of Charles G. Sisson ; Elizabeth was about a year old at the time of his death.

Helmah Van Houten had six children at the time of his death ; Garret, his eldest son, died in 1832 unmarried ; John, now living in Wisconsin, had four daughters—Rachel, wife of Garret G. Newkirk, Catharine, wife of John Vreeland, Eliza, wife of Jacob Vreeland, Jane, wife of Richard Tice ; Catharine and Rachel are dead, Eliza and Jane are living.

Rachel died before Mindert the second, and Catharine afterwards. 10

Rachel and Catharine both left children, who are still living.

Re-examination in chief.

Mindert the third understood all about the lease between us at the time the papers were signed.

Quest. When you say that Mindert the third was not competent to manage his business, do you mean anything more than that he could not manage his farm to make a living for his family? [This question is objected to by defendants' counsel.] 20

Ans. That is what I mean, sir.

Quest. During the period of which you have been speaking of Mindert the third, when he was sober, how did his mind appear to be?

Ans. When he was sober, his mind was altogether right at that time ; afterwards, towards the last, his mind did not appear to be altogether right.

By towards the last I mean, when he sold the property to Ramsey and Biggs—I mean after he sold to Biggs—I never saw anything before that. 30

Quest. What effect had the sale of property upon him, when receiving money for it?

Ans. It got him going again worse than he was before ; before that he was quite a man, and then got down again.

Quest. Until after he sold his property, and received the money for it, how did his mind appear in reference to business when sober?

Ans. It appeared he was altogether right.

Quest. How did he appear to be in the years 1834 and 1835? 40

Ans. He got along very well at that time; he did not drink so much then; he helped me on the farm a good deal.

Quest. Was there not a period of time when the price of land at Slonga went suddenly up?

Ans. Yes.

Quest. Can you tell whether this was in the years 1835 and 1836, or in 1837?

Ans. I can't tell exactly.

Quest. Up to the time of that rise, had not the land at
10 Slonga been considered of very little value?

Ans. Yes; before that time it was not worth much.

Quest. Do you know the location of the land sold by Van Horne at five hundred dollars, the quantity sold, or the time when it was sold?

Ans. No; I understood it was in 1835 or 1836.

Re-cross-examination.

Quest. Did Mindert the third ever appear to be a man of any judgment relative to selling his property?

Ans. I can't give a particular answer, the first man he
20 sold to was Mindert Van Horne—I suppose he can tell better than I; I never bought any property of him.

Mindert was working with me for several years on the farm. I persuaded him to go to work, and he got to be quite a man; in the year he worked most with me, I suppose he did as much as two months' work.

Quest. From your knowledge of the man, from having him to work, and seeing him work during those times when he was the best, would you ever have intrusted to his judgment and discretion to sell a lot of ten acres of land for you,
30 or to spend five hundred dollars of your money?

Ans. No.

Quest. Would you at those times have intrusted him to take a load of cabbages or melons to market, and sell them for you?

Ans. No.

Quest. Had he discretion enough to go to New York with twenty-five dollars, and purchase a suit of clothes for himself?

Ans. I would have trusted him with twenty-five dollars, after he was living with me a while.

40 *Quest.* Would he have bought the clothes with judgment and discretion?

Ans. I suppose he would; it is hard to tell.

Quest. Was he at any time so but that he would take to drink when he got a considerable sum of money?

Ans. I have paid him money myself, when he has kept to work and taken care of his family; then again he would use it for a spree.

Quest. When you were working the farm, did he do any other work than for you?

Ans. Yes; I think he worked sometimes for Van Horne; he did not work any land on his own account at that time; 10 he had none, except a little about the house.

Re-examination in chief.

Quest. Are there not a good many men that transact business for themselves and families continually, that you would not like to sell ten acres of land, or lay out five hundred dollars for you, according to their discretion?

Ans. Yes.

Quest. Do you want anybody to sell cabbages for you?

Ans. No.

Quest. When Mindert the third was sober, and particu- 20 larly so, when working for you, as before stated, was he not a man of ordinary capacity?

Ans. Yes; I don't trust my hired men to sell cabbages for me.

ABRAHAM VREELAND.

Sworn and subscribed before me, this 5th day of September, A. D. 1856.

FRED'C B. OGDEN.

Garret Sip, of the township of Bergen aforesaid, a witness produced on the part of the aforesaid complainant, being duly 30 sworn, deposeth and saith—

I was sixty last spring; my residence has always been in Bergen township.

Exhibit D, on the part of complainant, being shown to witness, he says—it is in my handwriting; it was executed in my presence, and acknowledged before me; it was executed and acknowledged at the time it bears date; I surveyed the property previous to making the deed, at the request of the grantor, Mindert the third.

I think he was with me when I made the survey; I believe I had at that time a knowledge of the value of land at Slonga; when I made the survey, Mindert the third gave me directions; the land was rough and stony and side-hill; there was not much wood on there at that time but some small cedars; it had been wooded.

In 1834, the land at Slonga was not considered of much value; its value consisted chiefly of the wood that was upon it; this land of Mindert the third was not worth a great deal 10 per acre.

At the time this deed was executed, I did not see but the mind of Mindert the third was as good as that of other people who came to do business with me—I did not see anything the matter with it; I made it an invariable rule not to have anything to do in business with persons affected in their minds.

I was acquainted with Mindert the third, but not particularly; I saw him occasionally; I did not see him often, like the neighbors that were near him; I lived in Bergen, and he at Communipaw.

20 *Exhibit E*, on the part of complainant, being shown to witness, he says—I rather expect I surveyed the land described in this deed; it is rather better land than the other; it is on the hill, but very rough; this land may have been worth more than thirty dollars an acre—it may not either—I do not know exactly; the land in that neighborhood that was wooded sold for less than that; this deed was acknowledged and executed before me at the time of its date.

I think, when I made this survey, Mindert the third was present, and gave me directions; I understood that survey 30 was made for the purpose of selling to Danielson. I did not discover any difference in the mind of Mindert the third at the time he signed away the thirty-two acres and the eight acres; I had the deed drawn to Danielson, when Mindert the third told me to make it out to Biggs; I asked him why he changed it; he said Danielson had not complied with his agreement, and he was not going to be fooled by him; at that time I was in the habit of doing a great deal of surveying and drawing deeds for different persons in my township—I was the only surveyor in my township.

40 I took for granted at that time, from conversations of Min-

dert the third, that he was as capable of conveying as other persons who applied to me; I should consider the consideration of one thousand and twenty-four dollars for the thirty-two acres was a very reasonable price at that time; afterwards land took a rise, in 1835 and 1836. I think it was in 1836 and 7 speculation came on, and everything loomed up very suddenly; after this the value of land, I believe, fell down some; about that time I sold land at West Hoboken at a less price than thirty dollars an acre—one tract I sold for eleven dollars per acre, and the other for seventeen dollars 10 and a half; one of the tracts was like the land in Slonga, and the other was not better; I have since known the eleven dollars per acre tract to have sold for five hundred dollars an acre; I don't know but what the West Hoboken land was better located than the Slonga land—it is nearer the ferry.

Cross-examination.

I think the eight acres went over the brow of the hill—it ran over west of the brow of the hill a chain or a chain and a half—it might have been only one chain; there was a dwelling house and some fruit trees on the eight acres down be- 20 low when I surveyed; I have never been along there since the Bulls ferry turnpike was run over Garrabrants' property; I don't recollect surveying the property sold by John and Mindert Van Horne to Saunier.

Re-examination in chief.

The dwelling house I spoke of was a small affair; a family lived comfortably in it.

Garret Sip.

Sworn and subscribed before me, this 5th day of September, A. D. 1856. 30

Fred'c B. Ogden, *M. C.*

The examination of witnesses, &c., in the above stated cause was resumed this thirteenth day of September, A. D. eighteen hundred and fifty-six, in the presence of the respective solicitors of the complainant and defendants.

Jasper Britten, of the township of Bergen aforesaid, a witness produced on the part of the aforesaid complainant, being duly sworn, deposeth and saith—

I live at Communipaw; I was forty-seven years old last August; I was born and brought up there.

I knew Mindert Garrabrants the second and third.

A paper writing being shown to witness, professing to be a receipt from Mindert Garrabrants, junior, bearing date August 8th, A. D. 1835, he says—the name Jasper Britten, subscribed thereto is his own proper handwriting; I don't recollect anything about the paper—it was so long ago.

I had nothing to do with the paper, except to witness it; I
10 don't think I would have signed the paper as a witness, if I had not seen Mindert Garrabrants sign it.

I lived in the same house, in another room, with Mindert the third at the time of signing the paper; I remember that Danielson, Garmo, and Mindert were sitting around a table in the entry at the time I signed the paper; I came through the entry, and they asked me to sign the paper—that is all I remember about it.

Mindert was at the table when they asked me to sign the paper.

20 I was sworn about this paper at Jersey City; it was the first of September, or thereabouts, in 1835, that I was sworn there.

I must have known Mindert the third about eight years; I used to see him when I was a boy.

I know Abraham Vreeland worked the farm; but I can't say whether he worked it that year.

Mindert was a drinking man; he drank a pretty good deal.

He was not drunk when he signed the receipt—it was in the morning it was signed.

30 When Mindert the third was sober, he was in his right mind; I never saw him have the delirium.

When sober, his mind, I should think, was as good as that of other people.

I lived in the same house with him one year, I know—I can't say whether it was two; it may have been; I am certain I lived there in the year 1835; I saw him then pretty much every day.

Cross-examination.

The paper was written the same day, before they left the
40 table, that I signed it.

I can't say whether Mindert had been drinking that day; I know he had been home all the morning; he sometimes had liquor in the house.

I knew the paper was about the Slonga woodland.

Mindert was in the habit, at that time, of getting drunk; at that time he was very intemperate; he was intoxicated half the time.

At that time I did not see that his property was out of the way; he did not do much work; I worked his ground back of the house; he worked sometimes around the house—not 10 much though, I can tell you.

After the farm was leased to Abraham Vreeland, I don't know whether or not Mindert provided for his family; he had at that time his wife and two daughters in his family; one of the daughters was an infant; his father did not live with him at that time; I had the rooms he used to occupy.

All the time I knew Mindert the third he had been very intemperate.

I knew several intemperate men as bad as he was, but not many worse. 20

I never saw Mindert but what he could walk; he could navigate and ride his horse.

At that time, when he was sober, I can't say whether he was able to manage and dispose of his property with discretion.

It is so long ago I can't say whether he could or not; I do not remember.

At that time, I think, Mrs. Terhune had not taken Mindert's eldest daughter Effie away—I think she was there.

Mindert the second, his father, was intemperate too; he 30 drank quite a good deal, but I don't think he was as bad as his son.

Re-examination in chief.

I think I made the bargain with Mindert the third for renting the place; I think I paid for it as much as it was worth.

I paid thirty dollars for the two back rooms, which was as much as could be got for them.

JASPER BRITTEN.

Sworn and subscribed before me, this 13th day of September, A. D. 1856. 40

FRED'C B. OGDEN, *M. C.*

Complainant's counsel offered in evidence a paper, purporting to be a receipt, marked *Exhibit L*, on the part of complainant.

Also, a lease from Mindert Garrabrants, junior, to Abraham Vreeland, marked *Exhibit M*, on the part of complainant.

Hannah Moore, of the township of North Bergen, a witness produced on the part of the aforesaid complainant, being duly sworn, deposeth and saith—

My husband's name was Samuel T. Moore; I am his
10 widow.

I knew Mindert the third; I remember my husband buying eight acres in Slonga of him—I think it was in 1834; the land was stony, and had cedars on it; there was a small, little old house on it; after we bought it, we occupied it; we had lived at that place about seven years before buying it; Col. Sip ran out the land at the time my husband bought it; Mindert the third was there at the time.

My husband and Mindert had talked a good deal about buying the land before he purchased it.

20 I talked with Mindert about selling the land; he used to be at the house two days at a time; I thought Mindert understood all about the sale of the property.

Mindert the third was a drinking man.

Quest. How was his mind when he was sober, was it good?

Ans. Well, I don't know.

Quest. When he was sober could he talk good?

Ans. Pretty good.

Quest. Did he understand about the selling of the prop-
30 erty?

Ans. He did, and his wife was present at the bargain; she said he could give good writings for it.

The subject of buying the land was talked about about a year.

When he was a little drunk, he would sit and talk as well as any one else.

I think his wife was twice with him; she came one time about selling the land; at that time she went with her husband to Hackensack; she had business there; my husband

went with them; they did not get the deed that day; I can't say why they did not get the deed.

Isaac Van Zile was in possession of the land before me.

We sold the property to Francis Price, and he then went into possession; he built on the property close by, and is living there now.

The property about there is much changed since that time —it looks very different now.

Before my husband bought the property, he hired it of Mindert the third. 10

He made the bargain with Mindert the third.

Mindert appeared to take care of his own interest in the bargain made with my husband in the purchase of the property.

We thought at the time we paid enough for the property— it was not worth much then.

I heard my husband and Mindert talk a good many times about selling the land; they talked considerable about the price; my father's name was Michael Carling.

Cross-examination. 20

Mindert the third used to come there every month—sometimes oftener than other times.

He would sometimes stay at our house a day, sometimes two, and sometimes a little longer; he was not drunk more than half the time he was there; sometimes he was drunk, and sometimes not.

We did not keep liquor to sell.

We never gave him liquor; he did not get it at our house.

He did not bring liquor with him.

He used to go up to my father's and get it; my father then lived on what is part of Mr. Gregory's place—it was not half a mile from our house. 30

My father sold liquor.

When Mindert was at my house he never staid over a day unless he was intoxicated.

He generally came on horseback.

I can't say how far it was from our house to Communipaw —I understand it is about eight miles.

I never heard anything said that Mindert the third could

not convey the property; his wife said he could give good writings for it; she said the writings were in Trenton.

My husband agreed to give eighty dollars for the place.

I never saw or knew of Mindert the third cutting wood off the property, and sending it to Hoboken.

I can't say what rent my husband paid before buying it, or what he was to pay.

My husband used to give him money when he hired the place at first.

10 We did not charge Mindert for staying there; he used to leave his horse upon the hill—I think with William D. Garmo.

When we went to live there, some apple and cherry trees were on the place; we had a garden; we raised potatoes and corn; there was not ground enough to raise any grain.

When we rented, we had a right to the whole Slonga property.

Re-examination in chief.

When Mindert came to see us, he was part of the time sober, and part of the time drunk; when he was sober his 20 mind was good; when he bargained with my husband for the place he was sober, and his wife knew what he was to have for it; she said he might as well sell it as to be spending money running there.

her
HANNAH ⋈ MOORE.
mark.

Sworn and subscribed before me, this 13th day of September, A. D. 1856.

FRED'C B. OGDEN, *M. C.*

John Sturges, of the township of North Bergen, a witness produced on the part of the aforesaid complainant, being duly sworn, deposeth and saith—

30 I live in New Durham, in the neighborhood of the land in question.

I was sixty-seven last April; I have lived here fifty years.

I knew Mindert Garrabrants the third; he was sometimes a drinking man.

When he was sober, I always thought his faculties were very good.

When sober, I always thought he was competent to do business as the common run of people; I saw him quite often, in the winter time particularly; I did not see so much of him in summer.

I never saw him so much in liquor that he could not walk or ride on horseback.

I always thought a certain proportion of liquor made him brighter.

In 1834, I would not have hesitated in buying a piece of land from him when he was sober. 10

I had dealings with him directly after he became twenty-one; I bought wood of him off that same land, some time before he sold it.

I bought some fire wood and chesnut posts of him at two different times, in different years; in my dealings with him about the wood, I met him, and we had a good deal of talk about it; I thought he wanted too much, and he thought I wanted to get it too low.

I know that when he was making a bargain he looked out for his interest. 20

I don't know what he did with it after he got it.

After the wood had been taken off the Slonga land, it was not of much value; there had been a rise in the land before 1834, but nothing like what it has been since. Peter Garrabrants owned a piece joining north of it, and his executors or administrators sold it at vendue, at the Five Corners, for three dollars per acre; a lot right below Mr. Gregory's was sold for seven or seven and a half dollars per acre at the same time; old Cornelius Garrabrants, half brother of Peter, bought one of the lots right north of Mindert's for three dollars an acre; 30 Michael Carling bought the north lot for seven or seven and a half dollars per acre; since they bought, Cornelius Garrabrants sold his to Robert Annett; I don't know anything from my own knowledge of this sale but I heard the parties say, he gave twenty-two dollars per acre for it; this sale was about twenty years ago—I can't tell the year.

Before the great rise, I don't think the eight acres would have brought over ten dollars an acre.

I remember when Moore bought this property of Mindert the third; I remember his living there. 40

I frequently heard, about the neighborhood, that Mindert the third wanted to sell the property; at that time I think Mr. Moore gave a full compensation for the eight acres, if he paid Mindert the third the price that was said to be given; it would not have brought ten dollars an acre if set up at auction at that time.

At that time Peter Garrabrants' land, above mentioned, was more valuable than this, because it ran down to the river through the meadow; the upper part touches the river.

10 Peter Garrabrants' property was sold five years, if not more, before the sale of the land to Mr. Moore.

Mr. Price went into possession of this land after Moore.

I did not know Mindert's wife; I have seen her; I believe she was a respectable woman.

I know the thirty-two acres sold by Mindert the third to Biggs—it joins the eight acres; there was not a great deal of difference in the value of the two tracts.

For farming purposes, the thirty-two acres are the most valuable.

20 The value of land there went up in 1835 and 1836.

I was in the habit of talking with Mindert the third when I met him; I was very friendly with him; I knew his father, mother, and the whole family.

When Mindert the third was sober, and I talked to him, I never saw anything like want of capacity in him—that idea never struck me; in the intertime, I used to see him sometimes more than once or twice a week, and sometimes less.

As I understand, Mr. Price owns the eight and thirty-two acres yet.

30 He has built two houses on it and a large barn; he has made a good road up the hill, through the rocks; he has blasted the rocks; before there was no such thing as getting up and down; he has also put the property all in fence.

I suppose he has laid out from eight to ten thousand dollars on the property, it may be twenty thousand dollars; he has spent a monstrous sight of money on it.

One of the houses is Mr. Price's residence—he has planted a great number of trees there; he has been living on it about seven years; he was working at the place, to improve it, im-
40 mediately after he bought it; he began building the house

nine or ten years ago; he has been all the time improving the property; he is a man that makes pretty liberal improvements, and has done so on this place.

He has bought adjoining lands, the whole close on to two hundred acres—it all joins together.

Besides the improvements put on this tract by Judge Price, David Pollock has put on it improvements amounting to two or three thousand dollars.

Judge Price has laid the foundation of a large house, fifty feet square, on this land, and a part of the foundation of another house; he has built a large quantity of stone fence there, a terrible sight. 10

Cross-examination.

My house is about seven miles from Communipaw, where Mindert lived; I knew Mindert the third a little while before he came of age; I knew him intimately after; he came to New Durham every winter after he came of age.

I think Samuel T. Moore lived on the property from the time Mindert the third came of age.

I can't say whether Mindert the third was in the habit of going to Moore's. 20

The house under the hill, on the property, was not worth eighteen pence; you could not keep dry in showers; that house is not standing—it was taken down six or seven years ago; it was a one story house, with one room on a floor, and cellar under it, the front of which was nearly out of the ground, except one step.

Judge Price has made considerable of the improvements within the last three years.

David Pollock's house has been built within the last two years. 30

Three-fourths of the improvements have not been put on the property within the last three years.

Seven years ago he commenced finishing the house; the property was fenced; the stone wall was put up since that.

I guess the new house he has finished within the last two years is more expensive than the first one.

The most of the road to get down the hill has been made within the last five years.

I don't think anything of consequence was done to the road more than five years ago. 40

The most of the stone wall has not been put up within the last five years, the biggest part of it was done seven years ago; I worked at the stone wall by the day, and not by the job.

I have lived away for five years, in Monmouth county; I returned in April; I am now living at Judge Price's, and am working as a foreman, fixing the road from the river to the upland.

I have frequently before this been sworn as a witness for
10 Judge Price.

I bought a few trees of Mindert the third, as they stood; this is the wood I bought of him.

After Mindert the third came of age, he got Anthony Ludlow to cut off the wood and sell it; I don't know what their arrangement was about money matters.

I don't know of any notices being put up by the trustees forbidding any persons buying wood of Mindert the third.

I knew, at that time, there were trustees until Mindert came of age, but not afterwards; then he took the property
20 himself.

Re-examination in chief.

I was never a witness for Judge Price until now, except in one case.

I have seen Mindert the third draw wood himself many a time and many loads; he had a splendid team of horses; I have seen him with a big load of wood on snap the whip and shout, and the horses would dash out among the trees, when the sleighing was good, and I would think he would get killed.

30 A canal was cut through this property to drain the meadow; it went from the swamp, through the mountain, to the river.

Re-cross-examination.

It was a canal cut through the mountain to drain the meadow—it was not a ditch; you can't cut the ditch through a rock; a ditch requires spading; we cut this by blasting, and hoisting the rocks out with a gin; I liked to have got killed; the top of the canal is in some places ten or twelve feet wide —other parts not so wide; it varies from two to nine feet in depth; in some places, a part of it has been covered up so as to
40 form a tunnel; it is all of sixteen rods long; it is covered under

the turnpike and a piece down below, not all the way, to the brow of the hill.

I lived about a mile and a quarter from this property.

his
JOHN ⋈ STURGIS.
mark.

Sworn and subscribed before me, this 13th day of September, A. D. 1856.

