

# COURT OF ERRORS AND APPEALS.

Between

HORACE LIPPINCOTT,

*Appellant,*

and

KETURAH M. EVENS, et als.,

• *Respondents.*

} On Appeal, &c.

## POINTS MADE BY COMPLAINANT'S COUNSEL.

### I.

The quality of the estate of Keturah M. Evans in the estate set up in the joint answer must be determined by the answer itself, as the defendants cannot claim any estate not set up. The defendants will be bound by the construction set up in the answer.—Moores vs. Moores, 1 C. E. Gr. 275; 1 Russell & Mylne, 527; 1 Barb. Ch. Pr., 137; Story's Equity Pl., §~~877~~ 697.

### II.

The trust which proceeded from the testator was destroyed by the compliance of the trustee with the order of the beneficiary to invest the *corpus* of the trust fund in the farm.—Perry on Trusts, §920 and 921; Walker vs. Beal, 106 Mass., 110. Halsted vs. Davidson, 2 Stock., 290; Bucon vs. Bonham, 12 C. E. Gr., 204; Barker vs. Greenwood, 4 Mees. and W., 421, 429; Adams vs. Adams, 9 Jur., 303; Bellinger vs. Schaffer, 2 Sandf. Ch., (N. Y.) 293. *Hardenberg v. Blair* 2 Stew. 645; *Stone v. Brown* 5 Stew 118; *Woodruff v. Johnson* 4 Halst. Ch. 729; *The New Parish in Exeter v. Adione* 1 N.H. 232; *Ramsey v. March* 2 Me. Cord 252; *Perry on Trusts* 359 — 19.

## III.

The farm cannot be deemed to be held in trust at all because the *habendum* in the deed as pleaded gives Mrs. Evens the legal title under the statute of uses.—Yeo vs. Mercereau, 3 Harr. 400; Perry on Trusts, §5 and §304; Shute vs. Harder, 1 Yerg. (Tenn.), 26; Jackson vs. Bateman, 2 Wend. 570; Jackson vs. Walker, 4 Wend., 462.

## IV.

If the farm can be deemed to be held in trust at all, the trust proceeded from the debtor, Keturah, herself.—4 Kent, 319 and 536, (original paging); 2 Redfield on Wills, 277; Craig vs. Craig, 3 Barb., ch. 77. *Bradford v. Sheel* 16 yes. 135; *Halehead v. Harrison* 2 Stock. 290; *Cremar v. Broadway* 8 Vt. 508; *Price v. Sisson* 2 Beap. 168.

Equity will most willingly aid in enforcing the application of the beneficiary interest of a *cestui que trust* to the security and payment of his debts.—Ryder vs. Sisson, 7 R. I., 341; Degraw vs. Claussion, 11 Paige, 140. *Hallett v. Thompson* 5 Paige 588

## VI.

To change a trust of personal to real estate and vice versa, the Court of Chancery must be consulted.—Quick vs. Fisher, 4 Hal. Ch., 674, 778; S. C., 1 Stock, 802; ~~Vanners vs. Jacobus~~, 2 C. E. Gr., 153; ~~Gen vs. Moore~~, 4 C. E. Gr., 503; in the matter of Eunice Salisbury, 3 Johns, Ch., 347. *Story Eq. juris.* 91267 978

ALFRED HUGG,

Of Counsel with Appellant.

The first report mentioned to be held in trust at all times the  
 above in the name of the said James W. Jackson the legal title  
 under the statute in case of his death to be held in trust for  
 on Trust to and 20th June 1850 James W. Jackson  
 Jackson vs Jackson 2 Wood 570 Jackson vs Jackson 1 Wood

It is the duty of the trustee to hold the trust at all times  
 in trust for the said James W. Jackson the legal title  
 under the statute in case of his death to be held in trust for  
 on Trust to and 20th June 1850 James W. Jackson  
 Jackson vs Jackson 2 Wood 570 Jackson vs Jackson 1 Wood

James W. Jackson vs Jackson 2 Wood 570

The second report mentioned to be held in trust at all times  
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 Jackson vs Jackson 2 Wood 570 Jackson vs Jackson 1 Wood



and invested the same in the above named farm for the benefit of said Keturah.

That no other moneys except those arising from said legacy are invested in said farm.

That said Griscom still holds said farm in trust, and that the said Keturah and her husband are now residing thereon.

A decree was made in the Court of Chancery dismissing the above named bill with costs.

From this decree the complainant, Horace Lippincott, has  
10 appealed.

(1). The above named judgment is void. It is founded upon contract made by a married woman as surety for her husband and for the payment of his debt.

*Statute, Revision, 1877, p. 637, section 5, and cases cited; Swing v. Woodruff, 12 Vroom, 469.*

(2). Where a trust has been created by, or the fund so held in trust has proceeded from some person other than the debtor himself, it is not within the jurisdiction of the Court of Chancery to subject such trust property to the payment of a judg-  
20 ment against the *cestui que trust*.

*Revised Statutes of 1877, p. 121, section 91;*

*Blair v. Hardenburgh, 3 Stew., 645;*

*Force v. Brown, 5 Stew., 118;*

*Frazier v. Brannan, 4 C. E. Green, 317;*

*Halsted v. Davidson, 2 Stock., 290, 295.*

(3). That the children of Keturah M. Evens are *in esse*; that they are entitled to said trust fund in the event of the death of the said Keturah, intestate, and by reason thereof have an interest in said lands and in this suit, and should have  
30 been made parties thereto.

*Keeler v. Keeler, 3 Stock 458;*

*Hicks v. Campbell, 4 C. E. Green 183;*

*Pence v. Pence, 2 Beas. 257.*

I submit that the decree of the Court of Chancery should be affirmed with costs.

FREDK. VOORHEES,

Attorney of Defendants.

(3) Samuel Lippincott by will gave the trust fund \$6,000—not to his daughter Keturah—but to his Executors—In trust.

To invest it on good security—but how to invest it, is left to the discretion of the trustee.

To collect the income and pay it to his daughter Keturah.

To pay her a part or the whole of the trust fund on her demand.

To pay the surplus on her death—as directed by her will—or to her children in case she should die intestate. 10

Printed book page 10, line 21, abbreviated Ex., 10: 21.

David D. Griscom one of the executors accepted the trust, and took and received the trust fund \$6,000 to invest under said will.

Ev., 24: 36. Ev., 25: 6.

(4) The trust thus created by the testator is not simply to pay over the money to Keturah, nor is it a trust in which she has the entire interest. But it is a trust in which Keturah and all her children are interested. A trust requiring the trustee to invest—hold—pay interest—and distribute the fund 20 in different ways, dependent on certain contingencies. It is a trust, reposing confidence in the trustee and requiring from him the exercise of discretion and the performance of active duties, as it is a living, vital, active trust, and is within the meaning of the exception in our statute.

Rev. 1877; 120, § 88—91.

Hardenburg vs. Blair 3 Stewart 645 and cases cited.

Force vs. Brown 5 Stewart 118.

Perry on Trusts § 359.

(5) The trust so created by the testator may be extinguish- 30 ed in *whole* or in *part*, by the *demand* of *Keturah* on the trustee *to pay to her* the whole or a part of the trust fund. But until *such demand to pay to her*, is actually made and payment received by her—the trust estate or the residue thereof in the hands of the trustee must remain unchanged—a living, vital, and active trust—the same in all respects as if no power to make demand had been embodied in said trust clause.

(6) By the joint and several answer filed by Griscom and Keturah—the joint and several answer filed by the children

of Keturah—and the evidence taken in the cause, it is set forth and established, that Griscom invested said trust fund, for the benefit of Keturah, under said will, in the farm described in the bill of complaint in this cause and that he still holds said trust fund or the residue of it so invested.

The only question involved in the case is the right to hold said farm for the payment of said judgment.

(7) The title to the farm was vested in Griscom as assignee of Samuel B. Evens. Griscom sold the farm as assignee and 10 by agreement with Jesse Evens had it bought in for himself, as an investment of said *trust fund* of \$6,000.

Ev., 27: 34; Ev., 12: 16; Ev., 25: 15.

Answer of Jesse Evens et al., page 3: 20.

(8) DEED FROM Griscom assignee to Jesse Evens, exhibit No. 2, consideration expressed \$7,059.50, conveys the title of said farm absolutely to Jesse Evens and his heirs.

DEED from Jesse Evens and wife to Griscom, EXHIBIT No. 3, for the consideration of one dollar, conveys the title of said farm absolutely to Griscom and to his heirs and assigns 20 forever, to have and to hold to his use, but *in trust* under the substantial provisions of said will.

These two conveyances are but parts of one and the same transaction conveying the title of said farm from Griscom assignee, to Griscom trustee. The consideration for said conveyance was paid by Griscom trustee to Griscom assignee. Jesse Evens paid nothing.

The trust fund was thus invested in the farm, but the title to the farm was vested absolutely in Griscom, in trust under the provisions of said will.

30 Ev. 12:10—38. Ev. 27:31. Ev. 25:33. Ev. 28:28.

Answer of Jesse Evens et al., page 3; 20 to 4:10.

(9.) Funds were needed to pay the balance of the consideration of the farm, and a small portion of the trust fund was also demanded by Keturah for her own use.

The only way to raise the amount was by conveying away an interest in the farm by mortgage.—But the trust clause in the deed, while it authorized a conveyance in fee, by the

trustee, under the direction of Keturah—gave the trustee no power to mortgage.

(10.) To accomplish the purpose, the farm was conveyed by Griscom trustee, pursuant to the trust clause in his deed; to wit, with the consent and direction of Keturah—for the consideration of one dollar to William C. Lippincott and to his heirs, to have and to hold to his use, absolutely (see exhibit No. 4), and was on the same day for the consideration of one dollar conveyed by Lippincott and wife (see exhibit No. 5) to Griscom and to his heirs and assigns, to have and to hold<sup>10</sup> to his use but *in trust* for the same purposes expressed in the first deed to Griscom with the addition of a power to mortgage.

These two last named conveyances are but parts of one and the same transaction—the conveying of the farm from Griscom trustee, *without* power to mortgage—to Griscom trustee *with* power to mortgage—no consideration was paid by either grantee to the other the title to the trust estate remains vested in Griscom in trust as before the conveyances.

Ev. 26:1. Ev. 25:35. Answer 13:27 to 14:14. 20

Answer of Jesse Evens et al., page 4:11—32.

(11.) The direction by Keturah to her trustee, to make the above named conveyance to Lippincott and the conveyance so made is no execution of or determination of the trust.

The only direction by Keturah that could determine the trust would be, a direction to the trustee *to pay the wh le or the balance of the trust fund to her, Keturah.*

No such direction has been made.

The direction made (see copy at foot of Exhibit 4) directs the conveyance of the trust property—not to herself, but to 30 Lippincott. It directs the payment of no part of the trust property to her, the conveyance was so directed by her not to determine the trust, but to perpetuate the trust, in the trustee, with power to mortgage. She wanted the property to go to her children—she so expressed herself.