FRED'C B. OGDEN, *M. C.*

The examination of witnesses, &c., in the above stated cause was resumed this 18th day of September, A. D. eighteen hun- and fifty-six, in the presence of the respective solicitors of the complainant and defendants. 10

Robert Annett, of the township of Hackensack, in the county of Bergen, a witness produced on the part of the aforesaid complainant, being duly sworn, deposeth and saith—

I live at Fort Lee, in Bergen county; I have lived there thirty-one years; I am a little over seventy.

I am acquainted with the property upon which Judge Price lives, and upon which his house is built.

I own some land adjoining Judge Price's—I own about twenty-two acres; I bought it from Cornelius Garrabrants 20 about twenty years ago; it don't differ much from that either way.

At that time, the land Judge Price bought was more cleared off than mine; there was not much difference in the value of the two.

If I had a choice, I should take Judge Price's land as the more valuable of the two; should have made but very little difference in the valuation of the two.

I paid twenty-two dollars and fifty cents per acre for my land; that was what he asked me for it; I think it was a fair 30 price at the time—it was all he asked me for it.

I understand this land had been sold previous to my purchase by commissioners appointed by the court; I can't say how long this sale was before my purchase—seven or eight years perhaps; I should think it might be that, and it might be a little over; I understood it sold for three dollars per acre; I have this from hearsay.

Cross-examination.

I never bought but one piece of land there of Cornelius Garrabrants; my deed from Garrabrants is recorded, and gives the true time I bought it.

That property did not increase in value for many years; eight years ago I offered to sell it for three hundred dollars per acre; I am offered for it now eleven hundred and fifty dollars per acre, and have refused it; there are no buildings or improvements on it now.

10 Of this property, both my lots and Judge Price's, the parts from the meadow edge or on the brow of the hill are more valuable than the rear of the lots.

I know the Moore lot; the front eight acres may be possibly worth at this time twice as much as the rest of the lot per acre, if you go to the far end on the back side.

Re-examination in chief.

The lot I bought extends the whole length of Judge Price's; both lots run from the Bergen line to the meadow.

Re-cross-examination;

20 The Moore lot is the only place where a road can be made easily down to the river.

I should not consider it more valuable than the next lot to it.

Re-examination in chief.

When I bought, the smoothest land for farming of my land and Judge Price's was the back part.

At that time the land was not considered of any value, except as farm land.

At that time, I should think the Moore lot was much more 30 stony and uneven than the back land which Judge Price bought; at that time, the Moore lot, I should think, was more valuable than the back land; there was considerable waste land in it.

There was not so much of the Moore lot that could be cultivated as the back lot; the back lot, with some trouble, could all of it be cultivated; the Moore lot, the part towards the river, was very nice for cultivation; the back part was rough, and could not be cultivated without a great deal of labor.

Pretty near one half, I should say, was rough and stony; I 40 never saw the stony part planted with anything.

This property overlooks a full view of the Hudson river; it runs down to the meadow—I refer to the Moore lot; it lays right opposite about Fiftieth street, in the city of New York.

The cause of the rise of the property has been the demand for building purposes by persons from New York; the land north and south is laid out in lots; the lots laid out don't exactly join on this property—they lie a little above and little below; a ferry has lately been established there, and a steamboat runs over to New York.

This land is three and a half to four miles from Hoboken ferry. 10

Re-cross-examination.

I live about five miles from this property.

When I bought my land, I did not make any calculation what I would do with it; I thought it was very cheap, and I bought it; land was not going up much when I bought it; it appeared to me that land would go up there, or else I would not have bought it; I never have cultivated any part of it; I have cut some timber off it.

Re-examination in chief. 20

A paper being shown to witness, and he being asked relative to the signature of William D. Garmo, he says—I have seen William D. Garmo write, and I believe that to be his signature—I am not certain.

Robert Annett.

Sworn and subscribed before me, this 18th day of September, A. D. 1856.

Fred'c B. Ogden, *M. C.*

Garret Vreeland, of the township of Bergen aforesaid, a witness produced on the part of the aforesaid complainant, being duly sworn, deposeth and saith— 30

I have been sixty-three years old since last January; I have always lived in Bergen township.

I was acquainted with Mindert Garrabrants the first, second, and third.

I was acquainted with the Garrabrants property held by John and Helmah Van Houten as trustees.

From the time Mindert the third came of age, he took the property in hand.

I don't know exactly whether Mindert the second and third lived together at the time the latter came of age; they lived together some time—I think it was after he came of age.

They lived together for some time, except when the young man lived with his grandfather, John Van Houten.

John Van Houten lived about a mile from the Five Corners on the Bergen woods road.

Mindert the second and third lived together at Communipaw.

10 After Mindert the third came of age, he rented out the property, and he worked it himself a part of the time.

He rented a part of the land to my brother, Abram Vreeland.

Mindert the third, after he came of age, sold some of the property.

He sold to Mindert Van Horne, myself, and Jacob D. Van Winkle; I and Jacob D. Van Winkle bought together.

I know the Slonga property was sold to Moore and Biggs.

At the time of the sale to Moore and Biggs, I can't tell 20 where Mindert the second lived; they both lived at what is called Communipaw.

I heard Mindert the second speak only once about these conveyances of Mindert the third.

Quest. What did Mindert the second say? [This question objected to by defendants' counsel.]

Ans. He said Mindert the third was a little in debt, and had to sell some land to pay his debts.

The trustees were dead before these sales; in the purchases I made, I dealt with Mindert the third; I paid him the money; 30 I understood him to be the owner.

I paid Mindert the third, I think, a full price for the land I bought, and a little more than he could get any where else.

I can't tell exactly what year I bought this land; we paid more money for our property than Van Horne did.

I don't know whether he gave a full value for it; some would have given more, I guess.

I dealt with and made the contract with Mindert the third—with no one else but him and his wife; they said they would have to sell, and raise money on account of the horses and 40 wagons being under execution.

When Mindert the third traded with me for the land, his mind appeared as right as he could be, or else he would not have charged me such a price as he did; I paid him the money.

I often saw Mindert the third after his marriage until the time of his death; I lived about three-quarters of a mile from him.

He would take a frolic.

I knew him from his birth until his death.

Quest. Would he keep drunk all the time, or was his habit to have a spree, and then be sober? 10

Ans. I have seen him sober, and I have seen him in a spree too.

When sober, I took him to be competent to transact business.

A few years before his death he kept more in liquor—I mean a year or two.

I often talked with him when I met him.

His wife would take little sprees too; but I believe now for some years she has got to be a very fine woman.

Mindert the third used to drive about there with his horses, 20 and cart wood and the like of that.

He was considered, in the neighborhood, to be the owner of all the property.

I paid him one hundred and fifty dollars for the salt meadows, and for a piece of upland five hundred dollars.

Cross-examination.

Mindert the third was intemperate from the time he first grew up; when he was a boy, he had his frolics; it was a long time before he got worse; he kept about the same a good many years. 30

Other people could have managed the farm better than he did; whether it was on account of liquor or not, I can't say; I have no doubt that has been the great cause of it.

After he got married, and came on the place, he was very intemperate; he was pretty intemperate, and always had his frolics.

He hired out the land, and put it on shares more than he worked it himself.

Most of the time after he came of age he kept no land to work at all. 40

Quest. Did not he, after he came of age, spend most of his time in running about and frolicking?

Ans. He used to go off and have his sprees for two or three days, as I have said before—but I have seen him as sober as any man; he used to go up to Bergen woods to get wood, but what he did then I can't say.

He did not begin being intemperate as young as any person I ever knew.

I have seen him quite intoxicated when he was fifteen or
10 sixteen years old.

He got in the company of boys, and all got in quite a spree; I don't think he was in the habit of being intoxicated at that time.

For the last year or two of his life, I have seen him sober, perfectly, but he was not then as fit to do business as he had been before.

His father, Mindert the second, was intemperate as a young man, but the latter part of his life he got reformed, and was a sober man.

20 The farm at Communipaw was good tillable land.

If Mindert the third had been sober, prudent, and worked his own land, it would have been sufficient for his support; I don't know whether he ever lived comfortably there after he came of age; I was never much in the house.

I don't know whether he was often harassed by executions, except from hearsay.

I understood before I bought that the trustees were appointed to keep the property until Mindert the third came of age, and then he was to have possession.

30 Before I bought, the lawyer told me he had the title searched, and thought it was good.

I did not have it searched.

Re-examination in chief.

When I say that Mindert the third was to have possession after he was twenty-one, I mean the title was to be in him—he was to be the owner.

Quest. You stated in your cross-examination, which was not taken down, that old Mr. Van Horne said, Mindert the third's title was good, when he came of age; was Mindert
40 present when he said that? [This question objected to by

defendants' counsel, because it is an improper way of getting down testimony, because he made no such statement, and because the testimony itself is illegal.]

Ans. Only I and Mr. Van Horne were present.

Quest. Did you or not state in your cross-examination, to a question put to you by Mr. Zabriskie, that old Mr. Van Horne told you that the title of Mindert the third was good when he came to be twenty-one years of age? [This question objected to by defendants' counsel, as an improper way of getting down testimony.] 10

Ans. I did.

At the time old Mr. Van Horne talked to me, I believe John Van Horne, his son, had possession of the property; it was before Mindert the third came of age that Mr. Van Horne worked the farm.

After Mindert's marriage, he worked the farm a part of the time himself, then he let it out to others.

GARRET VREELAND.

Sworn and subscribed before me, this 18th day of September, A. D. 1856. 20

FRED'C B. OGDEN, *M. C.*

Henry Brinkerhoff, of the township of Bergen aforesaid, a witness produced on the part of the aforesaid complainant, being duly sworn, deposeth and saith—

I knew Mindert Garrabrants the second and third.

Mindert the third was an intemperate man; I saw him often; I lived three years next neighbor to him, from 1828 to 1832, I think.

Mindert the second, at this time, was living with Mindert the third; I think he continued to live with Mindert the third 30 after 1832.

During this time, Mindert the third was in the habit of going on sprees, and he was sometimes sober.

When he was sober, I should judge him to be competent for making bargains; I don't think he was very shrewd, but still he could make a bargain for himself.

I was acquainted with the part of the Garrabrants property that lies in our neighborhood that was held by John and Helmah Van Houten as trustees.

From the time Mindert the third came of age, it was understood that the property was his; I don't know whether he was in possession before he came of age.

He went there so soon as he was married.

Cross-examination.

When I lived next to Mindert the third he was a very intemperate man.

He would get sober sometimes and be steady for a little while; I have seen him sober for a week.

10 He was more of his time drunk than he was sober; he kept getting worse some time before he died.

He was very intemperate; I have seen worse men than he was—still he was bad enough.

At any of the time I knew him, I don't think he was altogether capable of managing his property with prudence.

A great deal of his property around his house went to ruin; his horses died very suddenly; he was a good horseman.

Quest. Was not he considered by the neighbors as a prodigal, wasteful man? Was not that his general character?

20 *Ans.* Well, yes.

I should judge him so from what I saw of him myself.

I don't know whether he was often in want of money.

His farm was considered as good as any in that neighborhood; it was sufficient, with ordinary management, to support him and his family.

Some of his neighbors, on farms not so good and not so large, supported themselves and got richer.

Re-examination in chief.

I never knew him to give away any of his property, real or 30 personal; I never knew him to sell any at an under value; I have no knowledge of his sales.

Quest. When you say, on your cross-examination, that he was not fit to take care of his property with prudence, please explain what you mean?

Ans. It was on account of liquor, I suppose; he was not home enough to take care of it; he was out on a spree.

Quest. When sober, and you conversed with him, how did his mind appear to be?

Ans. When he had been sober some time, I thought his 40 mind was good.

HENRY BRINKERHOFF.

Sworn and subscribed before me, this 18th day of September, A. D. 1856.

FRED'C B. OGDEN, *M. C.*

Evert Greenleaf, of the township of North Bergen, a witness produced on the part of the complainant aforesaid, being duly sworn according to law, deposeth and saith—

I live in North Bergen; I have lived there ever since I was born; I was fifty-three years old last July.

I know the property Judge Price lives on, which he bought from Biggs and Moore; I owned six acres a little west of it; 10 I have sold it; I sold it to Joseph Danielson, I think somewhere about 1840.

I sold these six acres for seventy-five dollars; it lays in what they call West New York now.

This land was worth more than Judge Price's for agricultural purposes, that is, the most of it—I can't say all of it.

Land in that neighborhood has very much increased in value since that time.

The roughest part of these six acres Joseph Danielson since has sold for $500 an acre; he sold it, I guess, about four years 20 ago.

I knew Mindert Garrabrants the third; I have often seen him up there getting wood; I never bought any wood of him —I never saw him sell any.

I always had a talk with him when he came up there.

I often saw him intoxicated and often sober; he was most generally sober when he came up to the woods.

I always thought he was as capable of doing business as I was; he was always sharp enough when sober; I never saw anything the matter with him when sober. 30

He used to be up there in the winter time three times a week, every other day; he was riding wood.

Cross-examination.

My six acres were right west of Judge Price's, about a quarter of a mile from his house; you could see the Hudson river if the wood was all cleared off the land.

Some of my six acres was not one hundred yards from Judge Price's.

When I sold my land, the old Bergen road was right

through the middle of it; it was never a laid road until a few years back; it was a public road, and has been used so long as I can remember.

Mindert the third used to be up in the woods three times a week for the whole winter, so long as the going was good, and drove his own team.

I lived half a mile from Garrabrants' woods on a straight course.

Re-examination in chief.

10 *Quest.* Would Mindert the third take his team, as a habit, and go from his own home to the woods alone, and get a load of wood and take it home?

Ans. I always saw him come alone to the woods, and get a load and go home.

He had a noble pair of horses; they were like deers.

his
EVERT ⋈ GREENLEAF.
mark.

Sworn and subscribed before me, this 18th day of September, A. D. 1856.

FRED'C B. OGDEN, *M. C.*

20 *Jacob Danielson*, of the township of North Bergen aforesaid, a witness produced on the part of the complainant aforesaid, being duly sworn, deposeth and saith—

I reside in North Bergen; I have always lived there; I am fifty-six years old.

I know the signature of my brother, Joseph Danielson; I have seen him write.

A paper, marked *Exhibit N*, on the part of complainant, being shown to witness, and the name of Joseph Danielson, upon it, shown to him, he says—I believe that both the signa-
30 tures are in the hand writing of Joseph Danielson.

Mindert Garrabrants the third I knew well; I have seen Mindert the second, and have had some discourse, but no dealings with him.

I have seen Mindert the second two or three times at his house, and have seen him at his woods with Mindert the third.

Mindert the third used to come up with his team, and get wood; I have often helped him to chop the wood.

He was in the habit of selling wood up there; I never bought wood from him; I have seen other persons buy it I could name.

Mindert the third generally came up alone; sometimes persons would be with him; I never saw him sell wood off the wagon; he sold trees as they stood; those who wanted to buy went to the woods and selected trees; sometimes they would take him at his offers, and sometimes he asked more than they were willing to give.

He continued to sell off the wood before he sold the land; 10 the wood was nearly all sold off when he sold the land.

At that time I considered him competent to take care of his property.

He always asked enough for his trees—sometimes he asked too much.

One time, I recollect, Mindert the second was at the woods when Mindert the third sold some wood.

I did not hear any objection or complaint from Mindert the second against Mindert the third selling the wood.

I did not know Mindert the first; Mindert the first was dead, 20 I think, before I knew Mindert the second.

I thought Mindert the third acted with discretion in selling his wood; I thought he was a man that knew what to ask.

I heard nothing on the part of Mindert the second objecting to the act of Mindert the third in selling the wood; I did not see or hear any fault found by him.

JACOB DANIELSON.

Sworn and subscribed before me, this 18th day of September, A. D. 1856.

FRED'C B. OGDEN, *M. C.* 30

Daniel Welsh, of the township of Bergen aforesaid, a witness produced on the part of the complainant aforesaid, being duly sworn, deposeth and saith—

I was sixty-four years old last April.

I have always lived in Bergen, except two months.

I knew a part of the Garrabrants property at Communipaw—it was the trust property.

I knew Mindert the first, second, and third; I lived about

two hundred yards from the homestead at the time Mindert the first did not live there.

I think Mindert the third took possession of this property when he came of age; I think he let some part of it to Abraham Vreeland.

I think Mindert the third worked part of the land himself; when he did work, he worked with all his might.

He was rather intemperate, though I never saw him drink.

When he was sober he took care of his property and his
10 affairs, so far as I know.

From the time Mindert the third came of age, he was considered in the neighborhood to be the owner of the property.

It was said Mindert the second had a living out of this property after Mindert the third came of age—I always understood so.

When Mindert the third was sober, he was able to transact ordinary business, to buy and sell.

When he was sober, his mind was none of the brightest—it was fair.

20 When he dealt with me, I found him like other men; I bought a cow and some wood of him; I paid him what I paid other people.

I did not find him deficient in understanding; I was in the habit of seeing him pretty much every day; we were neighbors together; I never had much conversation with him.

Cross-examination.

I lived at Communipaw when Mindert the third married and until he died.

I think he got more intemperate towards the latter end of
30 his life.

For the last one year he was very intemperate—the year before he died.

DANIEL WELSH.

Sworn and subscribed before me, this 18th day of September, A. D. 1856.

FRED'C B. OGDEN, *M. C.*

Jacob Danielson, being recalled by the consent of both parties, says—

I was acquainted with property about Slonga in 1835 and
40 1836.

Property took a rise there somewhere about 1837 and 1838.

In 1834 and 1835 it was very low.

I recollect the Moore lot and Biggs lot sold to Price.

Some part, about an acre of the Moore lot, was tillable; the rest of it was mostly untillable altogether; it was rocks and side-hill; besides about an acre that was tillable, you might have picked out about half an acre that could be tilled.

The eight acres which was sold for eighty dollars, that I consider a fair price for property at that time for tillable land.

There was no idea of the land being used then for other 10 than tillable purposes.

There was no idea at that time of the land being used for country seats.

Land was sold about there then for ten dollars per acre and less; I bought some myself for less than ten dollars, and some a little over.

This land that I bought for ten dollars would bring from three to five hundred dollars per acre; I have sold some for three hundred dollars an acre.

At that time the land was not considered as worth anything 20 after the wood was off; the value of the land was in the wood.

For farming purposes, the land that laid west of the brow of the hill was the most valuable; it was worth double the value of the land on the east side for farming.

The usual way to get to New York is the Hoboken ferry; before 1834 or 1835 the ferry at Weehawken had been taken away.

There was a regular road from New Durham to Hoboken, the Hackensack turnpike.

At that time the road was through the woods from the turnpike 30 to the Moore land; it was used by the Bergen people to draw their wood; the distance from the Moore lot to the turnpike was about two miles.

A thousand dollars for the thirty acres Biggs lot was a large price for farming.

Cross-examination.

I bought the land of Abraham Campbell that I gave ten dollars per acre for.

I bought four acres of land, near Mr. Price's, of Abraham Campbell, for forty-seven dollars; this was all tillable. 40

I bought five acres, two or three hundred yards from Judge Price's, of Aaron Newkirk, for one hundred and ninty-three dollars, I think.

I bought a piece at Aaron Newkirk's second sale, five acres, for one hundred and seventy-five dollars; the wood was a part cut off.

I bought the first lot of Campbell about 1836—the second about 1837.

The deeds are recorded, and show the true date.

10 I bought the lots of Aaron Newkirk in 1835 and 1836, I think.

I never bought any other land of Campbell except these lots.

This land was what Campbell had bought and cut the wood off and sold the land to me.

JACOB DANIELSON.

Sworn and subscribed before me, this 18th day of September, A. D. 1856.

FRED'C B. OGDEN, *M. C.*

20 Complainant's counsel offered in evidence a paper, purporting to be a receipt from Joseph Danielson to Francis Price, marked *Exhibit N*, on the part of complainant.

The examination of witnesses, &c., in the above stated cause was resumed this twenty-seventh day of April, A. D. eighteen hundred and fifty-seven, in the presence of the respective solicitors of the complainant and defendants.

Margaret Carling, a witness produced on the part of the complainant, being duly sworn, upon her oath saith—

My age is sixty-three; I live up towards Hackensack, in 30 Bergen county; I was acquainted with Mindert the second very well; I have seen Mindert the first when I was a child; Mindert the second lived with his son, Mindert the third, when I knew him, down in Bergen, below Jersey City; I knew Mindert the third very well.

When I knew Mindert the second and third I lived on the property of Peter Garrabrants, near Bulls ferry; Samuel T. Moore was my son-in-law; I remember Mindert the third selling property to Moore in 1834; Mindert the third gave

the deed; I lived on the property three years; this was before the sale to Moore; it is forty years ago since I lived on the property; it is forty-two years, I think; it was a good many years after this that Moore bought it.

John Ludlow, Matt. Ludlow, Michael Eldridge, Samuel T. Moore, all lived on the property between the time of our leaving it and selling it to Moore; Moore lived on it some time before he bought.

The first year we occupied the property we paid rent to Mindert the second; then Mindert the third came of age, and 10 we paid rent to him; we paid Mindert the second in repairs to the house the first year; we made the arrangement with Mindert the second and Mr. Van Houten; we paid Mindert the third one year, and then we left the property; this is part of Judge Price's property now; this property was offered to be sold to me and my husband by both Mindert the second and third; I don't remember the price; it was small in those days; twenty dollars an acre was a big price in those days.