Ev. 28:10—24.

(12.) The mortgage was subsequently placed on said farm and the money raised thereon.

(13.) The farm subject to the mortgage, now represents the balance of the trust fund converted into land. It is vested in Griscom, in trust, under the substantial provisions of the will.

The *trust* is still active, in the hands of said trustee and is unexecuted both as to Keturah and her said children.

The *trust estate* so remaining invested has never been demanded by Keturah to be paid or conveyed to her—and 10 has never been so paid or conveyed.

It came wholly from her father—she has never contributed one cent towards it.

It remains in the hands of her trustee to be hereafter distributed under the provisions of said will, to Keturah—or her devisees—or her heirs, as future circumstances may require.

It is not within the jurisdiction of the Court of Chancery to subject the trust property to the payment of the judgment.

Ev. 32:1—8. Ev. 26:20—26. Answer 14:21—29.

Answer Jesse Evens et al., page 5;4—27.

20 See exception in statutes and authorities above cited.

I submit that the decree of the Court of Chancery should be affirmed with cost.

FRED. VOORHEES.

Sol. for and of Counsel with Ans. Defts.

# COURT OF ERRORS AND APPEALS.

Between

HORACE LIPPINCOTT,

*Appellant,*

and

KETURAH M. EVENS, et als.,

*Respondents.*

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} Bill for Relief.

## BILL OF COMPLAINT.

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To the honorable THEODORE RUNYON, Chancellor of the State of New Jersey.

Humbly complaining showeth unto your Honor, your orator, Horace Lippincott, of the township of Evesham, in the county of Burlington and State of New Jersey, that he is a creditor of Keturah M. Evens, the wife of Samuel B. Evens, of said township, county and State, and that he exhibits this bill for his own benefit, and for the benefit of such creditors of the said Keturah M. Evens as shall come into this Court and contribute to the ex- 30  
penses of this suit.

That on the thirtieth day of March, in the year of our Lord one thousand eight hundred and seventy five, the said Keturah M. Evens was indebted unto your orator in the sum of one thousand five hundred dollars for money lent and advanced to the said Keturah M. Evens, at her special instance and request, for which she gave to your orator a certain promissory note, in writing, bearing date the day and year last aforesaid, payable one day after the date thereof with lawful interest, drawn by herself and the said Samuel B. Evens, her husband, and payable to the order of your orator; and your orator 40

commenced a suit in the Supreme Court of Judicature of the State of New Jersey, on the third day of April, in the year of our Lord one thousand eight hundred and seventy-eight, against the said Keturah M. Evens, for the recovery of the amount of money due on the said promissory note; that afterwards, to wit: On the second day of July, in the year last aforesaid, by the consideration and judgment of the said Court, your orator recovered a judgment against the said Keturah M. Evens for the sum of one thousand two hundred and ninety eight dollars and twenty-five cents dam-  
 10 ages, and the further sum of thirty-three dollars and thirty-two cents for your orator's costs and charges by your orator in and about the said suit in that behalf expended, which were adjudged to your orator by the said Court, whereof the said Keturah M. Evens is convicted, as appears by the record of the said judgment, now in the office of the Clerk of said Court, at Trenton, in the State of New Jersey, or by an exemplified copy thereof, ready to be produced when and where this Honorable Court shall direct, reference being thereunto had will more fully and at large appear, and to which your orator for  
 20 greater certainty, prays leave to refer.

And your orator further showeth unto your Honor, that the said judgment so recovered in manner aforesaid against the said Keturah M. Evens still remaining in full force and virtue and effect, and not satisfied of record nor in any manner vacated, and the said sum of money remaining due and unpaid, your orator, by his attorney, Alfred Hugg, Esq., for the purpose of obtaining satisfaction of the said judgment sued out of the said Supreme Court, a writ of *feri facias de bonis et terris*, tested of the twenty-seventh day of July, in the year eighteen hundred and  
 30 seventy-eight and returnable to the term of November, eighteen hundred and seventy-eight, directed to the Sheriff of the county of Burlington, by virtue of which said writ the Sheriff of the county of Burlington was commanded that of the goods and chattels of the said Keturah M. Evens, in his county, he should cause to be made the sum of one thousand three hundred and thirty-one dollars and fifty-seven cents damages and costs, whereof the said Keturah M. Evens was convicted to satisfy the aforesaid judgment; and, if sufficient goods and chattels of the said Keturah M. Evens could not be found in said county, that then the said Sheriff was  
 40 further commanded, that he should cause the whole, or the residue

as the case might require, of the said damages, to be made of the lands, tenements and hereditaments and real estate, whereof the said Keturah M. Evens was seized on the second day of July, eighteen hundred and seventy-eight, or at any time afterwards, in whosoever hands the same might be, and that the said Sheriff should have those moneys before our Supreme Court aforesaid, on the first Tuesday of November, then, next, to render to your orator for his damages aforesaid, and that the said Sheriff should also have then and there that writ.

And your orator further showeth that the said writ of *feri* 10  
*facias*, before it was delivered to the said Sheriff, was duly recorded, according to the form of the statute in such case made and provided, directing the said Sheriff to levy the said sum of one thousand three hundred and thirty-one dollars and fifty cents with interest from the date of such judgment, besides his fees and charges, and that the said writ, so endorsed, was, before the return thereof, to wit: On the third day of July, eighteen hundred and seventy-eight, delivered to Benjamin F. Lee, Esq., Sheriff of the county of Burlington, to be executed according to law.

And your orator further showeth, that the said writ of *feri* 20  
*facias* was in due form of law returned by the said Sheriff into the said Clerk's office of the said Supreme Court, with the return thereto as follows:

"An inventory of the goods and chattels, lands and tenements of the above named defendant, levied on by the subscriber, Sheriff of the county of Burlington, by virtue of the annexed writ of execution, viz:

All that certain farm, situate in the township of Evesham, in the county of Burlington and State of New Jersey, being the same premises that Jesse Evens conveyed to David D. Griscom, in trust 30  
for Keturah M. Evens, in fee, by deed 6, dated and recorded in Book H, 9, of deeds, page 446, &c. Together with all the other goods and chattels, lands and tenements of the above named defendant, in whose hands soever the same may be, subject to legal encumbrance; value one dollar. Dated July the third, A. D., eighteen hundred and seventy-eight.

BENJAMIN F. LEE,  
Sheriff."

As by reference being had to the said writ, levy and return, will 40

more fully appear, and to which your orator prays leave to refer if it shall be necessary so to do.

And your orator further showeth unto your Honor, that on the day of \_\_\_\_\_ in the year of our Lord, eighteen hundred and seventy-eight, by virtue of said writ and levy made upon the said goods and chattels of the said Keturah M. Evens, the said Sheriff, after having first advertised the same, and set off to the said Keturah M. Evens, such goods and chattels as amounted in value to the sum of two hundred dol-  
 10 lars, as were exempted from sale, according to law, by which said sale the said Sheriff realized the sum of one thousand and twenty-one dollars, and after deducting his legal fees and charges, and the amount due to prior executions which were in his hands against the said Keturah M. Evens, the said Sheriff paid over to your orator the sum of five hundred and fifty-six dollars and eight cents, leaving a deficiency of the sum of seven hundred and eighty dollars and fifty-seven cents, which still remains due and owing to your orator, and entirely unsatisfied.

And your orator further showeth, that the said Keturah M.  
 20 Evens is in truth and in fact the owner of said lands, levied upon as aforesaid, by said Sheriff, by virtue of the *feri facias* aforesaid, but your orator is unable effectually to obtain the benefit of this or any other *feri facias*, or to enforce the same upon and against the said lands of the said Keturah M. Evens, inasmuch as the truth is, and your orator charges the fact to be, that although the said Keturah M. Evens is the real owner of said lands, the legal title to the same is not in her, but is, as your orator is informed, in one David D. Griscom, trustee for the said Keturah M. Evens, who took and received the deed of conveyance of said lands from  
 30 William C. Lippincott and Deborah C., his wife, dated July fifteenth, eighteen hundred and seventy-eight and the said W. C. Lippincott took and received the deed of conveyance of said lands from David D. Griscom, trustee for said Keturah M. Evens, dated the same day and year; and the said David D. Griscom, trustee, &c., took and received the deed of conveyance of said lands from Jesse Evens, the son of the said Keturah M. Evens, and Martha M., his wife, dated March twenty-eighth of same year; and the said Jesse Evens took and received the  
 40 deed of conveyance of said lands from David D. Griscom, assignee

of Samuel B. Evens, the husband of the said Keturah M. Evens, dated March the twenty-sixth, eighteen hundred and seventy-six.

And your orator further showeth, that all of said conveyances are subsequent to the incurring of the said debt, by the said Keturah M. Evens, and that the consideration expressed in each of said deeds of conveyance (excepting that from David D. Griscom, assignee of Samuel B. Evens to Jesse Evens, which is seven hundred and fifty-nine dollars and sixty cents) is one dollar.

And your orator further showeth that the premises in said deeds of conveyance are substantially described as follows :

10

A certain tract of land situate in the township of Evesham, in the county of Burlington and State of New Jersey, and bounded as follows: Beginning at a stone in the Medford road, now corner to Levi Troth and Joseph Evens lands, being where the old beach formerly stood, and runs thence by Joseph Evens south thirty-eight degrees and fifteen minutes, west eight chains to a stone near the west side of the road corner to Joseph Evens, thence by the same south seventy degrees and thirty minutes, east six chains and twelve links to a stone corner to the same; thence south five degrees and twenty-five minutes, east twenty-two chains and ninety-three links to a stake or stone in the middle of the Tucker-  
ton road; thence along the middle of said road, south sixty-eight  
degrees and fifteen minutes, east eleven chains and thirty links  
to a stake or stone in the middle of said road; thence by land of  
David Rogers, north twenty-eight degrees and thirty minutes,  
west seventeen chains and fifteen links to a stone corner to said  
Rogers; thence still by the same, north sixty-two degrees and  
twenty-five minutes east twenty-two chains and eighty-seven  
links to a stone corner to said Rogers; thence north five degrees  
and twenty-five minutes; west twenty one chains and sixty-two  
links to a stone in the Medford road, corner to Levi Troth; thence  
by Troth and along the middle of said road, south sixty-three  
degrees, west twenty-six chains and forty-four links to the place  
of beginning. Containing sixty-three acres and sixty hundredths  
of an acre of land, be the same more or less.