We paid Peter Garrabrants sixteen dollars an acre for his land; it was better property, we thought, than the other. 20

Mindert said he could give a good title—it was his; Mindert the second said Mindert the third could give a good title—it was his; we were all in his house at Bergen, talking together; I was at young Mindert the third's house; they all lived together there at the time; we did not buy this property, because we had bought of Peter Garrabrants, and Moore had no property; this Moore property was filled with cat briers, stumps, and cedars, growing up—I think it was not worth as much an acre; it had more wood on than the Garrabrants property; it had a small house, just one room, a garret and 30 cellar; the house was worth about fifty dollars.

I know the Annett land, lying next north of the Moore tract, which sold at three dollars and a half an acre; it sold at the same time we bought the Peter Garrabrants property.

I never talked with Van Houten, the trustee, about buying the Moore property.

When Samuel Moore bought, Mindert the third, his wife, and Mr. Outwater were at our house.

Outwater said they could give a good title.

I would not like to give as much for the Moore property as 40 the Garrabrants property.

Cross-examination.

Mindert Garrabrants lived at Communipaw, six or eight miles from this property; we went several times to Communipaw; in the winter they were up about our place cutting wood; Mindert the third frequently came up to our place; he did not stay there over night.

I never saw Mindert the third drunk at our place; he used to get drunk; I never saw him staying about the neighborhood drunk, at Moore's and other places; I don't know that 10 I ever saw him drunk—I have seen him drinking; at that time I sold liquor. Mindert the third never had any money; I never sold him any liquor; I never saw him drink any at our house; the only time I ever saw him drink was once at Communipaw.

The swamp on Moore's property lies now near Mr. Price's house, near the road; Mr. Price has drained it out a good deal; the Moore tract reached on top of the hill just to the swamp; Mindert the third never stayed at my house all night; he never stayed around the neighborhood at night.

20 Van Houten, the trustee, came with Mindert the second when we lived on the property; we paid twenty dollars a year rent.

We bought the Peter Garrabrants property not more than thirty-six years ago, I think less.

The Garrabrants property was about twenty-eight acres.

We bought from the river all the way back; it is the piece we sold to Gregory.

Re-examination in chief.

The Minderts frequently offered this property for sale; they 30 wanted money; they had been drinking often, and were not as bad as people said they were; when Mindert the third came to draw wood, he drove his own horses; he used to bring his horses there, and make a stopping place on the hill; he took his wood to Hoboken to sell it.

In speaking of Mindert the second and Mindert the third, I mean Mindert Garrabrants.

her
MARGARET ⋈ CARLING.
mark.

Sworn and subscribed before me, this 27th day of April, A. D. 1857.

FRED'C B. OGDEN, *M. C.*

Joseph Danielson, of the township of North Bergen, a witness produced on the part of the complainant, being duly sworn according to law, upon his oath saith—

I reside in North Bergen; I believe I will be sixty-three next September.

I knew Mindert Garrabrants the second and third; I knew Mindert the first—I was not particularly acquainted with him.

I was very well acquainted with Mindert the second and third.

I bought a lot of land up at Slonga of Mindert the third; I agreed with him for it, and paid him the money; the land was like twenty-two or thirty-two acres; I paid him twenty-five dollars on account. 10

A paper marked *Exhibit L*, on the part of complainant, being shown to witness, he says—that is my writing, it is the receipt I got from Mindert the third; he said he would give the deed any time we wanted it; Mr. Garmo and I were down there together; we were going to buy it together; we went there with the money to pay him; the two deeds were on the table; Mr. Garret Sip was there, and said to Mindert the third, "Mindert, take care what you are doing—I am afraid you are going to get yourself into trouble; there are two deeds here, and your receipt Danielson has got for it;" Garrabrants said, "Danielson won't give any more for it." I said I bought it of him as fair as could be for that sum. Garrabrants said this man would give him a little more for it. 20

He seemed to be keen for a few dollars; I think the man's name was Biggs, from New York, for whom the other deed was made. Garrabrants did not give me a deed; he gave it to the other man; I paid him the fifty half dollars for to bind the bargain; I think Mindert said he would get the property surveyed when I went down there with the money; it was the balance besides the twenty-five dollars that we agreed to pay; that was as much as land was selling for at that time; we thought then it was a very good price; twenty-two dollars and a half per acre was a good price for the land in those times where the wood was cut off; I remember buying a small piece adjoining this land. 30

Quest. What did you understand Annett paid for his land, adjoining this? [Objected to by defendants' counsel.] 40

Ans. Mr. Annett told me he paid eighteen dollars per acre.

I never got the twenty-five dollars, or any part of it, back again from Mindert; I think I gave Mindert something on the contract after first payment; this was before I went down to get the deed.

I sold out my right under the contract to Judge Price.

A paper marked *Exhibit N*, being shown to witness, he says, "that is my signature I think; (the name of William D. Garmo being shown to witness) that is Garrabrants' signa-
10 ture; my spectacles are poor and the writing is pale, and I can scarcely see; I think it is William D. Garmo's signature;" he is the man who was to buy the property with me; Judge Price is now in possession of the property I was to buy; I knew Mindert the second; he said, what Mindert the third did as to the sale of this land was all right; he had a right to sell it; John Van Houten, the trustee, said Mindert the third had a right to sell the wood that he cut off.

[The testimony of John Van Houten's statements objected to by defendant's counsel.]

20 John Van Houten said it was his, Mindert's, own; I bought considerable of John Van Houten's own land from himself; I did business with him, and had several conversations with him; at the time I made the contract with Mindert the third, I had not any doubt but that he could give a title; I considered I was giving him a fair price for the property at that time; I don't remember exactly when Van Houten, the trustee, died.

It was at the house of Mindert the third that these deeds were on the table; Mindert the second lived in one end of the
30 house; I don't think he was by, at any rate; I refused to give any more than I had bargained for the property; I said it was a fair bargain; Mindert the third signified I could have had the property, if I would pay as much as the other man offered; the other man had offered him more money than I had agreed for; I understood Biggs was there, but I did not know him; I think I came away when Mindert would not give me my deed; I did not feel pleasant about it; I thought it was a kind of underhand piece of work; I had the money there to pay him according to my contract; I told him, here is the money,
40 and he would not take it; Mindert the third, I think, had not

been drinking any that day; he appeared to be rational as ever I saw him; in my opinion, he understood what he was doing that day; when I talked with Mindert the third, and paid him the twenty-five dollars, he understood all about it; when I went to get the deed, he did not try to deny selling the land to me, but he said that this man would give him more money for it; he never gave me a deed for the property.

About the time I went to get the deed, when Mindert the third was sober, he knew as much as anybody; I thought he was keen enough to make bargains; at that time I never 10 heard any suggestions to the contrary; I believe Mindert the second knew he had made this contract to buy the property; on the first day, Mr. Garmo had some talk with him about it; I had some talk with Mindert the second about the sale, but I forget what it was, I think he said it was Mindert the third's, and he could do with it what he liked; I live about a mile from Judge Price's place; I have seen his improvements on the property; he has improved the land, carted off stones, put a good road on, and stone wall and fences; he has blasted rocks, and built a good house; Judge Price has laid out a good 20 deal of money on the place.

Quest. Do you think Judge Price has laid out twenty thousand dollars on the place?

Ans. I should not wonder if he had.

He lives on the place with his family, has done so for a number of years past; he began to improve the property some years before he moved on it to live.

There has been quite a large increase in the value of the property during the last twenty years; people from New York have been building up there. 30

Cross-examination.

When Van Houten told me that Mindert the third could cut off the wood, I don't know whether it was after Mindert the third was of age—I can't tell. This was up at New Durham that he told me this.

I think, at that time Van Houten said Mindert the third had a right to cut the wood, and sell it.

There was nothing said about his right to sell the land; it was his own, and from that I supposed he had a right to do with it what he pleased; at that time, don't know whether 40

Mindert the third was selling the wood; the wood was going out there, and that is the way I came to ask him whether Mindert had a right to sell.

Quest. Was this about the time Mindert the third had the wood cleared off?

Ans. I can't tell; there was wood went out before and after, I guess.

Quest. At that time, was Mindert the third about there with his horses and team?

10 *Ans* I had seen him about there sometimes with his horses and team.

Quest. Was not this about the time that Mindert came of age?

Ans. I couldn't say; I don't know what time he did come of age.

I couldn't say whether it was over twenty years ago; I don't know how long Van Houten has been dead; I could tell better if I could see my papers; I don't know whether it was thirty years ago, it was not forty years ago—it was nothing 20 like that; John Van Houten, the trustee, is dead; I don't think I can tell within ten years how long he has been dead.

Quest. How long ago do you suppose he died?

Ans. I don't know as I can say—it is only guessing at it; he has been dead some years; I believe he lived in Bergen when he died; he was a middling old man; he was quite a number of years older than I, but I don't know how much; his house in Bergen was below the Five Corners; I did not buy property of John Van Houten—I bought it, I think, of his son—I think his name was John; I bought a little wood- 30 land in Bergen woods, pretty well back, I think it lays from Judge Price's place; it was two and a half acres; I own it now; I could not say how long ago I bought it.

Quest. Can you tell within twenty years of the time that you bought this property of Van Houten?

Ans. To the best of my knowledge it was about twenty years ago, it may be a little over or under; I don't think it could have been ten years one way or the other from that—it may have been.

I have been in New Durham all my lifetime—it is my na- 40 tive place; after I came of age, when I first went to do for

myself, I lived in New Durham, in a house owned by Mrs. Blauvelt; I was married there; I was twenty-five or six when I married; I went right away to Mrs. Blauvelt's when I got married.

Quest. Was this talk you had with Van Houten, the trustee, about carrying away the wood, before or after you were married?

Ans. I can't say whether it was before or afterwards.

I don't think I ever bought any property of John Van Houten, the trustee—I asked him about it, but bought it afterwards of his son; I bought of John Van Houten's son some property above Jesse Van Gelder's; I think it was Helmah's son John, and not John's son John, that I bought the two and a half acres of; I did buy property of old John Van Houten, the trustee; he lived in Bergen; I knew him very well; I bought of him the property I now live on; I don't know whether I bought the property where I now live before or after I was married—it was about that time; when the embargo, was laid I burnt coal on the property; that got me into a notion of buying it; it was before I was married.

It was in Mindert the third's house; I made the contract with him at Communipaw; William D. Garmo was with me; I took the fifty silver half dollars with me—I had it in my pocket; I always have money in my pocket; the agreement was not made before I went there that day, but it had been talked about; I knew Mindert wanted to sell; Mr. Britten was by when the contract was made; I can't tell if any one else was by; I guess Britten was in the house when we went there; I can't say how long it was after I paid Mindert the twenty-five dollars that I heard he had sold to Biggs; I can't say whether I heard it before the day I went to tender the money for the deed; I don't know whether the reason I got the money, and went there that day to demand the deed, was because I had heard he was selling the property to another man; there was some talk about his selling it; there were two deeds drawn, and on the table when I got there—one to me, and one to Biggs.

I think some of the money was silver and some paper that I took; I can't say how long this was after I paid the twenty-five dollars, and took the agreement.

Mr. Garmo and I took no witness with us; I did not take the contract to a lawyer to begin suit against Mindert—I said that I would; I believe I got the agreement recorded; I never asked for my money back; I bought the property, and I wanted that; Mindert did not offer to pay the money back; I was out of humor; I told him I would have satisfaction; I thought it was bad treatment.

I couldn't say what Judge Price paid for the contract I sold him; I think it was a little more than twenty-five dollars; it
10 might have been in the neighborhood of one hundred dollars that he paid me; I don't think it was over three hundred; I don't think it was that; I can't say how long afterwards I sold the property to Judge Price; I don't recollect whether John Van Houten, the trustee, was alive or dead when I made this contract, but I think he was alive; it was long before this contract that I bought the property I live on of John Van Houten; I did not take possession of the thirty-three acre lot; Mr. Garmo said he would, but I don't know whether he did; I don't know whether Judge Price took possession under this
20 contract, but I expect he did; I heard Judge Price say that he had commenced, or was going to bring suit against Biggs; I did not hear him say that he had; I heard there was a suit brought about it.

Quest. Have not the most of Judge Price's improvements been put upon his property during the last four or five years?

Ans. I don't know how long ago he built his house; that is the most of it I suppose; he built a road six or seven years ago; he has blasted rocks; I mean the road that runs up and down the hill to the meadow.

30 There are one or two houses on this Garrabrants property, one under the hill, one for an office, and one for a wash-house; I think Judge Price's dwelling house is on it, or near the line; it may be a little over it; I can't say how long his dwelling house has been built—I guess it is over five years; he built it new; it is a stone house; the house by the gate is stone altogether; that, I believe, is an office; I forget whether the dwelling house is all stone or frame; I think it is two stories high.

Quest. Is it two rooms in front or a single house?

40 *Ans.* It fronts east, I think.

I think it has a piazza in front—I don't know whether there is or not; I think there is a front door in front of it; I can't tell whether there is an entry between the two rooms, or whether there is only one room in front; the building under the hill was built two or three years ago; I can't say whether it is on the Garrabrants property.

Re-examination in chief.

Mr. Garmo united with me in selling to Judge Price, and got his share of the profits; I cannot depend upon my memory now for dates of past events; I have no memorandum of 10 the dates about which I have been examined; this house of Judge Price's is a queer built house.

his
JOSEPH ⋈ DANIELSON.
mark.

Sworn and subscribed before me, this 27th day of April, A. D. 1857.

FRED'C B. OGDEN, *M. C.*

The evidence in the above stated cause was resumed this thirteenth day of July, in the year of our Lord one thousand eight hundred and fifty-seven, in the presence of the solicitors of the respective parties. 20

John Sturges, jun., of the township of North Bergen aforesaid, a witness produced on the part of the complainant, being duly sworn, deposeth and saith—

I am past forty-six; I live in North Bergen, very near two miles from Judge Price's; I have lived there forty-six years and better; it is my native place.

When I first knew the property of Judge Price, part of it was heavy woodland, part of it was swamp, and on top of the mountain was rocks, briers, and cedars.

Mindert Garrabrants the third cut off the wood; I remem- 30 ber him; at that time, after the wood was cut off, I would not suppose it would have sold for more than ten or twelve dollars an acre; land adjoining me, since that time, has sold for less than that; I have seen Mindert the second at Communipaw; I don't think I ever saw him up there; I never had any talk with him about this land, nor with Mindert the third.

I remember about the time Judge Price bought this land;

it was along about 1836 or 1837—it might have been a little after; when the Judge bought, it was in a rough uncultivated condition; after the timber was cut off, red cedar came up in its place and briers; every place on the hill where heavy timber was cut off red cedar came up; when the Judge bought this land there was a house on what they call the Garmo property of very little value; there was no house on this Garrabrants property, except a house of Sam Moore below the hill, not worth twenty-five dollars; Judge Price resides on the property 10 with his family—he has resided there several years; I think his house stands on the Garrabrants property, an office, barns, stand on it; he has built a good deal of stone fence; on the Garrabrants property, Judge Price has spent a great deal of money; there has been a great deal of expense in draining; there was a drain cut through the mountain; stumps have been taken out of the swamps; fences have been put all around it.

Quest. Is the cost, in your opinion, fifteen or twenty thousand dollars?

20 *Ans.* Yes.

Quest. I wish you to state what amount, in your opinion, has been expended by Judge Price on the Garrabrants property since he first took possession of it, in the way of improvements?

Ans. I have no doubt he has spent as much as fifteen or twenty thousand dollars there, and perhaps more.

I think this Garrabrants property has become very valuable now; there has been a great alteration in the value; some part of the road made by Judge Price was very expensive; a 30 good many men were employed on it; the ditching done there was very expensive.

I am a farmer.

Quest. What was the character of Mindert the third as to his capacity?

Ans. I never saw anything deficient in his mind; when he was sober he was cute enough, in fact when he was in liquor sometimes; he was cute enough sometimes when he was in liquor.

He used to sell wood on the property; I often saw him up 40 there; he sold the wood standing there, and took wood away with his team; he came up alone.

When I first knew him, I don't think he was more than twenty-one or twenty-two, between twenty and twenty-five.

Cross-examination.

The principal improvements of Judge Price consisted in making a fence, post and rail, all around the property, building a house, barn, an office, stone fences, a large foundation of a house, made a road down the hill, drained it through the mountain, cleared off a piece of swamp, had it all grubbed up, made a large ditch, commencing in the Garrabrants property, and running through the Brinkerhoof woods; he blasted the 10 rocks about where his house stands; he put drains all around the house, fixing walks and putting on gravel; he sunk a well there.

My estimate of fifteen or twenty-thousand dollars is a general guess of the value of these improvements; I have not estimated them particularly; I do not know the number of panels of fence there is around the property—I should think there is over two hundred panels around this property; I never, until asked this question, thought how many panels are there; I have no idea how many perches of stone wall 20 are around it—I should think there were fifty perches; I think there are more than one hundred perches; I would not like to undertake to say within fifty perches how much wall there is; I do not know the size of the house; it is two stories high; it is a frame house; I cannot tell how much rock was taken out within one hundred yards in making the road—I should think he took out more than one hundred cubic yards.

I think I can tell within two hundred rods how much ditching was done; I would not like to say within fifty rods how much was done; there was between two and three hundred 30 rods in all; three ditches are across the lot on the west side of the turnpike; there are two from the west end to the turnpike, and part of the way I think there are three.

I can't tell exactly how many acres of swamp he cleared off the stumps; I should judge there was between two and three acres, it may be a little more, that he grubbed up.

Quest. What do you suppose was the cost of his house?

Ans. I suppose it was in the neighborhood of three thousand dollars.

Post and rail fence is worth seventy-five cents to eighty- 40

seven cents a panel; I can't tell what such a stone wall is worth a perch; it is a large heavy stone wall; I am unaccustomed to such work; I can tell its worth per perch within five dollars; I don't think it is worth over five dollars per perch, any how; the foundation being sunk so far under ground, it is hard for any one to tell; I would not like to say what the rock removed from the road would cost per yard; on the Paterson road, I think, similar rocks cost two dollars a yard—that is as much as I know about it; I suppose this 10 would cost about the same as on the Paterson road, and perhaps a little more; it is the same kind of rock.

Re-examination in chief.

From my observation, I consider Judge Price a liberal man in making improvements on his property; he has been making improvements ever since he got the place.

Re-cross-examination.

The road down the hill has been made since 1845; most of it has not been built within the last three or four years; I should think it was worth one hundred and fifty dollars per 20 acre to clear up Judge Price's swamp land in the manner he cleared it; I would not undertake the job for two hundred dollars per acre.

Quest. When you speak of $200 per acre, is it a mere guess, or are you certain that you are within an hundred dollars an acre of what it can be done?

Ans. It is not guess work; I think, from my experience, it would cost $200 per acre, and I think that is right.

I suppose some of this ditching was worth from seventy-five cents to a dollar a rod; the wide ditches along the road 30 from east to west, for fifty rods, is worth, I suppose, from two to five dollars per rod, where there was no rock; in some part of the ditch there was some rock; I cannot tell how much there was; I could not say whether there was five, ten, or twenty rods of rock; my opinion is that Judge Price's house is on the Garrabrants lot—I can't say for certain.

JOHN STURGES, JUN.

Sworn and subscribed before me, this 15th day of July, A. D. 1857.

FRED'C B. OGDEN, *M. C.*

John I. Earle, of the township of North Bergen, a witness produced on the part of the complainant, being duly sworn according to law, upon his oath saith—

I live in North Bergen; I am forty-eight years of age; it was in 1832 or 1833 when I first became acquainted with Judge Price's land; Judge Price bought it in 1835 or 1836; at that time, in 1832 and 1833, land about there was very cheap; about 1835 land on the hill was sold for twenty-five dollars per acre, and sometimes sold for fifty dollars per acre after the wood was off; I should judge a part of this land was 10 worth more than that on the hill, and part of it was not worth as much.

The improvements on Judge Price's place are a large frame two story house he lives in, a barn, out-kitchens built of stone, pump in one of the kitchens to draw water in the house, a very large foundation of stone four to five feet above ground, and six feet in some places; adjoining the frame house, an office pretty much all stone, stone fences, a very large stone wall on the east of Palisade avenue, a stone wall on the opposite side, large ditches, I can't tell how many, cut through 20 the swamp, one runs from Palisade avenue, runs direct west over in the land, some of it is through rock, and some not, another large ditch cut through this property down through the Brinkerhoof property; I think one was cut across the avenue—I won't say for certain; it started, I know, from the east side of the avenue down to the edge of the mountain, through the solid rock nearly all the way; I think this ditch was made more than five years ago; he made several drains through the yard down towards the edge of the hill; the walks around the house and the road that leads in have these 30 drains under them; he cleared the swamp; when he got the swamp, some of it was not very bad, and some was very bad; the swamp was very miry; there were trees, cat briers, and grape vines in the swamp; some places the draining had to go through rock.

Judge Price has made improvements every year more or less since he has been there; men were there every summer working for him.

The improvements put on the property by Judge Price are

calculated to benefit the property; it would not be worth much without them, the ditches, &c.

I have never made any estimate of what the improvements are worth; a great deal of work has been done, which, to look at, would not appear much, but must have cost a great deal of money.

Quest. Has there been, in your opinion, as much as ten thousand dollars of improvements put on?

Ans. I should think there was more than that expended.
10 My attention has never been called to the value of the improvements, and I should not like to say how much they were worth; the land just around where Judge Price's house stands was covered with rock, briers, and cedars at the time he bought.

Quest. Where the house stands, and immediately around it, has not Judge Price cleared away the stumps, briers, rock, and everything that was on it?

Ans. Everything is not cleared off; where he has built the road and paths, he has cleared off the underwood, stuff,
20 &c.; all through the ground is cleared, except the cedars left for shade, of the underbrush, stones and stumps.

JOHN I. EARLE.

Sworn and subscribed before me, this 18th day of September, A. D. 1856.

FRED'C B. OGDEN, *M. C.*

William Cooper, of the city of Hoboken, in the county aforesaid, a witness produced on the part of the complainant, being duly sworn according to law, deposeth and saith—

I owned a place formerly a little above Judge Price's—
30 when I got it, most of it was similar to Judge Price's in its original rough state; I went into possession of my place from 1835 to 1836; it was rather before, I think, Judge Price went into possession of his; it might have been partly before and partly after.

I did a great deal of ditching, blasting, and pulling up roots of trees, and so on; I have had on my own property a good deal of experience of the expense necessary for improving property situated as Judge Price's was; my place was about a third of a mile above Judge Price's; I knew the situation

of Judge Price's property when he took possession of it; I knew its condition until within four years, since when I have not seen so much of it; before that I saw it daily almost; the improvements put on the property by Judge Price are a drain, some roads, a great deal of blasting; his drainage was very expensive; any estimate I could make at such short notice of the improvements would be very far from the mark; I can only say it would be a very large sum of money.

Quest. From your knowledge of the expense of making 10 improvements similar to Judge Price's upon his land, what estimate do you form of the amount Judge Price has laid out on his property since he came into possession of it?

Ans. That is not easy to answer without some previous examination and investigation; I never have thought of it; I merely say it is a great deal; if you include drainage, buildings, fences, clearing of stones, stumps, and all that, it would come to several thousand dollars.

Reclaiming a swamp like that would cost a great deal; to drain, clear, and grub up a swamp on my land would cost 20 hundreds of dollars per acre, that is both to upland and swamp; the expense to clear and improve Judge Price's land would be greater, I think, than mine.

Re-cross-examination.

I bought my land from fifty to one hundred and twenty-five dollars an acre; that was of course before the speculation in 1835 and 1836; I paid one hundred and twenty-five dollars per acre for six acres belonging to Judge Van Winkle in 1835; that was on the north side, a narrow strip extending to the river; it was a good deal of it timber; I bought the 30 largest piece of Stephen Vreeland, and one nearly as large I bought of Huyler and Demott, also a piece larger than the Stryker piece, I bought of Saunier and Danielson; I bought a small piece, between two and three acres, lying upon the river, in 1835, for eight hundred dollars; it was improved with fruit trees and a small tenement on it; perhaps the improvements on these three acres would not have made more than one hundred and fifty dollars difference in the value of the price.

When I bought these two or three acres, land had begun to 40 rise in value; I think it was in the month of October, 1835,

when I bought this piece; the lot I bought of Stephen Vreeland was partly wooded—I paid seventy-five dollars an acre for it; the Saunier and Danielson property was not much wooded—they had just cleared most of the wood off of it; I paid for that sixty-four dollars; I think I bought seventeen acres, extending to the river; that was the first I bought—it was in the summer of 1833; the Danielson spoken of was Joseph Danielson, of New Durham.

Re-examination in chief.

10 At the time Judge Price bought the Garrabrants property, it was not considered equal to mine in value; the lot I bought for six or eight hundred dollars ran along the river, in front of the Vreeland purchase; it had the water rights and water front with it; I was nearer to Bulls ferry than Judge Price's land; I could go that way to New York; I was in the habit of going that way; I was just a mile from that ferry by the road—along the river it would be about three quarters of a mile; the land I gave fifty dollars for was a narrow strip in the heart of the property, running from east to west down to 20 the river.

Quest. What was the common report of the amount for which the Annett land, adjoining Mr. Price's land, sold? [Objected to by defendant's counsel.]

Ans. It was twenty-two dollars and a half an acre.

Re-cross-examination.

Bulls ferry was kept up for some time, as quite a good ferry, between Canal street, Bulls ferry, and Fort Lee; it made three trips a day—I am not certain as to four trips; the ferry was not suspended the whole of the winter; boats would 30 run sometimes quite into January; my place was farther than Judge Price's from the Hoboken ferry.

After the crash in 1837, the property went down, like every thing else; I do not recollect whether there were any sales as low as the price of my property after the crash in 1837; there was very little, if any, property sold; I sold my property in the beginning of 1835; I believe it measured eighty-one and a half acres; I got seven hundred and twenty-five dollars per acre for it; that included all the improvements on it.

40 Re-examination in chief.

I put on it a house, barn, and other improvements.

All the improvements, including the cost of land and everything, amounted, I suppose, to about forty thousand dollars; the purchasers bought the property to lay it out in town lots.

WM. COOPER.

Sworn and subscribed before me, this 13th day of July, A. D. 1857.

FRED'C B. OGDEN, *M. C.*

EVIDENCE ON PART OF DEFENDANTS.

[Filed February 15, 1859.] 10

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the State of New Jersey, wherein Francis Price is complainant, and Charles G. Sisson and Mary his wife, James Van Boskerck and Effie his wife are defendants, taken at the office of A. O. Zabriskie, esquire, in Jersey City, on the seventh day of July, A. D. eighteen hundred and fifty-eight, before me, Frederic B. Ogden, a master in chancery of said court, in the presence of J. Dunn Littell, esquire, solicitor of the complainant, and Abraham O. Zabriskie, esquire, solicitor of the defendants. 20

Mindert Van Horne, of the township of Bergen, in the county of Hudson, a witness produced on the part of the defendants, being duly sworn according to law, upon his oath saith—

If I live to the 21st of this month, I will be sixty-three years of age; I live in Bergen township, on the road leading from Bergen to Communipaw, about half a mile from Communipaw; I was born and brought up within two or three hundred yards of where I now reside.

I knew the Mindert Garrabrants, the son, father, and grandfather; I was well acquainted with them; I lived pretty near half a mile from their residence at Communipaw; I was in the habit of seeing them frequently; I knew the grandson, called Mindert the third, up to the time of his death; up to 30

the time of his death his habits, as to temperance, were such that it was a very rare thing to see him sober; if you found him sober, you had to go very early in the morning, and sometimes then you would not find him sober; I saw him almost every day; he was an abandoned drunkard; I never was acquainted with a man in my life more habituated to drink and more of a drunkard than Mindert the third was; this habit commenced with him when I suppose he was not older than some fifteen, sixteen, or seventeen years of age,
10 when he lived with his grandfather Van Houten.

His extreme intemperance continued until his death; I was there until he died, and the last words you could understand he called for rum; after he was grown up he worked sometimes when he was sober, but he never did support his family, nor could; he was not capable of doing business after he was grown up; after he was grown up, he was sober sometimes to be sure, but very seldom; and if he had money, or could command money, you would not find him sober; when he was sober his mind was certainly very much affected by his
20 habits; he could not make a bargain, or do anything of a business character; he could not buy or sell, or do anything of a business character that looked anything like a business way; he was so that any person disposed to take advantage of him could have got the better of him in a bargain; from what I knew of him, he could not have formed any judgment of the value of his landed property.

As to how he obtained his living, he did not live, he stayed; every two or three years everything was under an execution for his living; one day, I know, he confessed nine judgments,
30 and another day seven.

[The part of the statement relating to his confessing judgments is objected to by complainant's counsel.]

I took the land from him three different times, and worked it on shares, and took one half of the profits, and used the other half to pay these bills; he was not competent to work the farm himself; his farm was a good one, and amply sufficient to support himself and family, and enable him to make money off of it; his family were generally suffering for want of the comforts of life.

40 John Van Horne had a lease of the farm until Mindert the

third came of age, on condition he would support Mindert the first and second; when Mindert the third came of age he took the place, and was to support the old people; he did not support them, because Mindert the first lived with my brother, and died there; John Van Horne, before Mindert the third took possession of the place, paid thirty pounds a year for the board of Mindert the first and second; then Mindert the third, when he came of age, took the place, and was to pay the same as John Van Horne, but he never did; Mindert the second boarded with me some time, and with different ones; 10 finally, he found everything was going to rack, he could make no living, and went back to the place; he then stayed and died on the place; Mindert the third's family lived with Mindert the second on the place.

Mindert the third was not at home one day in a fortnight; at one time Mindert the second had a bond of one thousand dollars of John Van Riper, of Slaughterdam, a part of the proceeds of land which came to Mindert the second and his sisters, which I and others had bought of Mindert the second for $2100; Mindert the third got this bond of his father, Min- 20 dert the second, to go and collect some money on it to buy a horse; he went, and collected seven hundred dollars on it; he was away for a fortnight; and my brother and I heard he was at the old Bulls head tavern, near Jersey City, and went there for him, but found he had just left; we followed him to Waters' tavern, near Bergen Point, and found him there with thirty-seven cents in his pocket; this was all that was left of the $700 endorsed on the bond; he had the bond with him—I saw it; my brother kept it in his house with the consent of Mindert the second; he was afraid of the other $300 that was 30 left; he was not able to give any account of what he had done with his money; he had bought no horse at that time; not a cent of the $700, that I know of, was ever got back or recovered.

After Mindert the second got over the feeling which arose from the spending the $700 so foolishly, then he went with Mindert the third, and bought a horse for $150 out of the $300 which remained; I know of no other occasion in which Mindert the third had possession of so much money as that; when he sold to Biggs, the money was taken possession of by his wife, and 40

she used it to build a barn with; when he had money at other times, he acted no wiser with it than he did with the $700.

My mother was a sister of Mindert the second; Mindert the first was my grandfather; I have always known the family, and have been acquainted with their ups and downs, and customs and habits; I have seen Mindert the third taken in a wagon, under the old fashioned Dutch seats covered with hay, and a negro sitting on the top of him, to be taken to
10 the Five Corners to sign a deed, when they wanted to buy land of him; my attention was attracted by his grunting from the spring seat striking down on him as the wagon jolted every time; I called the negro to stop, and I hauled the hay off him from under the seat, and asked him where he was going; he said he was going to the Corners to sign a deed for Merselis J. Merselis; I asked him what he was hid away for; he said it was so I should not see him—they wanted to keep it quiet; he was not sober then.

The property conveyed to Merselis was a piece of meadow
20 that lay on the northeast side of the Jersey City plank road; the deed says it is eight acres, more or less; it has since been surveyed, and is found to contain some fifteen or sixteen acres; the price is not one tenth part of the value of the property at that time; it was in August, 1835, that the conveyance was made to Merselis; it was Merselis' wagon and negro that took him up.

At any time when Mindert the third had not had rum for a day or two, by giving him four or five dollars, you could get him to endorse a note for any amount, I have often
30 stopped him from doing so; I have talked with him a good deal on business matters; he had no correct idea of the value of property or the value of money; after he left his grandfather's and took possession of the property, when the lease of John Van Horne had expired, he used to go up to the property in dispute, which was then good woodland, and would stay there two or three weeks without coming home, selling, cutttng, and wasting his wood; on two different occasions, I have gone up there with Michael Vreeland, and put up notices to try and stop him from selling, and people from buying
40 the wood.

Mindert the second authorized these notices to be put up; for says he, if something is not done we will have no wood to burn; and it was so, it was all cut off as smooth as this table, unless it was a few trees in the swamps, where he could not get at them; I never knew any one who took hold of property to manage it more prodigally and wastefully than he did.

This deed to Merselis was not given up, but there was a compromise made between Mr. Merselis' son and the defendants in this suit. 10

Quest. During the life of Mindert the third, was it understood in the neighborhood that this property was entailed or limited over, so that it could not be sold? [Objected to by complainant's counsel.]

Ans. Yes; it was so understood by myself, on account I took advice on it, if he did not support his family; his goods were all under execution then, and he tried to get his two brothers-in-law to satisfy those executions, to see if they would not advance the money for him; they asked him the amount of the executions; he said he did not know exactly, but he 20 thought in the neighborhood of $400, or may-be a little more; they said they could not advance so much money for him; then he came to me, and wanted to see if I could not, or rather would not, do as I had done before, that is, to take his property on shares; I told him no, but I would do this—if he and all hands of them would sell me that strip of land in front of my house, I would pay off the executions; I told him then I must take advice on this, and so I went to Squire Van Winkle, in Bergen; I said to him, Squire, Mindert Garrabrants' goods and chattels, furniture and all, are under execution, and I have 30 been thinking to take the strip of land in front of my house to satisfy those executions; the squire said to me, Mr. Van Horne, do you know he can give no deed for it? there is a risk to run, if Mindert the third does not live as long as Mindert the second; I said, I know it, the deed will not be good unless he outlives Mindert the second; I bought the property, and paid the executions, which amounted to four hundred and twenty-odd dollars; the next day he lost one of his children, and as he had no money I gave him twenty dollars, which made

about four hundred and fifty dollars altogether; at the time, I judged I bought from an acre and a half to two acres.

A paper marked *Exhibit D* 1, on the part of defendants, being shown to witness, he says, it is the deed I received for the strip above referred to.

Besides Van Winkle's advice, I took my old uncle John Van Horne's advice; he told me the same as Van Winkle, and said, you are a worker, and can make enough off of it before anything happens; both these men lived in the neighborhood,
10 John Van Horne at Communipaw, and Van Winkle at Bergen.

A paper, *Exhibit D* 2, on part of defendants, is the deed spoken of by me, containing the property conveyed by Mindert the third to Merselis.

I know the property in question which formerly belonged to the Garrabrants family; I owned property in the neighborhood; I think two or three lots were between that and mine; I sold my property on the tenth day of June, A. D. eighteen hundred and thirty-six; my brother and I got $500 an acre
20 for it; it was not worth as much as the Garrabrants property, because on our property we could not get down the hill—we had to go around to the Garrabrants property to get down.

Quite some property has been sold since 1835 about there; at that time, 1835, property around that neighborhood would bring from four to six hundred dollars; wood was not the object of the people buying property around there at that time, but it was the situation.

John Vreeland sold, August 1st, 1835, seven acres for eight hundred and seventy-eight dollars; Stephen Vreeland sold,
30 October 7th, 1835, fourteen acres for two thousand nine hundred and forty dollars; John Vreeland's property laid on the southwest side of me; it had no front on the river or hill; the front piece he had sold for fifteen hundred dollars an acre, comprising the part on the hill and running down to the water; Vreeland's property, which was sold on the brow of the hill, was north rather more than the property in contention, but his rear lot was not worth so much, because it was away off on the northwest line.

Stephen Vreeland's property lay near John Vreeland's; it
40 did not run on the brow of the hill; I was out of the way, and cannot say whether property sold freely at these prices in

1835; this property now in contention was worth, in 1835, two hundred dollars an acre; I should say it was cheap property at $250 an acre; the property of Stephen Vreeland did not run more than half way from the northwest line to the brow of the hill.

Cross-examination.

Exhibit D 2, being shown to witness, he says the grantor in that deed is Mindert the third.

Merselis J. Merselis, the grantee, came from Tappan, and died here; he had not lived here more than a few years before the date of this deed. 10

Stephen H. Lutkins, the commissioner, was a business man amongst us; he also was a justice of the peace.

Exhibit D 1, being shown to witness, he says, Mindert Garrabrants, jun., mentioned in the deed, is Mindert the third.

As near as I remember, I gave some $420 odd—with the twenty dollars, paid next day, it made near $450.

The amount of $150 consideration was put in at a hazard, because the amount of the executions was not ascertained; I was present at the execution of the deed—it was done at 20 my house; at the execution of the deed, I suppose he understood what he was doing; he was not sober when the deed was executed, neither was his wife sober; Garret Sip, before whom this deed was acknowledged, was the same person who was examined as a witness in this cause; I have no doubt, when Mindert the third executed this paper, he thought he was signing a deed; I think he knew he was signing over to me that particular piece of property; I did it by the persuasion of Mindert the second.

Mrs. Sisson and Mrs. Van Boskerck, two of the defendants, 30 are the children of Mindert the third, and therefore my cousins once removed.

The terms of settlement between Mrs. Sisson, Mrs. Van Boskerck, and myself was that we each took one share; I took one-third, and they two-thirds; there was no stipulation made by me in reference to Judge Price's case.

The settlement has been carried out by my keeping the property, and paying them, at their valuation, for their share; I paid them one thousand dollars; the persons who bought of Mindert the third were mostly persons living in his neighbor- 40 hood.

The occurrence relative to finding Mindert in the wagon must have been August 14th, 1835; this is the day the record tells me that the deed was made; the *Exhibit*, marked *D* 2, is the deed I refer to as given at that time to Merselis; I supposed the object of putting Mindert under the seat was to conceal the fact of his conveying the property; I don't know whether he was in liquor or not when I saw him under the seat; Mindert the third was my cousin.

The money from Biggs was taken charge of by Mindert the 10 third's wife, and she took it to rebuild a barn, which had been blown down.

It was always my fashion, when I had money, to give it to my wife to keep, but when I wanted any money, I took the keys and got it.

I never had any other deed from Mindert the third except the *Exhibit D* 1.

When the witnesses for the complainant were examined, I attended there, I suppose, some two or three days; I was notified to appear there, for they did not know how soon Mr. 20 Price's side might get through; besides selling the part of our land near Judge Price's, we sold the back part to Doeg, I think from $140 to $150 per acre; it seems to me we sold that in the lump as it laid, and not by the acre; the land we sold for $500 per acre was afterwards sold for less than that; I don't think it sold for more than one half that sum; Robert Pierce sold to Brown, Brothers & Co. about eleven acres for twenty, thirty, or forty thousand dollars.

When Mindert the third went to the woods he staid all over, sometimes at Moore's, sometimes with old Garmo, sometimes 30 with Ludlow; I have known, when he was staying with Nath. Ludlow, Nath. would take his horses for five or six days and draw wood to Hoboken, sell it, and pocket the money; and when Mindert got sober, he would get up a load for him, and send him home with it; I calculated Nath. must have taken the money, because when I went after Mindert he had none.

Re-examination in chief.

I knew the piece of property sold by Pierce to Brown only by public report at the time; the date, the 14th of August, 40 1835, I got from the records at Hackensack; the memoran-

dum could not have been taken from this deed, which is November 12th, 1832.

Witness being shown deed, marked *Exhibit D* 3, dated August 14th, 1835, says, that is the deed for what is called the Southmayd purchase; this must have been the deed from record of which I made my memorandum, and this is the same property as contained in the deed marked *Exhibit D* 4; this is the same property of which I spoke in my cross-examination, when I said, that Gregory and Southmayd gave up the property when they found how the deeds were made. 10

Re-cross-examination.

Mr. Merselis was esteemed a man of very good character; he is father of Jacob M. Merselis, the late sheriff; he was a regular speculator.

Re-examination in chief.

Quest. From the character of Merselis J. Merselis, was he not just the kind of man to take advantage of Mindert's infirmity to get his property at a low price.

Ans. Yes, sir.

Re-cross-examination. 20

I do not know whether Merselis gave any directions about the darkey; I do not know whether Merselis knew anything about it.

MINDERT VAN HORNE.

Sworn and subscribed before me, this 7th day of July, A. D. 1858.

FRED'C B. OGDEN, *M. C.*

The re-examination of the witnesses on behalf of the defendants in the above stated cause was resumed this twenty-third day of August, in the year of our Lord one thousand 30 eight hundred and fifty-eight.

John M. Vreeland, a witness produced on the part of the defendants, being duly sworn according to law, upon his oath saith—

I know the property formerly belonging to Mindert Garrabrants, and now belonging to Judge Price; I used to own property in that neighborhood very near to it; I live in the township of Bergen, and have always lived there; I am sixty-four

years old; I own lands within half a mile of Judge Price's; I owned one-third of about eighty acres; my lots ran from the river to the Bergen line, that is, one corner struck the river; the rest struck the Slonga meadow; I sold this land some time ago—It was before the speculation of 1836—I sold it to three different people; the first part I sold to Robert Pierce—I got one hundred and fifty dollars an acre for it; I think it was about 1829; that was the front near the river—it was the greater part of the property; I can't tell how many
10 acres he bought; Michael and Mindert Vreeland owned it with me; there was a little house down under the hill on this property, and also a barn; the whole of the improvements were worth from $150 to $200; the second lot I sold was on the hill west of the first lot; this was sold to Samuel and Joseph Danielson; I sold that lot before the first speculation; there were seven acres of it, and I sold it for a little more than one hundred dollars an acre.

Exhibit D 5, being shown to witness, he says, that is the land sold by me to Saunier and Danielson, and the considera-
20 tion there stated is the amount I received for the property.

There was wood on the seven acre lot; it was valuable; it was white-oak, but did not stand very thick; some of the ground was dry and some parts were swampy, and some parts you could not get through at all unless it was frozen.

I sold the third lot to John Dally, about a year or two after I sold the other lots; that is the back lot of all, and runs up to the Bergen line; Dally gave me two hundred dollars an acre for it.

I don't know which of these three lots was the most valua-
30 ble; the last one brought the most; Dally wanted it very much, and offered me the $200, and I told him he might have it; I would call the meadow lot the most valuable one.

Stephen Vreeland's property lays between our property and the Garrabrants property; Stephen Vreeland sold to Saunier and Danielson; I don't know what he got—I did not hear at the time; his property was situated, in relation to Slaugh's meadow, the same position as ours and the Garrabrants property.

Exhibit D being shown to witness, he says, the property
40 therein described is the same property of Stephen Vreeland spoken of by me.

I knew Mindert the first, second, and third; I am a grandson of Mindert the first; my mother was a sister of Mindert the second; I lived from Mindert the third about a mile on the road, and about half a mile across the meadow; I used to see Mindert the second and third very often; the habits of Mindert the third were, that he was a very intemperate man; there was no sober about him; he was as much given to intemperance as any man I ever knew.