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And your orator further showeth that the trust clause contained in the aforesaid deeds of conveyance from Jesse Evens to David D. Griscom, trustee of Keturah M. Evens, is in the following words: "In trust, nevertheless upon the following and no other uses and trusts whatsoever. In trust to suffer and permit Keturah

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M. Evens, wife of Samuel B. Evens, of the township of Evesham aforesaid, to have, hold, use, and occupy the *said* tract of land with the buildings thereon, and the appurtenances belonging, for and during the term of her natural life, if she shall choose so to do; she, the said Keturah M. Evens, keeping the same in repair, and paying all of the taxes that may from time to time be assessed against the same, and in case the said Keturah M. Evens shall not desire to use and occupy the said farm and the buildings thereon then in trust, to rent the said farm and premises for a year, or term  
 10 of years to such person as the said David D. Griscom, with the consent of said Keturah M. Evens, shall deem fit, and the rent therefore reserved to collect in yearly or other payments, and the same to pay over to the said Keturah M. Evens; he the said David D. Griscom, first paying from the said rent, all taxes assessed against said farm, and also paying all necessary expenses in keeping the buildings, fences, so in repair."

And your orator further showeth, that the deed of conveyance from the said William C. Lippincott and wife to the said David D. Griscom, trustee as aforesaid, contains the same trust clause as  
 20 that in the last aforesaid deed, with the addition of the following words: "And upon the further trust in case the said Keturah M. Evens should at any time be in need of money for the proper management of the farm, or for the maintenance and support and desire that an incumbrance should be created on said farm, then the said David D. Griscom shall execute a bond as trustee of the said Keturah M. Evens, to be secured by a mortgage on said farm, for such sum or sums as the said Keturah M. Evens shall order and direct by a writing under her hand and seal, executed in the presence of two subscribing witness, duly acknowledged in the  
 30 nature of a deed of appointment, and such sum so borrowed, the said David D. Griscom, trustee as aforesaid, shall be disposed of by him for the benefit of the said Keturah M. Evens, and in such a way as she may direct."

And your orator further showeth, that as your orator is informed on the same day and year that the execution by the said William C. Lippincott and wife to the said David D. Griscom, trustee, as aforesaid, of the last aforesaid deed of conveyance, the said David D. Griscom, trustee of the said Keturah M. Evens, and the said Keturah M. Evens made and executed a mortgage to Samuel  
 40 Lippincott and William G. Evans, trustees, &c., to secure the pay-

ment of the sum of fifteen hundred dollars on the same premises described in the deed of conveyance from William C. Lippincott and wife to David D. Griscom, trustee as aforesaid; and your orator charges that the said Samuel Lippincott and William G. Evans, trustees, &c., had full notice of your orator's said claim at the time of, and prior to the execution of the said mortgage to them; and your orator believes and charges the fact to be true, that the whole of the consideration money paid by the said Joseph Evens for the said land was furnished by the said Keturah M. Evens, and that the said deed was taken in the name 10 of the said Jesse Evens, and by him conveyed to the said David D. Griscom, trustee as aforesaid, and by him and the said Keturah M. Evens, conveyed to the said William C. Lippincott, and by the said William C. Lippincott and wife conveyed to the said David D. Griscom, trustee as aforesaid, for the purpose of defrauding the creditors of the said Keturah M. Evens, and your orator in particular, and delaying and hindering them and him in the collection of their and his debts then justly due, and to embarrass them and him in enforcing their and his claim against her, and to conceal her real property and ownership in said land. Your orator charges 20 and believes the fact to be that the said Jesse Evens owned at the time of the said purchase, little or no property, and had little or no money or means, but that the purchase money, or consideration mentioned in the deed of conveyance from David D. Griscom, assignee, &c., as aforesaid to said Jesse Evens, was furnished by the said Keturah M. Evens, and your orator is advised by counsel and humbly insists that the said land is in equity subject to the lien and operation of the said judgment and execution and levy made thereon as aforesaid. And your orator further showeth that he, or some other person for him, hath frequently, and in a friendly 30 manner applied to the said defendants, Keturah M. Evens and David D. Griscom, trustee of the said Keturah M. Evens, as aforesaid, or one of them, and requested them, or one of them, to satisfy his said judgment and execution; but the said defendants refused to comply with such reasonable request of your orator, and sometimes give out and pretend in speeches, that the said land so as aforesaid purchase by the said Jesse Evens, from the said David D. Griscom, assignee, &c., as aforesaid, and now held by the said David D. Griscom, trustee of the said Keturah M. Evens, was paid for with money belonging to the said Jesse Evens, the contrary 40

whereof your orator charges to be true. All which actings and pretences are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator. In tender consideration whereof and forasmuch as your orator is without adequate remedy except in this honorable Court, where matters of this nature are properly cognizable and relievable. To the end, therefore, that the said Keturah M. Evens, David D. Griscom, trustee, &c., as aforesaid, and Samuel Lippincott and William G. Evans, trustees of Rachel G. Haines, combining and

10 confederating to and with divers other persons, at present unknown to your orator, but, whose names, when discovered, your orator prays may be herein inserted, and they be made parties, defendants hereto, to charge them how to injure and aggrieve your orator in the premises, may, upon their several and respective corporal oaths or affirmations, full, true, perfect and distinct answer make to all and singular the matters aforesaid; and that as fully as if the same were here again repeated and they thereto particularly interrogated. And that the said judgment of your orator be declared a lien to the amount that is due thereon on

20 said land, prior to the mortgage of the said Samuel Lippincott and William C. Lippincott, trustees of Rachel G. Haines, and that the deeds of conveyance aforesaid may be declared and decreed to have been taken with the intent to hinder, delay and defraud the creditors of the said Keturah M. Evens, and to be fraudulent and void as against your orator and all other creditors who shall come in and contribute to the expense of this suit, and that the said lands may be sold under the said judgment and *feri facias* of your orator or by the decree of this honorable Court, and out of the proceeds of such sale, your orator and such other creditors, paid

30 their debts, and that your orator may have such further and other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered to grant unto your orator the State's writ of subpœna, issuing out of and under the seal of this honorable Court to be directed to the said David D. Griscom, trustee of Keturah M. Evens, Keturah M. Evens and Samuel Lippincott and William G. Evans, trustees of Rachel G. Haines, commanding them, and each of them, that on a certain day, and under a certain penalty therein to be inserted, to be and

40 appear before your Honor in this honorable Court, then and there

to abide the premises 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 will ever pray, &c.