I don't know that I can say that I ever saw him sober after he was grown up at any hour; I can't say whether his intemperance began exactly before he was grown up or after; he began drinking before he was married—it was before he was grown up entirely. 10

After he was grown up he was so far affected by his habits of intemperance I would not like to have had him do any business for me.

At any time I saw him after he was grown up he was not capable of selling a farm fairly to any person who was disposed to take advantage of him; his farm at Communipaw was, for the size of it, the best farm in Hudson county; he never made a living off his farm; he never worked it to make a living; from what I saw of him, I suppose he would have been fit to manage a farm, if he had only kept himself sober; I suppose his farm at Communipaw contained fifty or sixty acres of upland, besides some meadow; his father, Mindert the second, was a very intemperate man, but not quite as bad as the son; Mindert the second was divorced from his wife; that divorce was on account of his habits and his wife's habits; she was as bad as he was. 20

A private act, from 1808, page 13, chap. 7, being read to witness, he says—the parties there described are Mindert the second and his wife. 30

Mindert the second's wife afterward married Richard Lyon; Mindert the second was never married after he was divorced; Mindert the third was the child of him and Effie.

Cross-examination.

I and Sisson's wife are second cousins.

Mindert the third is my first cousin.

Several times, some days would pass without my seeing Mindert the third; I have no doubt but sometimes a week 40

would pass without my seeing him at all; two or three weeks would not pass sometimes without my seeing him; sometimes I would meet him along the road; sometimes one place and sometimes another, and sometimes at the store.

He kept pretty wild horses, but he never kept them in the best of order; he drove himself, whenever I saw him; I rode with him once from Bergen, when I would not do it again if he gave me the whole farm he owned; I never expected to get home alive; I never saw him draw wood home, never
10 saw him plough, and never saw him do much work on the farm.

As to the property about Judge Price's, there never was much change in the prices when I owned; but I have heard there have been changes, growing out of the speculations; Mindert, Michael, and I inherited our property from our father.

The piece sold to Robert Pierce was all the land we owned that bounded on the river; the strip on the river was nothing but gravel and a little meadow; this is a part of the land now belonging to James Brown, of the firm of Brown, Brothers &
20 Co.; the wood on the piece of seven acres was not worth one hundred dollars an acre; if the wood had been sold, it would not have brought much; the hauling was worth more than the wood was.

The wife of Mindert the third is living; she was a pretty fair, sober, and correct woman, so far as I know; Mindert the third lived in the house with Mindert the second.

There was some wood on Judge Price's land, when we sold ours; I tell you it was wooded—that is all I can tell you; Pierce came to us to buy the land, we did not go to him; be-
30 fore we sold the land to Pierce, it had been used to cut fire-wood off; I have seen buckwheat on it; under the hill, Pierce had a small garden on it; I can't give an idea which, at that time, was the most valuable, this or the Price property; before Robert Pierce bought, he had hired only the garden below the hill; it might have been one acre; he raised Lima beans to sell; those are the only things I ever saw him raise; I don't know whether Pierce fished there or not.

John M. Vreeland.

Sworn and subscribed before me, this 23d day of August,
40 A. D. 1857.

Fred'c B. Ogden, *M. C.*

Peter C. Westervelt, of the township of Bergen, a witness produced on the part of the defendants, being duly sworn according to law, upon his oath saith—

I am forty-three years of age; I live on the plank road, within two hundred yards of the Communipaw lane; I have lived in that neighborhood some twenty-odd years; I knew Mindert Garrabrants the second and third—I have known them before 1835; I did some little business for Mindert the third in 1835; I knew him until the time of his death; I am a wagon maker; at first my shop was about a mile and a half 10 from his house—afterwards I moved nearer to him, to about a mile from him; I saw Mindert the third very often; my shop was right on the forks of the road, and Mindert had to pass it every day—I saw him almost daily.

When I knew him he was a very fast liver and intemperate—he was very much so; it injured him very much; I might have seen him sober coming from his house towards my shop, but I never saw him return sober; he was not a fit man to do business; he was a good subject to make a bargain of—I could have done it time and again; I could have bought 20 any of his property about there, and have made a good bargain out of him; he offered to sell it to me time and again; he borrowed money of me time and again; it was not when he borrowed money that he offered to sell his property, but he came to me at other times for the purpose.

I did not buy it, because I had seen others bit by the same kind of men, and thought it was dangerous; I did not think he was fit to sell it; he never paid back the money he borrowed of me; he would come and ask me for five dollars, and I would give him a quarter or fifty cents; he would stop at 30 the shop to get it, as he came along from home in the morning; at those times when he came from home, I suppose he was sober, like a man who had been drinking the night before; at those times he was not fit to do any business of importance; I have done some repairing work, &c., for him, but have never done any business of any amount; I have seen men more all the time drunk than he was, but whenever he could get a dollar he would have the liquor.

When he was sober, he seemed to have his senses, but he was easily led along; if I offered anything for his property, 40

and said I would give him ten dollars to bind the bargain, he would do it; he was a fine looking man, and when he was sober he created the feeling of pity that so fine a man should be going that way.

I knew Mindert the second; at the time I knew him, the most of the time he lived with John and Mindert Van Horne, and he lived, too, at the stone house in Communipaw; he was sober there; on training and election days I have seen him fine.

10 Re-cross-examination.

The capacity of Mindert the third, if rum had been kept out of him, would have been, I think, that of a pretty shrewd Dutchman, but, understand me, I never saw him as nature made him.

My shop was between where he lived and the tavern; he went by my house generally at seven, eight, or nine o'clock, sometimes a little earlier; I think I have seen him in the morning, when he was not sober, coming from his house; he went by my shop sometimes with a one-horse wagon, and 20 sometimes two horses; sometimes he would have somebody with him; the taverns he went to were from two to three miles beyond my house; he did not say what he wanted of the money he borrowed of me, but it was on his way to these taverns that he got it; in the mornings, when he passed by sometimes, I conversed with him; he understood my conversation when I talked with him; on these occasions he would talk reasonably; he was in no way loony; his wife lived with him during this time—she was a good-hearted woman; I never saw her in liquor; when he talked to me about selling 30 his property, I do not think he understood its value; I think I would have bought of him, if I had supposed he did; I had the first opportunity.

The work I did for him he and his wife got me to do it; he was not exactly fit to talk about it, and I would consult his wife about it, and she would tell me to go and do it.

The time I have been speaking of was some few years before his death; I charged the work to him; I think I have seen his wagon come with wood, but I can't say I ever saw him driving it with wood on it; I never saw him carry a 40 bottle of liquor with him.

Mindert wanted to sell to Abram Vreeland the Swanopoint, and any price could have bought it; I am told he offered to sell the place he lived on, but he never did to me; he was a man in the prime of life when I knew him; I never saw him do any work on his farm; I think at that time I could see from my shop over a part of his farm; I don't know when he went home; I have seen him at the taverns in the evening.

PETER C. WESTERVELT.

Sworn and subscribed before me, this 23d day of August, A. D. 1858. 10

FRED'C B. OGDEN, *M. C.*

During the progress of the examination, the defendants' counsel offered in evidence the following exhibits:

Exhibit D 1. Deed from Mindert Garrabrants, Mindert Garrabrants, jun., and Rachel his wife to Mindert Van Horne, dated May 3d, 1830.

Exhibit D 2. Deed from Mindert Garrabrants to Merselis J. Merselis, dated November 12th, 1832.

Exhibit D 3. Deed from Mindert Garrabrants and Rachel his wife to Merselis J. Merselis, dated August 14th, 1845. 20

Exhibit D 4. Agreement of Merselis J. Merselis with Henry Southmayd, dated August 14th, 1835.

Exhibit D 5. Certified copy of deed from John M. Vreeland to Saunier and Danielson, dated August 21st, 1835.

Exhibit D 6. Certified copy of deed from Stephen Vreeland to Saunier and Danielson, dated October 7th, 1835.

Exhibit D 7. Certified copy of deed from John G. Van Horne and Mindert Van Horne to Michel Saunier, dated June 10th, 1836.

Exhibit D 8. Certified copy of deed from Samuel T. Moore and wife to Saunier and Danielson, dated August 25th, 1835. 30

Exhibit D 9. Thomas Biggs to Mindert Garrabrants, indemnity bond, dated August 24th, 1835.

Exhibit D 10. Decree of divorce and alimony between Effie Garrabrants, complainant, and Mindert Garrabrants, jun., defendant. This paper admitted by consent of counsel.

Exhibit D 11. Certified copy of the record of the cause, wherein Mindert Garrabrants, jun., was complainant, and

John Van Houten, Helmah Van Houten, Effie Garrabrants, and Mindert Garrabrants were defendants.

Exhibit D 12. Deed in trust from Mindert Garrabrants, jun., to John Van Houten, jun., and Helmah Van Houten, dated March 15th, 1809.

Exhibit D 13. Deed from John Van Houten, Jane Tice, and Eliza Greenleaf, trustees, to Effie Van Boskerck and Mary Elizabeth Sisson, dated May 17th, 1852.

FRED'C B. OGDEN, *M. C.*

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10 ORDER TO MAKE NEW COMPLAINANT.

[Filed October 16, 1860.]

It being admitted by the counsel of the parties in this case, in open court, that the interest of the complainant in the subject matter of the suit has ceased, by reason of a deed of conveyance made and executed by the complainant and his wife to the Weehawken Ferry Company, a corporation formed under the laws of this state, which deed bears date the twenty-second day of June, in the year eighteen hundred and fifty-nine, whereby the complainant and his said wife did grant,
20 bargain, sell, and convey to the said corporation all their right, title, interest, and estate of, in, and to the property in question in this cause—It is thereupon ordered, on motion for J. Dunn Littell, solicitor for the complainant, that the said Weehawken Ferry Company be made, and they are hereby made complainants in the cause, along with the now complainant therein, in order that the rights of all parties concerned may be bound by the final decree in the cause.—Dated October 16th, 1860.

HENRY W. GREEN, *C.*

DECREE.

[Filed March 31, 1862.]

This cause coming on to be heard upon the pleadings, exhibits, and proofs, before the Chancellor, at Trenton, at the term of October, eighteen hundred and sixty, at which term the same had been duly noticed and set down for final hearing and decree, in the presence of Joseph P. Bradley, of counsel with the complainant, and Abraham O. Zabriskie, of counsel with the defendants, and the pleadings, exhibits, and proofs having been read, and the arguments of the counsel of the re- 10 spective parties having been heard, and the Chancellor having duly considered the same—

And it appearing to the Chancellor that, by virtue of a former decree made by this court and the conveyances stated in the pleadings and exhibits in evidence, the lands and premises described in the complainant's bill, and concerning which relief is sought thereon, were conveyed to and vested in John Van Houten and Helmah Van Houten, as trustees, in trust for Mindert Garrabrants the first, called Mindert Garrabrants, senior, and his son, Mindert Garrabrants the second, called 20 Mindert Garrabrants, junior, for their natural lives, and in trust at the death of both of them, to convey the same to Mindert Garrabrants the third, the son of said Mindert Garrabrants the second, and such other lawful issue as the said Mindert Garrabrants the second might then have living, as tenants in common in fee, upon their arriving at the age of twenty-one years.

And it further appearing that Mindert Garrabrants the third became twenty-one years of age on the twenty-ninth of September, eighteen hundred and twenty-two, and died on the 30 first day of May, eighteen hundred and thirty-seven, leaving the defendants, Mary Elizabeth Sisson and Effie Van Boskerck, his only issue and heirs at law, and that they have both arrived at the age of twenty-one years; that Mindert Garrabrants the first died on the twenty-ninth day of September, eighteen hundred and twenty-five, and that Mindert Garrabrants the second, the other tenant for life, died on the third day of September, eighteen hundred and forty-six, leaving the defendants, Mary Elizabeth Sisson and Effie Van Bos-

kerck, his grand daughters, his only issue and heirs at law, surviving him; and the Chancellor being of opinion that said defendants, Mary Elizabeth Sisson and Effie Van Boskerck, at the death of said Mindert Garrabrants the second, as his issue surviving him, became entitled to have each one-third of said lands conveyed to her when she became twenty-one years of age, as tenants in common with the heirs or assigns of their father, and that said Mindert Garrabrants the third was in his lifetime, and at the time of the conveyance by him on
10 said bill stated, entitled to the equitable reversion in fee of the said lands after the death of his said father, as tenant in common with his said two daughters, subject to be varied by the birth of other issue of his said father in his father's lifetime, and that the said defendants, Mary Elizabeth Sisson and Effie Van Boskerck, are each entitled to an equal undivided third of said lands in fee, and the heirs or assigns of said Mindert Garrabrants the third are entitled to one equal undivided third—

And the Chancellor being of opinion that the conveyance
20 by said Mindert Garrabrants the third, set forth in the complainant's bill, through which the complainant, and Francis Price the original complainant, claims title to said lands, are not shown by the evidence to be affected by fraud or by the mental incompetency of said Mindert Garrabrants the third, and that the same are sufficient to convey the undivided third of said Mindert Garrabrants the third in the premises—

And it further appearing that the trustee, Helmah Van Houten, who had survived his co-trustee, John Van Houten, died in the year eighteen hundred and twenty-three, leaving
30 the defendant, John H. Van Houten, his oldest son, surviving him, and that said John H. Van Houten had conveyed the legal estate of said lands to the defendants, Mary Elizabeth Sisson and Effie Van Boskerck, and the Chancellor being of opinion that the legal estate of said one-third of said premises is held in trust for the complainants, and ought to be conveyed to them—

It is thereupon, on this twenty-first day of March, in the year eighteen hundred and sixty-two, ordered, adjudged, and decreed, by Henry W. Green, esquire, Chancellor of New
40 Jersey, that the said John H. Van Houten, trustee, and the said Mary Elizabeth Sisson and Effie Van Boskerck, as his

grantees, hold one-third of the legal estate in said lands in trust for the complainants, and two-thirds thereof in trust for said Mary Elizabeth and Effie, or their respective assigns.

And that said defendants do execute and deliver to the complainants, within thirty days from the date hereof, sufficient and proper deeds to convey and assure to them in fee the legal estate to the one equal undivided third part of said lands and premises so held by them in trust for the complainants.

And it is further ordered, that the said defendants be perpetually enjoined from proceeding in the ejectment in the bill of complaint mentioned, or in any suit at law to recover the said one-third of said premises so directed to be conveyed to the complainants; but that said injunction be dissolved, so far as the same affects the other two undivided thirds of said lands, which are herein adjudged to belong to said Mary Elizabeth and Effie and their respective assigns in fee. 10

HENRY W. GREEN, *C.*

CHANCELLOR'S OPINION.

On the 10th of December, 1800, Mindert Garrabrants, jun., intermarried with Effie, the daughter of John Van Houten, and on the 29th of September, 1801, had by her issue one son, Mindert Garrabrants (3). On the 10th of August, 1807, he executed to John Van Houten, the father, and Helmah Van Houten, the brother of his wife, a conveyance in fee simple of all his real estate, including a tract of about fifty acres at Slonga, in trust for certain purposes therein specified. 20

On the 29th of June, 1808, a bill was filed in this court by the grantor in the said deed, Mindert Garrabrants, jun., against the grantee and his wife and only child, *cestui que trusts* therein named, praying that the said deed might be set aside and made void, as executed by mistake. The trustees answered, admitting that the deed, as executed, was not in all respects in conformity with the agreement under which the same was executed. A decree was therefore made, on the 9th of September, 1808, declaring the said instrument to be utterly void and of no effect, and decreeing that the same should be set aside, vacated, and annulled, both at law and in equity. 30

And it was in and by the said decree further ordered, adjudged, and decreed, that the said Mindert Garrabrants, jun., should, on or before the third Tuesday in November then next, execute and deliver to the said John Van Houten and Helmah Van Houten a conveyance of the lands described in the deed of the 10th of August, 1807, in trust, that the grantees, and the survivor of them and the heirs of such survivor, should permit Mindert Garrabrants, jun., and his family, and Mindert Garrabrants, sen., the father of Mindert Garrabrants, jun., during their lives, respectively, to occupy and possess the messuages and tenements, and the rents, issues, and profits thereof, for the support and maintenance of the said Mindert Garrabrants, jun., and his father, and Mindert Garrabrants, sen., during his life; and upon this further trust, that after the decease of the said Mindert Garrabrants, jun., and of his father Mindert Garrabrants, sen., that then the said trustees and the survivor of them, and the heirs of such survivor, shall convey the whole of the said premises to the said Mindert Garrabrants (3), son of the said Mindert Garrabrants, jun., and Effie his wife, and to such other lawful issue as he, the said Mindert Garrabrants jun., may then have living, share and share alike in fee simple, as soon as he or they arrive of age, (reserving to the widow of the said Mindert Garrabrants, jun., if any he should leave, the said widow's legal estate of dower in the said premises).

The conveyance was not executed within the time appointed by the decree; but on the 19th of March, 1809, Mindert Garrabrants, jun., executed a deed for the same premises to the grantees in the former deed upon trusts slightly variant in terms from the language of the decree. The deed contains no recital of a reference to the decree in chancery, but the bill of complaint in this cause charges, and the answer admits, that it was made in compliance and in conformity with the said decree.

Mindert Garrabrants (3) came of age on the 29th of September, 1822. On the 29th of July, 1825, Mindert Garrabrants (1), one of the *cestui que trusts* for life, died. In the years 1834, 1835, and 1836, Mindert Garrabrants (3), by deed of conveyance and sale, with covenants of general warranty, conveyed the tract at Slonga, in separate parcels, to different

purchasers. These titles subsequently became united in Francis Price, the present complainant, who claims a fee in the premises from Mindert Garrabrants (3d).

Mindert Garrabrants (2d), the grantor in the deed of trust, and one of the *cestui que trusts* for life under it, survived his son, and died on the 3d of September, 1846. He left no issue other than the two daughters of his son, Mindert Garrabrants (3d).

Mindert Garrabrants (3d) died on the 1st of May, 1837, leaving two daughters, infants of tender years, Mary Elizabeth, who intermarried with Charles G. Sisson, and Effie, who intermarried with James Van Boskerck, defendants in this suit. 10

John Van Houten and Helmah Van Houten, the trustees in the deed of trust, both died in the lifetimes of the *cestui que trusts* of the life estates in the lands conveyed on the 17th of May, 1852. John H. Van Houten, only son and heir at law of Helmah Van Houten, the surviving trustee, made a conveyance of the trust property specified in the deed of trust to the two daughters of Mindert Garrabrants (3d), as the only lawful issue of the said Mindert Garrabrants (2d) living at his death. 20

An action at law having been commenced by them for the recovery of the property at Slonga, the complainants filed their bill in this cause to restrain the defendants from further proceedings at law and for the confirmation of their titles.

The main controversy in this cause arises upon the true construction of the trust deed executed by Mindert Garrabrants, jun., under the authority of a decree of this court, bearing date on the 9th of September, 1808. 30

Both parties claim under that conveyance. The complainant claims under a title derived through Mindert Garrabrants the third, one of the *cestui que trusts*. The defendants, two of the children of Mindert Garrabrants the third, claim the premises, not through their father, but by virtue of a deed executed by the trustee to them as the lawful issue of their grandfather, Mindert Garrabrants the second, pursuant to the provisions of the trust. It will be assumed, for the purpose of the investigation, that the entire estate, legal or equitable, to which Mindert Garrabrants the third was entitled has been legally transferred to and vested in the complainant. 40

What estate did Mindert Garrabrants (3d) take under that deed or decree ?

By the act of June 13th, 1799, § 47, which at the date of the decree was and still is in force, it is enacted that where a decree of the Court of Chancery shall be made for a conveyance, release, or acquittance, and the party against whom the said decree shall pass shall not comply therewith by the time appointed, then such decree shall be considered and taken in all courts of law and equity to have the same operation and
10 effect, and be as available as if the conveyance, release, or acquittance had been executed conformably to such decree. *Paterson's Laws* 433, § 47 ; *Nixon's Dig.* 94, § 56.

The time limited by the decree for the delivery of the conveyance was the 3d of November, 1808. It was not delivered till the 15th of March, 1809. By force of the statute, therefore, the decree has the same operation and effect as if the conveyance had been executed conformably to the decree. By operation of the decree, the title vested before the deed was executed. The rights of the parties, therefore, in case of a
20 variance between the terms of the decree and of the conveyance, must depend upon the former rather than upon the latter. The bill in this case charges, and the answer admits, that the conveyance was made in compliance and in conformity with the decree. If, however, in the progress of the investigation it shall appear that the deed contains any clause adverse to the title of Mindert Garrabrants (3d) or those claiming under him, his rights cannot thereby be prejudiced. At the time of the conveyance he was an infant, and however the rights of the parties to the conveyance competent to contract might be
30 affected by giving or accepting a conveyance variant from the terms of the decree, it is clear that an infant could not thus be deprived of his rights under the decree.

Again, the terms of the decree must be construed precisely as the conveyance itself would be if executed within the time appointed for its execution. The language of the statute is, that the decree shall be taken to have the same operation and effect, and be as available as if the conveyance had been executed conformably to the decree. The same principles of interpretation, therefore, are to be applied as if the terms of
40 the decree were duly and fully embodied in the conveyance.

With these suggestions in regard to the nature and object of the investigation, we approach the immediate subject of our inquiry. What estate did Mindert Garrabrants take by virtue of the decree?

By the terms of the deed, the legal estate vested in the immediate grantees in trust for the persons beneficially interested. The trust was not executed by the statute for transferring uses into possession, so as to vest the legal estate in the *cestui que trusts*, or in either of them. The deed is technically drawn for the creation of a trust estate, as distinguished from the legal title. The conveyance is made to the grantees and their heirs, for the use of the grantees and their heirs, in trust for the persons beneficially interested in the grant. This is the precise formula for the creation of a trust. 2 *Bla. Com.* 336, *Christian's note.* 10

Where a use is limited upon a use the statute executes only the first use. 2 *Bla. Com.* 336; 1 *Cruise's Dig.* 453, *title* 12, *c.* 1, § 1; *Hill on Trustees* 63, 229.

This familiar principle is thus distinctly stated because upon the argument it was strongly urged, that inasmuch as by the terms of the trust the grantees were not *to pay* the rents and profits to Mindert Garrabrants (1st) and Mindert Garrabrants (2d), but to permit them during their respective lives to *occupy and possess* the estate, and the rents and profits thereof, during their respective lives, the use was executed by the statute, and that they had, respectively, a legal estate for life. There is a numerous class of cases which hold, that where the donee to uses is merely to permit the *cestui que use* to take and receive the rents and profits, or to occupy and enjoy the estate, no trust is created, but the estate will be vested by the statute in the person who is to receive the rents. But this is but the limitation of another general rule, *viz.* that where the donee to uses is intrusted with duties or powers, for the due discharge of which it is requisite that he should take the legal estate, the use is not executed, but a trust arises. If, on the other hand, the duties imposed on the trustee are not such as to require that he should take the legal estate the use is executed. *Barker* v. *Greenwood*, 4 *Mees & W.* 429; *Hill on Trustees*, 229, 231, 233, and cases cited in *note g.* 20 30

This rule applies where the conveyance is to the trustees to 40

the *use* of another, but where the conveyance is to the trustees and to the use of the trustees, they take the legal estate by virtue of the limitation without the aid of any reasoning derived from the nature of the trust. *Powell on Dev.* (*Jarman*) 220, 221, *note* 7; *Hill on Trustees* 235.

The entire *legal* estate under the conveyance is unquestionably vested in the immediate grantees, John Van Houten and Helmah Van Houten, with limitations of trusts to Mindert Garrabrants (1st) and Mindert Garrabrants (2d) for their
10 respective lives, and then over to Mindert Garrabrants (3d) and the other lawful issue of Mindert Garrabrants (2d).

In construing limitations of trusts, courts of equity adopt the rules of law applicable to legal estates. Declarations of trust, either of real or personal estate, are construed in the same manner as common law conveyances where an estate is finally limited by deed. 4 *Cruise* 310, *title* 32, *c.* 19, § 65; 1 *Sanders on Uses and Trusts* 280.

I am of opinion, said Lord Northington, in *Wright* v. *Pearson* (1 *Eden* 125), that a limitation in trust, perfected and de-
20 clared by a testator, must have the same construction as the devise of an estate executed. The rule, notwithstanding some conflict among the earliest cases, appears to be satisfactorily settled. *Cases Temp., Talbot* 19, *Lord Glenorchy* v. *Bosville*; *Jones* v. *Morgan*, 1 *Bro. C. C.* 222; *Garth* v. *Baldwin*, 2 *Vesey* 655.

Regarding the trusts under the conveyance as executed, and the limitations of the equitable interest as complete and final, so that the limitations of the trust are to be construed by the rules of law applicable to legal estates, let us examine what
30 estate is given to Mindert Garrabrants (3d). The estate is conveyed to the grantees in trust to permit the grantor and his family and the father of the grantor, during their lives, respectively, to enjoy the estate, and take the rents and profits thereof, and after their death in trust, to convey the whole of the said premises to Mindert Garrabrants (3d), the son of the grantor, and to such other lawful issue as the grantor may then have living, share and share alike in fee simple, as soon as he or they arrive at age. Divesting the estates of the *cestui que trusts* of their character as trusts, and treating them as pure
40 legal estates, the grant would be to Mindert Garrabrants (1st)

and Mindert Garrabrants (2d) an estate for their joint lives and the life of the survivor of them, with remainder to Mindert Garrabrants (3d) and such other lawful issue as Mindert Garrabrants (2d) may then have, as tenants in common in fee simple, share and share alike, to be enjoyed as they severally attain the age of twenty-one years. This is stating the case most strongly in favor of the complainant, and rests on the assumption that, by the conveyances, an equitable estate in remainder is vested in Mindert Garrabrants (3d), which was not liable to be defeated by his death before the determination 10 of the intervening estates for life of his father and grandfather. The defendants maintain that no estate whatever, legal or equitable, by the terms of the grant, vests in Mindert Garrabrants (3d). That the legal estate is wholly in the trustees, and the right to the conveyance of the estate, legal or equitable, in Mindert Garrabrants (3d) is contingent upon his surviving both the tenants for life. I think it clear, however, that under the conveyance Mindert Garrabrants (3d) had an equitable interest, *viz.* to have the whole estate, legal and equitable, conveyed to him upon the determination of the life estates of his 20 father and grandfather. Construing the limitation of trust by the same principles which govern in the construction of the legal estates, the interest of Mindert Garrabrants (3d) is a vested interest, which is not determinable by his death before the happening of the contingency upon which the legal estate is to be conveyed to him, *viz.* the determination of the intervening life estates.

The rule, as applied to legal estates, is that no remainder will be construed to be contingent which may consistently with the intention be deemed vested. Every remainder man may 30 die without issue before the death of the tenants for life. It is the present capacity of taking effect in possession, if the possession would become vacant before the estate limited in remainder determines, that distinguishes a vested from a contingent remainder. *Fearne on Rem.* 149 (4*th ed.*); *Kent's Com.* 203.

A remainder, says Chancellor Walworth, is vested in interest where the person is in being and ascertained, who will, if he lives, have an absolute and immediate right to the possession of the land upon the ceasing or failure of all the precedent 40

estates, provided the estate limited to him by the remainder shall so long continue. In other words, where the remainder man's rights to an estate in possession cannot be defeated by third persons or contingent events, or by the failure of a condition precedent if he lives, and the estate limited to him by way of remainder continues till all the precedent estates are determined, his remainder is vested in interest. *Hawley* v. *James*, 5 *Paige* 466.

A remainder is contingent, although the remainder man is 10 in being and ascertained, so long as it remains uncertain whether he will be absolutely entitled to the estate limited to him in remainder if he lives, and such estate continues until all the precedent estates have ceased. *Ibid* 467.

When the person to whom a remainder after a life estate is limited is ascertained, and the event upon which it is to take effect is certain to happen, it is a vested remainder, although by its terms it may be entirely defeated by the death of such person before the determination of the particular estate. It is the uncertainty of the right of enjoyment which 20 renders a remainder contingent, not the uncertainty of its actual enjoyment. *Williamson* v. *Field*, 2 *Sandf. C. R.* 533. See, also, *Moore* v. *Lyons*, 25 *Wend.* 144.

The better opinion also is, says Chancellor Kent, that if there be a devise to trustees and their heirs during the minority of a beneficial devise, and then to him, or upon trust to convey to him, it conveys a vested remainder in fee, and takes effect in possession when the devisee attains twenty-one. If the devisee dies before twenty-one, the estate descends to his heirs as a vested inheritance. 4 *Kent's Com.* 204.

30 These authorities show that the equitable interest of Mindert Garrabrants (3d) under the conveyance was a vested interest. He was in *esse* at the date of the deed, and his interest vested immediately on its execution and delivery, subject to be divested *pro tanto* upon the birth of afterborn issue. The only afterborn issue of Mindert Garrabrants (2d), the grantor, were the two daughters of his son, Mindert Garrabrants (3d), who are the defendants in this cause. They survived the grantor, and became entitled with their father by the terms of the trust, each to one equal undivided third of the equita- 40 ble estate. Applying the principles which govern the con-

struction of legal instruments to the terms of this trust such must be the result.

In a deed, the term "issue" is universally a word of purchase. *Doe* v. *Collis*, 4 *T. R.* 299.

And wherever the term is used as a word of purchase, either in a deed or in a will, it is synonymous and coextensive with the term "descendants," and includes all persons who answer that description. Such is the legal construction of the term in all cases where its natural meaning is not controlled by a plain intent apparent on the face of the instrument. 2 *Jarman on Wills* 33, 353; 1 *Roper on Leg.* 158; 2 *Williams on Executors* 953; 2 *Spence on Eq. Jur.* 154; *Leigh* v. *Norbery*, 13 *Vesey* 340; *Sibley* v. *Perry*, 7 *Vesey* 531; *Davenport* v. *Hanbury*, 3 *Vesey* 257; *Freeman* v. *Parsley*, 3 *Vesey* 421; *Cook* v. *Cook*, 2 *Vern.* 545; *Hampson* v. *Brandwood*, *Maddock* 381. 10

The term may be, and often is, especially in wills, construed as meaning children, where such appears to be the intention of the testator. But such intention must be gathered from the instrument itself. This is but an instance of the general principle, that the will is to be construed according to the intent of the testator. The cases on the subject are exceedingly numerous, and with remarkable uniformity they sustain the principle as stated. 20

It is urged, and with seeming force, that this construction is against reason and probability; that it never could have been intended that the parent and his children should share the estate equally. The objection has often been made, and has always been met by the answer, that the court must give to the terms of an instrument their fair, natural, and ordinary import, unless when controlled by a plain contrary intent. This general principle is not denied. But the court are asked to go back of the decree, and look into the previous proceedings in the cause, to ascertain what was intended by the term "issue," as used in the decree and in the deed. And from these it is insisted that the intention was to exclude from the limitation over the children of Mindert Garrabrants (3d). That this will totally vary the legal effect of the term used in the decree and in the deed is not denied. But it is sought to be justified on the ground, that the estate being created by the decree, and not by the deed, 30 40

the entire proceedings in the cause may be resorted to for its interpretation. This, I think, is not admissible. By the terms of the statute already adverted to (*Nix. Dig.* 94, § 56,) the decree is to be considered and taken in all courts of law and equity to have the same operation and effect, and be as available as if the conveyance had been executed conformably to such decree. The decree is to be construed as if the deed had been executed pursuant to its terms. The deed and the decree must be alike construed according to the legal effect of the terms used. The same principles of interpretation are to be applied to each. If the deed had been executed conformably to the terms of the decree within the time prescribed, it would not have been admissible to resort to the proceedings in the cause to interpret the deed. Where, moreover, the terms of the decree are clear and unequivocal independent of the statute, its construction could not be altered by a resort to the pleadings.

It was suggested, rather than urged, upon the argument, that these trusts should be regarded as executory, and as they are to be carried into effect under the control of the court, a greater latitude of interpretation might be adopted. If that course were admissible, and the deed could be interpreted according to the apparent intention of the parties without regard to fixed rules of interpretation, it would become a grave question, whether the death of Mindert Garrabrants (3d) in the lifetime of his father did not altogether defeat his interest in the estate, and whether that was not the real design of the parties in the creation of the trust. But the defendants have invoked in support of their title, and I think rightfully, the principl, ethat the limitation of trust estates must be construed by the rules of law applicable to legal estates, and the further principle, that the rights of the parties were unchangeably fixed by the terms of the decree. Adopting these principles in support of their claim, the court cannot escape the application of well settled legal principles in dealing with the trust estate.

It has been said that in the interpretation of trusts and marriage settlements the most favorable exposition will be made of words to support the intention of the parties. "It is, however, the intention of the parties appearing on the deed that

always governs the court in construction, not the arbitrary conjecture of the judge, though founded on the highest degree of probabilities." *Horry* v. *Horry*, 2 *Dess.* 126.

Whatever I might deem probable in regard to the intention of the parties, I do not feel authorized to interfere with well settled rules of construction.

The evidence does not support the allegation of mental incapacity in Mindert Garrabrants (3d) to convey his estate by reason of intemperance or from any other cause. Nor is it an appropriate case for the application of the principle upon 10 which a court of equity interferes to protect expectant heirs or reversioners against the disposition of their estates on the ground of constructive fraud. 1 *Story's Eq. Jur.* 339, *note* 1.

Conceding that the principle might have been applied as against the orignal puchasers, it cannot operate against a subsequent *bona fide* purchaser without notice of the fraud.

By the terms of the trust, the estate vested equally in Mindert Garrabrants (3d) and his two daughters, the other issue of the grantor. Under the conveyance executed by Mindert Garrabrants (3d) the complainant is entitled in equity 20 to his interst in the estate, being one equal third part thereof. The title to the legal estate, as well as to the remaining two-thirds of the equitable estate, is in the defendants.

The injunction will be retained.

It appears, from the evidence, that valuable permanent improvements have been made upon the land by the complainants, which give them a large portion of their value. The complainant is entitled in equity to an allowance for those improvements, so far as they enure to the benefit of the estate of his contestants. A reference will be necessary to ascertain the 30 character and value of the improvements. Each party will be at liberty to apply for directions as to the terms of such reference.

PETITION OF APPEAL.

IN THE COURT OF ERRORS AND APPEALS.

Between

THE WEEHAWKEN FERRY COMPANY, appellants,
and
CHARLES G. SISSON and MARY ELIZABETH, his wife, JAMES VAN BOSKERCK, and EFFIE his wife, and JOHN H. VAN HOUTEN, respondents, } *On appeal.*

10

To the Judges of the Court of Errors and Appeals of the State of New Jersey.

The petition of the Weehawken Ferry Company respectfully shows, that in a certain cause lately pending in the Court of Chancery of New Jersey, wherein your petitioners were complainants, and Charles G. Sisson and Mary Elizabeth his wife, James Van Boskerck and Effie his wife, and John H. Van Houten were defendants, a certain decree was made by the Chancellor upon and bearing date the thirty-first day of 20 March, in the year eighteen hundred and sixty-two, whereby, after making certain recitals, it was decreed as follows, that is to say:

"And it appearing to the Chancellor that, by virtue of a former decree made by this court, and the conveyance stated in the pleadings and exhibits in evidence, the lands and premises described in the complainant's bill, and concerning which relief is sought thereon, were conveyed to and vested in John Van Houten and Helmah Van Houten, as trustees, in trust for Mindert Garrabrants the first, called Mindert Garrabrants, 30 senior, and his son, Mindert Garrabrants the second, called Mindert Garrabrants, junior, for their natural lives, and in trust at the death of both of them, to convey the same to Mindert Garrabrants the third, the son of said Mindert Garrabrants the second, and such other lawful issue as the said Mindert Garrabrants the second might then have living, as tenants in common in fee, upon their arriving at the age of twenty-one years.

And it further appearing that Mindert Garrabrants the third became twenty-one years of age on the twenty-ninth of September, eighteen hundred and twenty-two, and died on the first day of May, eighteen hundred and thirty-seven, leaving the defendants, Mary Elizabeth Sisson and Effie Van Boskerck, his only issue and heirs at law, and that they have both arrived at the age of twenty-one years; that Mindert Garrabrants the first died on the twenty-ninth day of September, eighteen hundred and twenty-five, and that Mindert Garrabrants the second, the other tenant for life, died on the third 10 day of September, eighteen hundred and forty-six, leaving the defendants, Mary Elizabeth Sisson and Effie Van Boskerck, his grand-daughters, his only issue and heirs at law surviving him: and the Chancellor being of opinion that said defendants, Mary Elizabeth Sisson and Effie Van Boskerck, at the death of said Mindert Garrabrants the second, as his issue surviving him, became entitled to have, each, one-third of said lands conveyed to her when she became twenty-one years of age, as tenants in common with the heirs or assigns of their father; and that said Mindert Garrabrants the third was, in 20 his lifetime and at the time of the conveyance by him in said bill stated, entitled to the equitable reversion in fee of the said lands after the death of his said father, as tenant in common with his said two daughters, subject to be varied by the birth of other issue of his said father in his father's lifetime; and that the said defendants, Mary Elizabeth Sisson and Effie Van Boskerck, are each entitled to an equal undivided third of said lands in fee, and the heirs or assigns of said Mindert Garrabrants the third are entitled to one equal undivided third; and the Chancellor being of opinion that the convey- 30 ances by said Mindert Garrabrants the third, set forth in the complainant's bill, through which the complainant, and Francis Price, the original complainant, claims title to said lands, are not shown by the evidence to be affected by fraud or by the mental incompetency of said Mindert Garrabrants the third, and that the same are sufficient to convey the undivided third of said Mindert Garrabrants the third in the premises: and it further appearing that the trustee, Helmah Van Houten, who had survived his co-trustee, John Van Houten, died in the year eighteen hundred and twenty-three, leaving the defend- 40

ant, John H. Van Houten, his oldest son surviving him, and that said John H. Van Houten has conveyed the legal estate of said lands to the defendants, Mary Elizabeth Sisson and Effie Van Boskerck, and the Chancellor being of opinion that the legal estate of said one-third of said premises is held in trust for the complainants, and ought to be conveyed to them —It is thereupon, on this thirty-first day of March, in the year eighteen hundred and sixty-two, ordered, adjudged, and decreed, by Henry W. Green, esquire, Chancellor of New Jersey,
10 that the said John H. Van Houten, trustee, and the said Mary Elizabeth Sisson and Effie Van Boskerck, as his grantees, hold one-third of the legal estate in said lands in trust for the complainants, and two-thirds thereof in trust for said Mary Elizabeth and Effie, or their respective assigns; and that said defendants do execute and deliver to the complainants, within thirty days from the date hereof, sufficient and proper deeds to convey and assure to them in fee the legal estate to the one equal undivided third part of said lands and premises so held by them in trust for the complainants: and it is further or-
20 dered, that the said defendants be perpetually enjoined from proceeding in the ejectment in the bill of complaint mentioned or in any suit at law to recover the said one-third of said premises so directed to be conveyed to the complainants, but that said injunction be dissolved so far as the same affects the other two undivided thirds of said lands, which are herein adjudged to belong to said Mary Elizabeth and Effie, and their respective assigns in fee," as by the said decree, remaining on file with the other proceedings in said suit, may more fully and at large appear.

30 And your petitioners further show, that they have appealed from so much of said decree as decides, adjudges, or decrees "that said defendants, Mary Elizabeth Sisson and Effie Van Boskerck, at the death of said Mindert Garrabrants the second, as his issue surviving him, became entitled to have each one-third of said lands conveyed to her when she became twenty-one years of age, as tenants in common with the heirs or assigns of their father; and that said Mindert Garrabrants the third was, in his lifetime and at the time of the conveyance by him in said bill stated, entitled to the equitable reversion in
40 fee of the said lands after the death of his said father, as

tenant in common with his said two daughters, subject to be varied by the birth of other issue of his said father in his father's lifetime; and that the said defendants, Mary Elizabeth Sisson and Effie Van Boskerck, are each entitled to an equal undivided third of said lands in fee;" and also from so much thereof as decrees that the said John H. Van Houten, trustee, and the said Mary Elizabeth Sisson and Effie Van Boskerck, as his grantees, hold two-thirds of the said legal estate in the said lands above referred to in trust for said Mary Elizabeth and Effie, or their respective assigns; and also so 10 much thereof as decrees, orders, and directs the said injunction to be dissolved, so far as the same affects the other two undivided thirds of said lands; and also so much thereof as adjudges that the said two undivided thirds of said lands belong to the said Mary Elizabeth and Effie, and their respective assigns in fee or otherwise.

And your petitioners further state, that the grounds of their said appeal are, that by the true construction of the said former decree of the said Court of Chancery, and the conveyance made in pursuance thereof, on which the title to the said lands 20 depended, and which are fully set forth in the bill of complaint in said suit, and referred to in said decree, Mindert Garrabrants the third, in the said decree mentioned, from whom your petitioners claim title, became, and was in his lifetime and at the time of the conveyance by him in said bill stated, entitled to the whole equal reversion in fee of the said lands after the death of his father, and not merely to one undivided third part thereof; and that his daughters, the said Mary Elizabeth and Effie, did not become entitled to any part or share of or in the said reversion, and are not now entitled 30 to any interest or share therein. Whereas the said portions of the said decree so appealed from are founded upon the opinion of the Chancellor, as expressed in the recitals of said decree; that the said Mary Elizabeth and Effie became, by virtue of said former decree and the conveyance made in pursuance thereof, entitled, each, to one-third of said reversion: and a further ground of said appeal is, that the said decree, in the parts so appealed from, is illegal and erroneous in fact and in law, and contrary to equity and justice. Your petitioners therefore pray that the said decree of the Chancellor 40

may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

JOSEPH P. BRADLEY,
Solicitor for and of counsel with the appellants.

EXHIBIT A, ON THE PART OF COMPLAINANT.

[Filed July 28, 1808.]

Between

10 MINDERT GARRABRANTS, jun., complainant,

and

JOHN VAN HOUTEN, junior, HELMAH VAN HOUTEN, EFFIE GARRABRANTS, and MINDERT GARRABRANTS 3d, defendants,

} *Bill.*

To his Excellency Joseph Bloomfield, esquire, Chancellor of the State of New Jersey.