ALFRED HUGG,  
Solicitor for and of Counsel with Complainant.

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ANSWER.

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The joint and several answer of Keturah M. Evens and David D. Griscom, trustee of Keturah M. Evens, two of the defendants in the bill of complainant of Horace Lippincott, complainant.

These defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception that can and may be had and taken to the many errors, uncertainties, insufficiencies, and other imperfections in the complainants bill of complaint contained, for answer thereunto or so much thereof as these defendants are advised is in any wise material or necessary for them to make answer unto, answer and say, and the said Keturah M. Evens in answering for herself, admits that on or about the thirtieth day of March, eighteen hundred and seventy-five, she, the said Keturah M. Evens, with her husband, Samuel B. Evens, executed their certain promissory note of such date and purport as in said bill of complainant is set forth; but she expressly denies that on the day and year last aforesaid, she, the said Keturah M. Evens, was indebted unto the said Horace Lippincott in the sum of fifteen hundred dollars, or in any other sum, for money lent and advanced to her, the said Keturah M. Evens, by the said Horace Lippincott at her special instance and request, and she avers the truth to be, that her husband, the said Samuel B. Evens, on the day and year last aforesaid, being indebted in the sum of fifteen hundred dollars on a certain promissory note theretofore given by the said Samuel B. Evans, and discounted in the State Bank at Camden for his own benefit, dated February the second, eighteen hundred and seventy-five, and payable two months after date, which said promissory note was then about to mature, was in need of money with 40

which to meet and pay the same. And the said Horace Lippincott then having the sum of fifteen hundred dollars under his control, and knowing of said promissory note in bank, and of the need of the said Samuel B. Evens, thereupon loaned and advanced to the said Samuel B. Evens, said sum of fifteen hundred dollars for the express purpose of enabling the said Samuel B. Evens to take up and pay said promissory note, so as aforesaid about to mature in bank, and to secure to the said Horace Lippincott the payment of said sum of fifteen hundred dollars, so  
 10 borrowed as aforesaid, this defendant and the said Samuel B. Evens executed and delivered to the said Horace Lippincott their promissory note as is hereinbefore set forth.

And these defendants in further answering, say that the said Keturah M. Evens is the daughter of Samuel Lippincott, late of the county of Burlington, State of New Jersey, who departed this life on or about November the fifth, eighteen hundred and seventy-four, seized and possessed of a considerable amount of real and personal estate. Said Samuel Lippincott having first duly made, executed and published his last will and testament in due form of  
 20 law, wherein and whereby he did, among other things, give and bequeath as follows, viz: "Item—I give and bequeath unto my executors hereinafter named, the sum of six thousand dollars, in trust for the following uses and purposes, in trust, to invest the same on good security, and to collect the income or interest arising therefrom, as the same falls due, and to pay the said income or interest to my said daughter Keturah M. Evens, yearly, and every year during her natural life; provided, however, that in case my said daughter Keturah M. Evens, should at any time, wish a part or the whole of the said sum of six  
 30 thousand dollars, then I hereby authorize and direct the said trustee, or the survivor of them, to pay to her from time to time such part or parts of said sum as she may demand, and her receipt for any such payment shall be a full discharge to said trustees for the amount paid. At her death, the said sum of six thousand dollars or such part thereof, if any, as may remain in the hands of the said trustees, or the survivor of them, to be paid to such persons as she may bequeath the same to by her last will and testament; or in case she shall die intestate, then to be equally divided among her several children, share and  
 40 share alike. And did further in and by said last will and testa-

ment appoint his son Joseph H. Lippincott, and his son-in-law David D. Griscom, executors thereof, who proceeded and proved said will, and took upon themselves the burthen of the execution thereof. And that the said David D. Griscom, as acting executor under said will, took and received said legacy of six thousand dollars so as aforesaid bequeathed to said executors in trust for the benefit of this defendant, Keturah M. Evens, and invested the same on good and sufficient security, and continued to hold the same invested in manner and way, and for the purpose directed in and by said last will and testament." 10

And these defendants in further answering, say that on or about the thirteenth day of May, eighteen hundred and seventy-five, the said Samuel B. Evens, by his deed of conveyance duly executed, assigned and conveyed all his estate, both real and personal, to this defendant, David D. Griscom, for the equal benefit of his creditors pursuant to the statute in such case, made and provided. That this defendant took upon himself the burthen of said trust and proceeded to execute the same, and duly advertised, according to the statute, for the creditors of the said Samuel B. Evens to present their claims to him under oath 20 within the time specified. And the said sum of fifteen hundred dollars so as aforesaid borrowed by the said Samuel B. Evens, from the said Horace Lippincott, then still remaining wholly unpaid, the said Horace Lippincott afterwards, to wit: On or about the nineteenth day of July, eighteen hundred and seventy-five, presented his said claim for fifteen hundred dollars, as represented by the above named promissory note, to the said David D. Griscom assignee, under oath as a claim against the said Samuel B. Evens, and took and received from the said David D. Griscom, as aforesaid, a dividend of thirty-five per cent. from the estate of 30 the said Samuel B. Evans, on account thereof.

And the said defendant, David D. Griscom, in further answering, says that the said Samuel B. Evans, at the time of making his deed of assignment as aforesaid, was seized in fee of the farm or tract of land particularly described in the complainant's bill of complaint, as containing sixty-three and sixty-one-hundredths acres. And that this defendant, in further execution of the trust reposed in him as assignee, as aforesaid, afterwards proceeded and advertised said farm to be sold at public vendue, to the highest bidder, on the fourteenth day of October, eighteen hundred and seventy-five, 40

the deed for the same, by the conditions of said sale, to be delivered to the purchaser on the twenty-fifth day of March, eighteen hundred and seventy-six. And at the time and place specified did expose the same to sale at public vendue, and the said Jesse Evens, then and there bidding for the same the sum of seven thousand fifty-nine dollars and sixty cents, and no one bidding so much or more, the same was struck off and sold to him, the said Jesse Evens, for the price aforesaid.

10 And this defendant, David D. Griscom, in further answering, says that this defendant still having in his possession the said legacy of six thousand dollars with its accumulated interest, so as aforesaid bequeathed in trust for the said Keturah M. Evens, in and by the last will of Samuel Lippincott, deceased, and the said Keturah M. Evens being desirous that said fund should be invested for her benefit in the purchase of said farm of sixty-three and sixty-one-hundredths acres, this defendant applied to the said Jesse Evens before the delivery of the deed for said farm to him, and agreed with him to purchase and take said farm at and for the same price or sum of seven thousand fifty-nine dollars and sixty  
20 cents, and to take and hold the same as trustee under the will of Samuel Lippincott, deceased, for the use and benefit of the said Keturah M. Evens, and that thereupon on the twenty-fifth day of March, eighteen hundred and seventy-six, this defendant as assignee, as aforesaid, by his certain deed of conveyance, dated the day and year last aforesaid, did grant and convey said farm of sixty-three and sixty-one-hundredths acres to the said Jesse Evens and the said Jesse Evens and wife did thereupon, by their deed of conveyance, dated March the twenty-eighth, eighteen hundred and  
30 com, in trust for the benefit of the said Keturah M. Evens, and that this defendant thereupon took and applied the whole of said legacy or sum of six thousand dollars, with its accumulated interest to and towards the payment of the consideration money for said farm, and thereupon took and held said farm, and the title of the same in trust for the benefit of the said Keturah M. Evens; allowing her to occupy, possess and enjoy the same, and to take and receive all the rents, issues and income therefrom as directed in and by said last will and testament.

40 And the said defendant, Keturah M. Evens, in further answering, says, that she admits that on or about the third day of April,

eighteen hundred and seventy-eight, a suit was commenced by the said Horace Lippincott in the Supreme Court, for the recovery, as she understood it, of the moneys due on said promissory note, so as aforesaid executed by her and her said husband, to the said Horace Lippincott, but she expressly charges that said suit was commenced both against herself and her said husband, and she supposed the same would be so prosecuted to the end. That she had signed said note simply as security for her said husband, but was not aware of her legal rights in the premises, and therefore employed no counsel and put in no defense to said suit. That she is now informed and believes that the name of her said husband was afterwards and without her knowledge stricken from said suit, and that judgment was thereafter entered in said suit by default against this defendant alone, as in complainant's bill is stated. 10

And this defendant, Keturah M. Evens, in further answering says, that she has no knowledge in reference to the issuing by the complainant of an execution on said judgment, and the recording of the same, and of the levy and return made thereon by the Sheriff of the county of Burlington, except what is stated in the complainant's bill of complaint; and therefore neither admits nor denies the same, but leaves the complainant to make such proof thereof as to him may seem fit. But she admits that the said Sheriff, by virtue of some writ of execution or other process issued, as she understood on said judgment, proceeded and sold the goods and chattels of this defendant as is stated in said bill of complaint. 20

And these defendants, in further answering, say that afterwards, to wit: On or about the fifteenth day of July, eighteen hundred and seventy-eight, the said Keturah M. Evens being in need of moneys with which to pay certain of her debts, and being desirous to have for her own use and disposal a portion of the moneys so as aforesaid held in trust by the said David D. Griscom, under the will of the said Samuel Lippincott, and invested by said trustee in said farm as is above set forth, and learning that a loan of fifteen hundred dollars could be procured or raised by mortgage on said trust property, applied to the said David D. Griscom, trustee, to raise said money by mortgage on said trust property, that the said David D. Griscom, thereupon, on application to counsel, was advised that the trust clause contained in the deed from Jesse Evens and wife to him for said farm, 30 40

while it authorized a sale of said farm did not authorize the said trustee to mortgage the same. That thereupon, at the request of the said Keturah M. Evens, and in pursuance of the advice of counsel, said farm was conveyed by the said trustee to one William C. Lippincott, in accordance with the provisions of the trust clause in said deed contained, by deed dated July fifteenth, eighteen hundred and seventy-eight, referred to in complainant's bill. And the said William C. Lippincott and Deborah, his wife, thereupon, by their deed, dated the day and year last aforesaid, 10 re-conveyed said farm to the said David D. Griscom, in trust for the benefit of the said Keturah M. Evens, inserting in the trust clause in said deed contained, a provision authorizing said trustee, by and with the consent of the said Keturah M. Evens, to mortgage the said farm as in said bill of complaint is stated.

And these defendants admit that under the provisions of the trust clause in the last above named deed contained, this defendant, David D. Griscom, by and with the consent of the said Keturah M. Evens, did execute a mortgage on said farm for fifteen hundred dollars, to Samuel Lippincott and William G. Evens. 20 trustees, as in the bill of complainant is stated.