In chancery, humbly complaining, showeth unto your
20 your Excellency your orator, Mindert Garrabrants, jun., of the township of Bergen, in the county of Bergen, and in the State of New Jersey, that on or about the thirteenth day of December, in the year of our Lord one thousand eight hundred, he was married to Effie Van Houten, daughter of John Van Houten, jun., of the same place; that some time after your orator was so married, your orator's father, he then being an old and infirm man, and incapable of properly managing and taking care of his farm and his business, did convey to your orator, being his only son, all his estate, real and perso-
30 nal, situate and being in the township and county aforesaid, a part of which real estate is contained in a certain deed hereinafter set forth, which conveyance was made to your orator by his father, under an express agreement between your orator

and his father, that your orator should decently and comfortably maintain and support him during his life; by virtue of which conveyance your orator took possession and was seized of the said premises, until on or about the tenth day of August, in the year of our Lord one thousand eight hundred and seven, when your orator, in order to secure to your orator and his father, during their lives, respectively, a sure and comfortable maintenance, and to prevent your orator, by any imprudence he might be guilty of, from wasting and squandering his estate, and thereby leaving not only himself and his aged father, 10
but also his wife and infant son, Mindert Garrabrants the third, destitute of support, entered into an agreement with the said John Van Houten, jun., the father of your orator's wife, that your orator would grant and convey unto the said John Van Houten, jun., and to his son Helmah Van Houten, their heirs and assigns for ever, all the lands and premises contained in the deed hereinafter set forth—In trust nevertheless, that they, the said John Van Houten, jun., and Helmah Van Houten, and the survivor of them and the heirs of such survivor, should permit your orator and his family and your orator's father, 20
during their lives respectively, to occupy and possess the messuages and premises so as aforesaid to be conveyed, and that the rents, issues and profits thereof should be applied by them toward the support and maintenance of your orator's father during his natural life, as well as to the support and maintenance of your orator and his family, in as decent and comfortable a manner as the same would admit of; and upon this further trust, that after the decease of your orator and his aged father, Mindert Garrabrants, that then the said trustees should convey the whole of the said premises to your orator's 30
infant son, Mindert Garrabrants the third, and to such other lawful issue as he might then have living, share and share alike, as soon as he or they, respectively, came of age, in fee simple, reserving to your orator's widow, if any he should then have, her legal estate of dower in the said premises: in pursuance of which agreement, as your orator supposes, application was made by the said John Van Houten, jun., to have a deed prepared in conformity to the said agreement; and your orator further charges, that he afterwards, to wit, on the tenth day of August, in the year of our Lord one thousand 40

eight hundred and seven, executed the deed hereinafter set forth, which he then supposed to be in conformity to the disposition he had agreed to make of his property, which deed is in the words and figures following, to wit:

"This indenture, made the tenth day of August, in the year of our Lord one thousand eight hundred and seven, between Mindert Garrabrants, jun., of the township and county of Bergen, and State of New Jersey, of the one part, and John Van Houten and Helmah Van Houten of the same place, of
10 the other part, witnesseth that the said Mindert Garrabrants, jun., as well for and in consideration of the sum of one dollar, lawful money of the United States, as for and in consideration of the trusts, covenants, and agreements hereinafter mentioned and contained, have given, granted, bargained and sold, and aliened, released, and enfeoffed, and conveyed, and by these presents doth give, grant, bargain, and sell, alien, release, enfeoff, convey, and confirm, unto the said John Van Houten and Helmah Van Houten, their heirs and assigns for ever, all that certain piece or parcel of land, situate, lying, and being at
20 Gummunopough, in the county of Bergen aforesaid, whereon the said Mindert Garrabrants, jun., now lives, and all other his lands lying in and above Gummunopough, be the same more or less, excepting and reserving thereout a certain tract, containing thirty acres, lying opposite to Garret Van Horne's, bounded, south by the road leading to Gummunopough, west by lands of Hendrick Brinkerhoff, north by the creek, and east by a fence, as it now stands, leading to said road, which said piece of land, containing thirty acres, and bounded as above mentioned, has been conveyed by Mindert Garrabants to his
30 two daughters, the wives of Michael Vreeland and Garret Van Horne, as by reference to the deed will more fully appear: together with all and singular the houses, barns, buildings, and improvements thereon erected; and also one other piece or parcel of land situate, lying, and being at Slonga, in township, county, and state aforesaid, adjoining the Hudson river, and bounded, northerly by land of Cornelius Garrabrants, westerly by lands late the property of Helmah Van Houten, deceased, southerly by lands now in the possession of Mr. Ludlam, and easterly by the said river, be the same more or less: together
40 with all and singular the ways, waters, easements, profits,

privileges, woods, hereditaments, and appurtenances to the two above mentioned tracts of land and premises belonging or in any wise appertaining; and also all the estate, right, title, property, claim, and demand of him, the said Mindert Garrabrants, jun., as well in equity as in law; also the reversion and reversions, remainder and remainders, rents, issues, and profits thereof—In trust, nevertheless, that the said John Van Houten and Helmah Van Houten, and the survivor of them, and the heirs of said survivor, shall, in case the said Mindert Garrabrants, jun., shall survive his present wife, Effie 10 Garrabrants, release and convey all and singular the said premises to Mindert Garrabrants the third, the son of the said Mindert Garrabrants, jun., and such other sons and daughters as they, the said Mindert Garrabrants, jun., and Effie his present wife may hereafter lawfully have between them, share and share alike, as they, the said child or children, respectively, arrive at the age of twenty-one years, or to their lawful representatives. But in case the said Effie Garrabrants should survive the said Mindert Garrabrants, jun., then the said John Van Houten and Helmah Van Houten, and the 20 survivor of them, and the heirs of such survivor, shall release and convey one-third part of the premises above mentioned, to be by them, the said John and Helmah, divided at their discretion, having respect to the quantity, quality, and value of the said premises, to the said Effie Garrabrants, within the thirty-first days of her widowhood, to be held and enjoyed by her, her heirs and assigns for ever, and in such case to release and convey the residue of the said premises to the said child or children, as is above mentioned and specified; and that they, the said John and Helmah, and the survivors of them, 30 and the heir of such survivors, shall and will, in all respects, faithfully execute and perform the trust by these presents in them vested in relation to the said premises, pursuant to the stipulation and condition above mentioned, to have and to hold all and singular the above granted and bargained premises, with all and singular the hereditaments and appurtenances to the same belonging or in any wise appertaining to them, the said John and Helmah, to the only proper use, benefit, and behoof of them, the said John Van Houten and Helmah Van Houten, their heirs and assigns for ever, in trust as afore- 40

said ; and the said Mindert Garrabrants, jun., doth hereby, for himself, his heirs, executors, and administrators, covenant and agree, to and with the said John Van Houten and Helmah Van Houten, their heirs and assigns, that he, the said Mindert Garrabrants, jun., is lawfully and rightfully seized in his own right of a good, sure, and indefeasible estate of inheritance in fee simple of and in the premises above mentioned, without any limitation, mortgage, judgments, or other matter, cause, or thing whatsoever, to change, alter, or encumber the same in
10 title or estate, and that he hath good right and full power in his own right to convey the same to the said John and Helmah in manner and form aforesaid; and that the said John Van Houten and Helmah Van Houten, their heirs and assigns, shall for ever hereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the premises aforesaid, with the appurtenances, without the let, suit, interruption, molestation, or denial of any person or persons claiming or to claim the same or any part thereof; and that also he, the said Mindert Garrabrants, jun., the premises hereby granted, with the
20 hereditaments and appurtenances, unto the said John Van Houten and Helmah Van Houten, their heirs and assigns, against him, the said Mindert Garrabrants, jun., his heirs and assigns, and against all and every person and persons whomsoever, shall and will warrant and by these presents for ever defend.—In whitness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written."

The original of which deed is now in the possession of the said John Van Houten, jun., and Helmah Van Houten, or one
30 of them, and to which your orator, for greater certainty, begs leave to refer himself; and your orator afterwards, on the same day, acknowledged the said deed before Philip Williams, esq., one of the masters in the High Court of Chancery of the State of New Jersey; and the same deed was duly recorded in the clerk's office of the county of Bergen, on the eleventh day of August, in the year of our Lord one thousand eight hundred and seven, in Book A 2 of deeds, in pages 141, 142, 143, and 144, as by reference thereunto being had will more fully and at large appear.

40 And your orator further showeth unto your Excellency,

that the said recited deed, so executed by him, is not according to the original agreement made between your orator and the said John Van Houten, jun., nor agreeable to the intent and meaning of the party to the same at the time the said deed was executed, for instead of securing to your orator and his aged father a home and a comfortable support and maintenance during their lives out of the said premises, and instead of securing the same to the lawful issue of your orator by his present or any future wife he may have, which your orator expressly declares was his intention, your orator and 10 his aged father, from whom he derived the said property, are by the said deed totally divested of all interest and estate in the same, and completely at the mercyof the said John Van Houten, jun., and Helmah Van Houten.

And your orator further showeth unto your Excellency that by the before recited deed, it is provided that if your orator's present wife Effie should survive him, that then the said trustees should release and convey to her in fee simple one equal third part of your orator's estate, and that no provision whatever is made for the support and maintenance of your orator's 20 father, all of which is contrary to the real and true understanding of the parties to the said deed at the time the same was executed.

And your orator expressly charges the said deed to have been executed by him by mistake, and that if he had known the legal effects of its contents, he would not have executed and delivered it to the grantees therein named; and though your orator does not now recollect whether the said deed was shown or read to him before the same was executed by him or not, yet your orator is constrained to acknowledge and de- 30 clare that he is illiterate, and so totally ignorant of legal matters that he believes, if the said deed had been read to him, he would not have known that, by the terms of it, he was immediately upon the execution and delivery thereof divested of all interest and estate in the premises therein mentioned, left in that miserable and dependent situation in which both your orator and his father now are by the terms of the said deed, as your orator is advised and believes to be true.

And your orator further showeth unto your Excellency, that as soon as he discovered, by the advice and information 40

of his friends, that the said deed which he had so executed as aforesaid was so totally different in its terms and effects from what were his intentions and understanding at the time of executing the same, and from what your orator expressly charges to have been the meaning and intention of the grantees therein named, your orator in a friendly manner, by himself and others, applied unto the said John Van Houten, jun., Helmah Van Houten, and Effie Garrabrants, your orator's wife, to give up the said deed to be cancelled, and reconvey
10 the same to your orator, in order that he might execute a new deed upon the several trusts herein before mentioned by your orator, and according to the true intent and meaning of the parties at the time of executing the said deed.

And your orator well hoped that the said John Van Houten, jun., Helmah Van Houten, Effie Garrabrants, and Mindert Garrabrants the third, would without hesitation have complied with this reasonable request of your orator, as in equity and good conscience they ought to have done ; but now so it is, may it please your Excellency, that the said John
20 Van Houten, jun., Helmah Van Houten, Effie Garrabrants, and Mindert Garrabrants the third, combining and confederating themselves with divers other persons to your orator unknown, and whose names, when discovered, your orator prays may be added to this his bill of complaint, with proper and apt words to charge them as parties hereto, to injure and aggrieve your orator in the premises, and to defraud him of the whole estate in the said deed mentioned and conveyed, and of all benefit and interest therein, did altogether refuse, and still do refuse, to reconvey to your orator the said premises, and to
30 take from your orator a new deed, made according to the aforesaid original intention of the parties, but give out and allege that your orator has no right or interest in the said premises, and threaten to turn your orator and his aged father off of the said farm and premises whenever they think proper, and to make your orator and his father account to them for the rents, issues, and profits of the said messuage, farm, and premises, that have accrued ever since the said deed was executed by your orator—all which pretences, actings, and doings of the said John Van Houten, jun., Helmah Van Hou-
40 ten, Effie Garrabrants, and Mindert Garrabrants the third, tend to the manifest injury and oppression of your orator.

In tender consideration whereof, and for that your orator is remediless by the strict rules of the common law, and has no ways or means whatsoever of compelling the said John Van Houten, jun., Helmah Van Houten, Effie Garrabrants, and Mindert Garrabrants the third, to reconvey to him the said lands and premises, and to carry into effect the original meaning and intention of the parties to the said deed; now to prevent the said John Van Houten and Helmah Van Houten from entering into and upon the said premises, and turning your orator and his father out of the same, and from making 10 your orator and his father account for and pay over to them the rents and profits of the said premises since the said deed was executed, but in a court of equity, where matters of accident, mistake, and fraud are properly cognizable and relievable—To the end, therefore, that the said John Van Houten, jun., Helmah Van Houten, Effie Garrabrants, and Mindert Garrabrants the third, and their confederates, when discovered, may, upon their several and respective corporal oaths, true, distinct, and perfect answer make to all and singular the matters aforesaid, and that as fully and distinctly as if the same were 20 herein again repeated, and they and each of them interrogated thereto according to the best of their respective knowledge, information, and belief, and that they may more particularly, upon their respective corporal oaths, set forth and declare whether the said deed was made and drawn according to the original agreement and understanding of the parties, and whether the several trusts therein contained are not totally different from those intended to be raised by the said deed, and how and in what particulars the said deed and the several trusts therein contained are different from what was agreed 30 upon between your orator and the said John Van Houten, jun., and whether the said deed was shown or read to your orator before he executed the same, and whether, if the same was shown or read to him, they do not believe your orator entirely mistook and did not properly understand the contents thereof, and whether it was not the intention of your orator to secure and reserve to himself and his father out of the said premises a support and maintenance during their lives.

And that, after his decease, all his lawful issue should be entitled to an equal share of the said premises, and that the 40 said deed may be decreed to be set aside as utterly void, the

same as having been made and executed by mistake, and that your orator may have such further and other relief in the premises as the nature of his case shall require and as to your Excellency may seem proper and according to equity and good conscience.

May it please your Excellency, the premises considered, to grant unto your orator the state's most gracious writ of subpœna, issuing out of and under the seal of this honorable court, to the said John Van Houten, jun., Helmah Van Hou-
10 ten, Effie Garrabrants, and Mindert Garrabrants the third, and their confederates, when discovered, to be directed, commanding them and each of them, at a certain day and under a certain pain, therein to be limited and expressed, personally to be and appear before your Excellency, in this honorable court, then and there, upon their several and respective corporal oaths, true and perfect answer make to all and singular the premises; and further, to stand to and abide such further order, direction, and decree in the premises as to your Excellency shall seem meet and agreeable to equity and good con-
20 science. And your orator, as in duty bound, will ever pray, &c.

Jos. C. Hornblower,
Solicitor and counsel with complainant.

Petition to appoint guardian.—Filed 29th July, 1808.

To the Honorable Joseph Bloomfield, Chancellor of the State of New Jersey.

The humble petition of the defendants showeth, that the complainant exhibited his bill in this honorable court against your petitioners, to which they have appeared. But for as
30 much as one of your petitioners, *viz.* Mindert Garrabrants the third, is an infant, and cannot answer the complainant's bill, nor defend this suit without having a guardian assigned for that purpose, your petitioners therefore humbly pray your Honor that you would appoint John Van Houten, jun., one of your petitioners and grandfather of the said Mindert Garrabrants the third, the aforementioned infant, to be his guardian to defend this suit. And your petitioners shall ever pray, &c.

John Van Houten, jun.,
Helmah Van Houten,
Effie Garrabrants.

ORDER TO APPOINT GUARDIAN.—Filed 29th July, 1808.

It is ordered, that John Van Houten, jun., be appointed guardian *ad litem* to Mindert Garrabrants, the infant within named, agreeable to the prayer of the within petition.

JOSEPH BLOOMFIELD, *C.*

ANSWER.—Filed 29th July, 1808.

The joint and several answer of John Van Houten, jun., Helmah Van Houten, and Effie Garrabrants, by John Van Houten, jun., her next friend, and Mindert Garrabrants the third, an infant under the age of twenty-one years, by the said John Van Houten, jun., his guardian, to the bill of complaint of Mindert Garrabrants, jun., complainant. 10

These defendants, now and at all times hereafter saving and reserving to themselves all and all manner of benefit to the manifold errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say, that they admit that, on or about the thirteenth day of 20 December, in the year of our Lord one thousand eight hundred, he, the said Mindert Garrabrants, jun., was married to the said Effie Garrabrants, daughter of the said John Van Houten, jun., and her next friend.

And these defendants also admit, that shortly after the said intermarriage, Mindert Garrabrants, the father of the said complainant, being then an old and infirm man, and incapable of properly managing or taking care of his farm or business, did convey all his realand personal estate, situate, lying, and being in the township and county of Bergen, to the said 30 complainant, and that a part of which real estate is mentioned and contained in the deed set forth in the complainant's said bill of complaint.

And these defendants further answering say, that they of their own knowledge cannot tell what agreement was made between the complainant and his father at the time the said deed was executed and conveyance made respecting the support and maintenance of the said Mindert Garrabrants, sen.,

but that they have no reason to doubt but that the said agreement is correctly set forth by the said complaint.

And these defendants further answering admit, that the said complainant was seized of the said premises on or about the tenth day of August, in the year of our Lord one thousand eight hundred and seven, when the said complainant did execute a deed to the said John Van Houten, jun., and Helmah Van Houten, two of the defendants in the complainant's said bill of complaint named, for the property in the said deed 10 mentioned, and in trust, as is set forth in the complainant's said bill of complaint.

And the said John Van Houten, jun., and Helmah Van Houten, two of the defendants in the complainant's said bill named, for further answering, say, that they cannot deny but that the agreement between the complainant and these defendants, upon which the said deed in trust was executed, was as is set forth in the complainant's said bill of complaint, as far as it respects the life estate or maintenance and support of the said complainant and the estate in fee simple of the said 20 Effie, nor that, by the said agreement, the said complainant was not entitled to a support and the use and occupation of the said premises during his life without being subject to account to these defendants, or any of them, for the rents, issues, and profits of the said premises.

And these defendants further answering say, that at the time the said deed in the complainant's bill set forth was executed, it was read to the said complainant, but that they cannot say whether he understood the contents of the same or not; and these defendants do further say, that the trusts in the 30 said deed set forth are expressly according to the original agreement made with the said complainant, excepting the use and occupation of the said premises to the said complainant during his life, and excepting the part of the said deed which secures to the said Effie, in case she survives the said complainant, one equal third part of the said premises in fee simple.

And these defendants further answering admit, that they never understood nor intended that the said deed in trust should vest the estate in the premises in the said trustees there-40 in named, so as to give them a legal right to take possession

of the same immediately, to the total exclusion of the said complainant, by virtue of the said deed, until some considerable time after it was executed and recorded.

And these defendants expressly deny that the said complainant hath, at any time since the execution of the said deed, applied to them to give up the said deed to be cancelled, or for these defendants to reconvey the same to him in order that a new deed might be executed to them upon the several trusts in the complainant's said bill set forth, or upon any other trusts, and that if such application had been made they would 10 have immediately complied with such request, in order that a new deed might have been executed according to the real intention of the parties at the time of executing the same, reserving to the said complainant the free and undisturbed use and occupation of the said premises during his life.

And these defendants deny all unlawful combination and confederacy in the said bill charged, without that that or any other matter or thing material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, or avoided, traversed 20 or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready 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 that behalf most wrongfully sustained.

Personally appeared before me, Philip Williams, one of the masters in the High Court of Chancery in the state of New Jersey, John Van Houten, jun., who appeared and answers as well for himself as for Effie Garrabrants as her next friend, 30 and for Mindert Garrabrants the third, as his guardian, to defent this suit, and Helmah Van Houten, the defendants within named, who, being severally sworn, did depose and say, that what is contained in this their answer, so far as concerns their own acts and deeds, is true to the best of their knowledge, and that what relates to the acts and deeds of any other person or persons they believe them to be true.

John Van Houten, jun.,
Helmah Van Houten.

Sworn and subscribed before me, 28th July 1808. 40

R Philip Williams, *M. C.*

This cause coming on at a special term of the Court of Chancery, holden at Newark, in the county of Essex, on Friday, the twenty-ninth day of July, in the year eighteen hundred and eight, to be heard and debated before the Chancellor of this state in the presence of Joseph C. Hornblower, counsel for the complainant, and William Halsey, counsel of the defendants, and upon hearing the bill of complaint and the answer read, and upon hearing and debate of their counsel, the Chancellor took time to consider and advise thereon, and now,
10 on the ninth day of September, in the same year, made the following decree:

This cause is set down and heard upon bill and answer. The answer admits the trusts and matter of equity sufficient for the court to decree upon.

The Chancellor doth declare, order, adjudge, and decree, and accordingly it is, this ninth day of September, in the year eighteen hundred and eight, by Joseph Bloomfield, Governor and Chancellor of the State of New Jersey, declared, ordered, adjudged, and decreed, that the writing purporting to be a
20 conveyance made by Mindert Garrabrants, jun., the complainant in this cause, to John Van Houten and Helmah Van Houten, two of the defendants in this cause, bearing date the tenth day of August, eighteen hundred and seven, set forth in the bill of complaint, and alleged to have been duly proven and to be recorded in the clerk's office of the county of Bergen, in Book A 2 of Deeds, pages 141, 142, 143, and 144, is utterly void, frustrate, and of none effect, and the same conveyance is accordingly set aside, vacated, and annulled, both at law and in equity.

30 And it is further ordered, adjudged, and decreed, that the said Mindert Garrabrants, jun., the complainant, shall, on or before the third Tuesday of November next, make, seal, execute, and deliver to the said John Van Houten and Helmah Van Houten a conveyance of the lands, tenements, and hereditaments described in the said conveyance of the tenth day of August, eighteen hundred and seven, and set forth as aforesaid in the complainant's bill, to them, the said John Van Houten and Helmah Van Houten in trust, that they, the said John Van Houten and Helmah Van Houten, and the survivor of
40 them, and the heirs of such survivor, shall permit the said

Mindert Garrabrants, jun., and his family, and Mindert Garrabrants, sen., the father of the said Mindert Garrabrants, jun., the complainant, during their lives, respectively, to occupy and possess the messuages and tenements, and the rents, issues, and profits thereof, for the support and maintenance of the said Mindert Garrabrants, jun., and of his father, Mindert Garrabrants, sen., during life ; and upon this further trust, that after the decease of the said Mindert Garrabrants, jun., and his father, Mindert Garrabrants, sen., that then the said trustees, the survivor of them, and the heirs of such survivor, shall con- 10 vey the whole of the said premises to the said Mindert Garrabrants the third, son of the said Mindert Garrabrants, jun., and the said Effie Garrabrants his wife, one of the defendants in this cause, and to such other lawful issue as he, the said Mindert Garrabrants, jun., the complainant, may then have living, share and share alike in fee simple, as soon as he or they arrive of age, reserving to the widow of the said Mindert Garrabrants, jun., if any he should leave, the said widow's legal estate of dower in the said premises. The expense of perfecting the said conveyance and the costs sustained in this 20 suit to be paid by the said Mindert Garrabrants, jun., the complainant in this cause.

JOSEPH BLOOMFIELD, *C.*

I, Daniel B. Bodine, clerk of the Court of Chancery of the State of New Jersey, do hereby certify that the foregoing is a copy of the enrollment on record in the cause wherein Mindert Garrabrants, jun., was complainant, and John Van Houten, jun., and others were defendants, taken from Book No. 6 of Enrolled Decrees, pages 64, &c. 30

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court of Chancery, at Trenton, the third day of July, in the year of our Lord one thousand eight hundred and fifty-two (1852).

DANIEL B. BODINE, *Cl'k.*

Exhibit D 10, on the part of defendant.

In the Court of Chancery of New Jersey.

Between

Effie Garrabrants, by John Van Houten, jun., her next friend, complainant,

and

Mindert Garrabrants, jun., defendant

On bill, answer, and replication. Decree of divorce and alimony.

This cause coming on at a special term of the Court of
10 Chancery, holden at Newark, in the county of Essex, on Friday, the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and eight, to be heard and debated before Joseph Bloomfield, Governor and Chancellor of the State of New Jersey, in the presence of Philip Williams, solicitor, and William Halsey, counsel of the complainant, and Jos. C. Hornblower, solicitor and counsel of the defendant, and upon hearing of the bill of complaint, answer, and replication, and the depositions, examinations, and evidence taken in this cause read, and upon hearing and debate of their coun-
20 sel, the Chancellor took time to consider and advise thereon.

And now, on Friday, the twelfth day of August, in the same year, the Chancellor decrees as follows:

The Chancellor is of opinion that the bill of the complainant, Effie Garrabrants, against the defendant, Mindert Garrabrants, junior, is supported by the testimony taken in this cause, of extreme cruelty committed by the said defendant to the said complainant, in the state of New Jersey, during his intermarriage with the said complainant—it is therefore, in virtue of the statute of New Jersey in such case made and provided,
30 ordered, adjudged, and decreed, and the Chancellor doth order, adjudge, and decree, that the said complainant, Effie Garrabrants, be divorced from the bed and board of the said defendant, Mindert Garrabrants, junior, for extreme cruelty in the said defendant, Mindert Garrabrants, junior, to his said wife, the said complainant, Effie Garrabrants. The Chancellor doth further order and direct, that William Sandford Pennington, one of the masters of this court, make inquiry

into the circumstances of the said parties, and particularly of and concerning the property of the said defendant, Mindert Garrabrants, junior, and of any marriage agreement or settlement subsisting between the parties, and make report thereon to this court, that such order may be made touching the care and maintenance of Mindert Garrabrants the third, the child of their marriage, and also touching the maintenance and alimony of the said complainant, Effie Garrabrants, as from the nature of this case may be fit, equitable, and just.

JOSEPH BLOOMFIELD, *C.*

In the case of 10

MINDERT GARRABRANTS, junior, complainant, *and* JOHN VAN HOUTEN, junior, HELMAH VAN HOUTEN, EFFIE GARRABRANTS, and MINDERT GARRABRANTS 3d.	*On bill and answer filed July 29th*, 1808.

The Chancellor reserves his decree on the deed in controversy until the report of Master Pennington touching the alimony of Effie Garrabrants shall be made, &c.

JOSEPH BLOOMFIELD. 20

EXHIBIT D 11.

Between

MINDERT GARRABRANTS, junior, complainant,

and

JOHN VAN HOUTEN, junior, HELMAH VAN HOUTEN, EFFIE GARRABRANTS, and MINDERT GARRABRANTS 3d, defendants.

Bill filed 29th July, 1808.

10 *To his Excellency Joseph Bloomfield, esquire, Chancellor of the State of New Jersey.*

In chancery, humbly complaining, showeth unto your Excellency your orator, Mindert Garrabrants, jun., of the township of Bergen, in the county of Bergen, and in the state of New Jersey, that on or about the tenth day of December, in the year of our Lord one thousand eight hundred, he was married to Effie Van Houten, daughter of John Van Houten, jun., of the same place; that some time after your orator was so married, your orator's father, he then being an old and in-
20 firm man, and incapable of properly managing and taking care of his farm and his business, did convey to your orator, being his only son, all his estate, real and personal, situate and being in the township and county aforesaid, a part of which real estate is contained in a certain deed, hereinafter set forth, which conveyance was made to your orator by his father under an express agreement between your orator and his father that your orator should decently and comfortably maintain and support him during his life, by virtue of which conveyance your orator took possession and was seized of the
30 the said premises until, on or about the tenth day of August, in the year of our Lord one thousand eight hundred and seven, when your orator, in order to secure to your orator and his father, during their lives respectively, a sure and comfortable maintenance, and to prevent your orator, by any imprudence he might be guilty of, from wasting and squandering his estate, and thereby leaving not only himself and his aged father but also his wife and infant son, Mindert Garrabrants

and possess the messuages and tenements, and the rents, issues, and profits thereof, for the support and maintenance of the said Mindert Garrabrants, jun., and of his father, Mindert Garrabrants, sen., during life ; and upon this further trust, that after the decease of the said Mindert Garrabrants, jun., and his father, Mindert Garrabrants, sen., that then the said trustees, the survivor of them, and the heirs of such survivor, shall convey the whole of the said premises to the said Mindert Garrabrants the third, son of the said Mindert Garrabrants, jun., and the said Effie Garrabrants his wife, one of the defendants 10 in this cause, and to such other lawful issue as he, the said Mindert Garrabrants, jun., the complainant, may then have living, share and share alike in fee simple, as soon as he or they arrive of age, reserving to the widow of the said Mindert Garrabrants, jun., if any he should leave, the said widow's legal estate of dower in the said premises. The expense of perfecting the said conveyance and the costs sustained in this suit to be paid by the said Mindert Garrabrants, jun., the complainant in this cause.

JOSEPH BLOOMFIELD, *C.* 20

I, Daniel B. Bodine, clerk of the Court of Chancery of the State of New Jersey, do hereby certify that the foregoing is a true copy of the enrollment on record in the cause wherein Mindert Garrabrants, jun., was complainant, and John Van Houten, jun., Helmah Van Houten, Effie Garrabrants, and Mindert Garrabrants were defendants, taken from Book No. 6 of Enrolled Decrees, pages 64, &c., now remaining in the Chancery office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, at Trenton, the second day 30 of September, in the year of our Lord one thousand eight hundred and fifty-one (1851).

DANIEL B. BODINE, *Cl'k.*

Exhibit D 12.

This indenture, made the fifteenth day of March, in the year of our Lord one thousand eight hundred and nine, between Mindert Garrabrants, junior, of Gummunopough, in the county of Bergen, and state of New Jersey, of the one part, and John Van Houten, junior, and Helmah Van Houten, of the township, county, and state aforesaid, of the other part, witnesseth, that the said Mindert Garrabrants, junior, as well for and in consideration of the sum of one dollar to him in hand paid, as for and in consideration of the trusts, covenants,
10 and agreements hereinafter contained, hath given, granted, bargained, and sold, aliened, released, enfeoffed, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey, and confirm unto the said John Van Houten, junior, and Helmah Van Houten, their heirs and assigns, all and singular, that certain piece or parcel of land, situated, lying, and being at Gummunopough, whereon the said Mindert Garrabrants now lives, bounded on the east by the bay called Gummunopough bay, on the north and west, by lands of Cornelius Garrabrants, and on the south
20 by the road that leads to Gummunopough, containing three acres, be the same more or less: also one other certain piece of land and meadow, situated at Gummunopough, in the township and county aforesaid, bounded on the east by lands of Cornelius Garrabrants, northwardly, by the mill creek, and westwardly by lands of Henry Blenckerhoof and of Garret Van Horne and Michael Vreeland, and southwardly by the aforesaid road leading to Gummunopough, containing one hundred and twenty acres, be the same more or less; and also one other certain piece or parcel of land, situated, lying, and
30 being at Slonga, in the said township and county of Bergen, bounded, on the east by the north river, northwardly by lands of Cornelius Garrabrants, westwardly by lands late of Helmah Van Houten, deceased, and southwardly by lands belonging to the proprietors of a certain piece of meadow lying east of the same, containing fifty acres, be the same more or less, together with all and singular the messuages, houses, barns, buildings, improvements, hereditaments, and appurtenances; and also all and singular the ways, waters, woods, easements,

profits, privileges, hereditaments, and appurtenances to the same belonging or in any wise appertaining; and also all the estate, right, title, interest, property, claim, and demand whatsoever, as well in equity as in law, of him, the said Mindert Garrabrants, junior, his heirs or assigns, of, in, or to the same—to have and to hold all and singular the above mentioned and described pieces and parcels of land and premises, with the hereditaments and appurtenances unto them, the said John Van Houten, junior, and Helmah Van Houten, their heirs and assigns. In trust nevertheless, that the said 10 John Van Houten, junior, and Helmah Van Houten, and the survivor of them, and the heirs of such survivor, shall permit the said Mindert Garrabrants and his family, and Mindert Garrabrants, senior, the father of the said Mindert Garrabrants, junior, during their joint and several lives, to use, occupy, possess, and enjoy all and singular the said messuages, lands, and tenements, and to take and receive the rents, issues, and profits thereof for the support and maintenance of the said Mindert Garrabrants, junior, and Mindert Garrabrants, senior, during their lives, respectively; and upon this further 20 trust, that after the death of the said Mindert Garrabrants, junior, and the said Mindert Garrabrants, senior, that then the said John Van Houten, junior, and Helmah Van Houten, and the survivor of them, and the heirs of such survivor, shall convey the whole of the said messuages, lands, and premises unto Mindert Garrabrants the third, son of the said Mindert Garrabrants, junior, and to such other lawful issue as he, the said Mindert Garrabrants, junior, shall then have, share and share alike, in fee simple, as soon as he or they shall arrive at full age; and in case of no lawful issue, then to the heirs at 30 law of the said Mindert Garrabrants, junior, share and share alike, in fee simple, to the only proper use, benefit, and behoof of the said John Van Houten, junior, and Helmah Van Houten, their heirs and assigns for ever—in trust as aforesaid. And the said Mindert Garrabrants, junior, doth hereby, for himself, his heirs, executors, and administrators, covenant and agree to and with the said John Van Houten, junior, and Helmah Van Houten, their heirs and assigns, that he, the said Mindert Garrabrants, junior, is lawfully and rightfully seized in his own right of a good, sure, and indefeasible es- 40

tate of inheritance in fee simple of and in the said premises, without any limitation, mortgage, judgment, or other matter, cause, or thing whatsoever to charge, alter, or encumber the same in title or estate or otherwise, and that he hath good right, full power, and lawful authority in his own right, to grant, bargain, and convey the same to the said John Van Houten, junior, and Helmah Van Houten, their heirs and assigns; and also that they, the said John Van Houten, junior, and Helmah Van Houten shall for ever hereafter peaceably and
10 quietly have, hold, use, occupy, possess, and enjoy the premises, with the appurtenances, to and for the uses and trusts aforesaid, without the interruption, molestation, or denial of him, the said Mindert Garrabrants, junior, or any other person or persons claiming or to claim the same or any part thereof; and also, that he, the said Mindert Garrabrants, junior, and his heirs, the premises hereby granted, with the appurtenances, unto the said John Van Houten, junior, and Helmah Van Houten, their heirs and assigns, against him, the said Mindert Garrabrants, junior, his heirs or assigns, and against all and
20 every other person or persons whomsoever, shall and will warrant and by these presents for ever defend; and the said John Van Houten, junior, and Helmah Van Houten do hereby, for themselves, their heirs, executors, and administrators, covenant and agree to and with the said Mindert Garrabrants, junior, his heirs and assigns, that they, the said John Van Houten, junior, and Helmah Van Houten will well, truly, and faithfully do, execute, and perform the trusts and conditions on their part to be done, executed, and performed.

In witness whereof, the parties to these presents have here-
30 unto interchangeably set their hands and seals the day and year first above written.

Sealed and delivered in presence of

his
Mindert ⋈ Garrabrants,
mark

John H. Van Houten,

Helmah Van Houten.

State of New Jersey, Bergen county, *ss.*—On the fifteenth day of March, in the year of our Lord eighteen hundred and nine, personally came before me, Philip Williams, a master in

Chancery in said state, the within named Mindert Garrabrants, junior, John Van Houten, junior, and Helmah Van Houten, all well known to me, and severally acknowledged that they signed, sealed, and delivered the within deed freely as their voluutary act and deed for the uses and purposes in the same expressed.

PHILIP WILLIAMS, *M. C.*

EXHIBIT D 9.

Know all men by these presents, that I, Thomas Biggs, of the city of New York, and state of New York, am held and firmly bound unto Mindert Garrabrants, of the township and county of Bergen, and state of New Jersey, in the sum of one thousand five hundred dollars, lawful money of the United States, to be paid to the said Mindert Garrabrants or to his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made I do bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents.—Sealed with my seal, and dated the twenty-fourth day of August, A. D. one thousand eight hundred and thirty-five.

Whereas the said Thomas Biggs hath agreed with the said Mindert Garrabrants for the absolute purchase of a certain messuage or lot of land, situate at Slonga, in the township and county of Bergen, and is bounded, southwest by a lot of William Garmo, northwest by a lot of Garret Newkirk and others, northeast by a lot of Robert Emmett, and southeast by a lot of Samuel T. Moore, for the sum of one thousand and twenty-four dollars; and as the said Thomas Biggs hath paid the whole of the purchase money, the said Mindert Garrabrants hath by his deed, bearing even date herewith, duly made, sealed, delivered, and conveyed, the above described lot or messuage unto the said Thomas Biggs, his heirs and assigns.

Now the condition of this obligation is such, that if the above bounden Thomas Biggs, his heirs, executors, and administrators, or any of them, do and shall for ever save, defend, and keep harmless and indemnify the said Mindert Gar-

rabrants, his heirs, executors, and administrators, his and their goods and chattels, lands and tenements, against all claims, leases, and articles of agreement, what kind soever they may be, held against the above described lot by William Garmo and Joseph Danielson, or by any other person or persons whomsoever, then this obligation to be void, or else to be and remain in full force and virtue.—In witness whereof, I have hereunto set my hand and seal the day and year above written.

10 Signed, sealed, and delivered in the presence of,

THOMAS BIGGS.

In the condition, on the eighth line, the following was interlined before executed, (against the above lot).

GARRET SIP,
RICHARD SIP.

EXHIBIT D 13.

This indenture, made this seventeenth day of May, in the year of our Lord one thousand eight hundred and fifty-two, between John Van Houten, of Marquette county, in the state
20 of Wisconsin, and Richard Tice and Jane his wife, and Jacob Greenleaf and Eliza his wife, all of the county of Hudson, in the state of New Jersey, of the first part, and Effie, wife of James Van Boskerk, and Mary Elizabeth, wife of Charles G. Sisson, all also of Hudson county, in the state of New Jersey, of the second part—witnesseth, that whereas, by a certain decree, made in the Court of Chancery of New Jersey by his Excellency Joseph Bloomfield, esquire, Governor and Chancellor of said state, on the ninth day of September, in the year eighteen hundred and eight, in a certain cause in said court
30 pending, wherein Mindert Garrabrants, jun., was complainant, and John Van Houten, jun., Helmah Van Houten, Effie Garrabrants, and Mindert Garrabrants the third were defendants; and by a certain deed, bearing date the fifteenth day of March, in the year eighteen hundred and nine, made and ex-

ecuted by said Mindert Garrabrants, jun., of the first part, to said John Van Houten and Helmah Van Houten, of the second part, certain lands and premises, situate in that part of the county of Bergen, in the state of New Jersey, which is now the county of Hudson in said deed mentioned and described, and mentioned and described in a certain other deed, which had been executed by said Mindert Garrabrants, jun., to said John Van Houten and Helmah Van Houten, as trustees, dated the tenth day of August, in the year eighteen hundred and seven, and recorded in the clerk's office of Bergen county, in Book A 2 of deeds, pages 141 to 144, were conveyed to and vested in said John Van Houten and Helmah Van Houten in fee, in trust that they, the said John Van Houten and Helmah Van Houten, and the survivor of them, and the heirs of such survivor, should permit the said Mindert Garrabrants, jun., and his family, and Mindert Garrabrants, sen., the father of the said Mindert Garrabrants, jun., during their lives, respectively, to occupy and possess the said lands and premises, and the rents, issues, and profits thereof, for the support of the said Mindert Garrabrants, jun., and Mindert Garrabrants, sen., during life; and upon this further trust, that after the decease of the said Mindert Garrabrants, jun., and Mindert Garrabrants, sen., then the said trustees, the survivor of them, or the heirs of such survivor, should convey the whole of said premises to Mindert Garrabrants the third, son of said Mindert Garrabrants, jun., and Effie his wife, and to such other lawful issue as the said Mindert Garrabrants, jun., might then have living, share and share alike, in fee simple, as soon as he or they arrive of age.

And whereas the said Mindert Garrabrants, sen., died in the lifetime of his son, Mindert Garrabrants, jun., and Mindert Garrabrants, jun., also died in or about the year eighteen hundred and forty-seven; and whereas Mindert Garrabrants the third died in or about the year eighteen hundred and thirty-eight, in the lifetime of his father, Mindert Garrabrants, jun., his daughters Effie and Mary Elizabeth, the above named parties of the second part, his lawful issue surviving him; and whereas said parties of the second part were, at the death of said Mindert Garrabrants, jun., his only lawful issue then living, and became, by virtue of said trust, entitled to the conveyance to them, share and share alike, of the whole of said

lands and premises in fee simple; and whereas said John Van Houten died in the lifetime of said Helmah Van Houten, who survived him; and whereas said Helmah Van Houten has since died, leaving John Van Houten, of the first part, his only son, and the said Jane Tice and Eliza Greenleaf, two of his daughters, surviving him, by virtue whereof the execution of the residue of said trust has devolved upon said parties of the first part—

Now, therefore, the said parties of the first part, in execu-
10 tion of said trust and in consideration of the premises and of one dollar to us in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, enfeoff, convey, and confirm to the said parties of the second part, and their heirs and assigns for ever, all and singular the said lands and premises so by said decree of the Court of Chancery of New Jersey, and by said deed, dated on the fifteenth day of March, in the year eighteen hundred and nine, conveyed to and vested in said John Van Houten and Helmah Van Houten in trust as aforesaid—together with all
20 and singular the easements, rights, privileges, hereditaments and appurtenances to them belonging or in any wise appertaining: To have and to hold the same to the said parties of the second part and their heirs and assigns, share and share alike, to their own use, benefit, and behoof for ever. And we do hereby authorize and empower them, in the names of us or either of us, but at their own risk, costs, and expense, to sue for and recover said lands or any part thereof, or for any trespass or injuries done to the same by any deforcers, ejectors, trespassers, or wrongdoers whatever.

30 In witness whereof, we have hereunto set our hands and seals the day and year first above written.

Signed, sealed, and delivered by Richard Tice and Jane his wife, in presence of
JOHN G. ACKERMAN.
} RICHARD TICE,
JANE TICE.

By Jacob Greenleaf and Eliza his wife, in presence of
JOHN G. ACKERMAN.
} JACOB GREENLEAF,
ELIZA GREENLEAF.

And by John Van Houten, in the
40 presence of
A. O. ZABRISKIE.
} JOHN H. VAN HOUTEN

State of New Jersey, Hudson county, *ss.*—Be it remembered that on this twenty-second day of May, in the year one thousand eight hundred and fifty-two, before me, John G. Ackerman, a commissioner of deeds, personally appeared Richard Tice and Jane his wife, Jacob Greenleaf and Eliza his wife, who I am satisfied are the grantors in the within deed of conveyance named, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed. And 10 the said Jane Tice and Elizabeth Greenleaf being by me privately examined separate and apart from their said husbands, did further acknowledge that they signed, sealed, and delivered the same freely as their voluntary act and deed, without any fear, threats, or compulsion of or from their said husbands.

John G. Ackerman,
Commissioner of deeds for Hudson county.

State of New Jersey, Hudson county, *ss.*—I, Abraham O. 20 Zabriskie, a master in chancery of New Jersey, do hereby certify, that on this twenty-fourth day of September, A. D. eighteen hundred and fifty-two, personally appeared before me John Van Houten, who is I am satisfied the person named in and who executed the within deed; and I having first made known to him the contents of the same, he thereupon acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed.

A. O. Zabriskie, *M. C.*

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

THE WEEHAWKEN FERRY COMPANY, appellants, *and* CHARLES G. SISSON and MARY ELIZABETH his wife, JAMES VAN BOSKERCK, and EFFIE his wife, and JOHN VAN H. HOUTEN, respondents.	*On appeal from decree of Chancellor.*

The answer of the above respondents to the petition of ap-
10 peal of the above appellants.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereunto, nevertheless, say and admit, that a decree was, on the thirty-first day of March, in the year eighteen hundred and sixty-two, made and entered by the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated.

But as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And
20 these respondents are advised and believe that the said decree is agreeable to equity, and they pray that the same may be affirmed with costs, to be adjudged to these respondents.

A. O. ZABRISKIE & SON,
Solicitors for respondents.

A. O. ZABRISKIE, *of counsel.*