And these defendants in further answering, say that the said farm and tract of land is now held by the said David D. Griscom, trustee, under the will of Samuel Lippincott, deceased, subject to the said mortgage, for the benefit of the said Keturah M. Evens, and that the said trust was not created by, nor did the fund so held in trust proceed from her, the said Keturah M. Evens, but that the said trust was created by, and that the fund so held in trust proceeded from the said Samuel Lippincott as is hereinbefore set forth.

30 And the said Keturah M. Evens, expressly denies that she is or has at any time been the owner of the farm or tract of land in complainant's bill, described as containing sixty-three and sixty-one-hundredth acres of land.

And these defendants expressly deny that the purchase or consideration money mentioned in the deed of conveyance from David D. Griscom, assignee, to Jesse Evens as paid for said premises by the said Jesse Evens, was paid, furnished or advanced by her, the said Keturah M. Evens, or proceeded from her in any way whatever, and expressly denies that the deed for said farm was taken 40 in the name of said Jesse Evens, and that the conveyance for said

farm to said David D. Griscom as trustee in said bill recited, were made for the purpose of defrauding the creditors of the said Keturah M. Evens, or any one of them, and of delaying or hindering them or any of them, in the collection of their, or any of their debts, or to embarrass them or any of them in the enforcing of their claims, or to conceal her real property or her ownership in said tract of land, or any other lands; and further expressly denies that said farm or tract of land is in any wise either in law or in equity, subject to lien and operation of the judgment of the said complainant, or the execution issued thereon. 10

And these defendants deny all unlawful combination and confederacy in said bill charged, without this, that any other matter or thing material for these defendants to make, answer unto and not herein and thereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge and belief of the defendants, 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 this behalf most wrongfully sustained.

Signed, **FREDERICK VOORHEES,** 20  
Solicitor and of Counsel with Assignees and Defendants.

STATE OF NEW JERSEY, }  
BURLINGTON COUNTY, } ss.

Keturah M. Evens and David D. Griscom, the above named defendants being duly affirmed according to law, severally say that the matters and things set forth in the above answer, so far as they relate to their own acts respectively, are true, and so far as they relate to the acts of others affirmed they believe them to be true.

**KETURAH M. EVENS,** 30  
**DAVID D. GRISCOM.**

Affirmed and subscribed this seventh day of April, A. D., eighteen hundred and seventy-nine, before me,

**WALTER A. BARROWS, M. C. C.**

#### REPLICATION.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the 40

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 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,  
10 as in and by his said bill he has already prayed.

ALFRED HUGG,

Solicitor for and of Counsel with Complainant.

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#### DEPOSITIONS.

Examination of witnesses in the above stated cause before J. Eugene Troth, one of the Masters in Chancery of said State, at his office, No. 35 North Second Street, Camden, New Jersey, on the  
20 eighth day of May, eighteen hundred and seventy-nine, at 10 o'clock A. M., pursuant to notice hereunto annexed, in presence of Alfred Hugg, Esquire, Solicitor of the complainant.

Thursday, May 8th, 1879.—10 A. M.

Examination of witnesses taken in the above case in the presence of Alfred Hugg, Esquire, Solicitor of complainant, and Frederick Voorhees, Esquire, Solicitor of defendants.

CHARLES S. BAREFORD, a witness produced on the part of the  
30 complainant in the above cause, being duly sworn, on his oath saith: On being shown paper purporting to be a promissory note, the body of this note is in my hand writing. (Marked exhibit "A" on part of the complainant.) I saw Keturah M. Evens and Samuel B. Evens sign the note, and the signatures to the note are in their own proper hand writing. Keturah M. Evens, Samuel B. Evens, and the complainant, and myself were present at the time.

*Question:* What was said by Horace Lippincott or Keturah M. Evens about the loan of this money, at this time?

The question objected to by Mr. Voorhees, so far as Horace  
40 Lippincott is concerned.

I do not know what Keturah M. Evens said; she said nothing. Horace Lippincott told Keturah M. Evens that he would not loan Samuel B. Evens any money, but "Aunt Kit I will lend it to you;" (meaning his sister); she assented to it; I don't remember any words she used; he, Horace Lippincott, asked her to sign the note first; I saw no money pass, or anything representing money; she signed it first. This conversation about the signing of the note took place at the hotel at Marlton, at the time the note is dated; March the thirtieth, eighteen hundred and seventy-five. This is all I know about it. 10

On being cross-examined by Mr. Voorhees, witness says: I did not hear any talk between the parties before they went into that room; it occurred in the front room, southwest corner, first floor, called the parlor; I do not know what the money was borrowed for; I heard and know nothing except what I have stated above; I did not hear Keturah M. Evens speak or say anything in that room; I was not in that room more than five or ten minutes, no longer than it took me to write the note.

CHARLES S. BAREFORD.

Sworn and subscribed before me this  
8th day of May, A. D. 1879.

20

J. EUGENE TROTH, M. C. C.

UZZIEL BAREFORD, witness produced on the part of the complainant, being duly sworn on his oath saith: I am acquainted with the parties to this suit; I reside at Marlton; I keep a hotel; Keturah M. Evens came to my hotel a few days before that note was dated, I think about a week; I saw the note after it was given. She called me into the parlor; I opened the parlor door and let her into the parlor; she asked for her brother Horace; I went out into the barroom and took him in to her; he boarded with me; she said to Horace, she wanted fifteen hundred dollars; Horace said that he had the money, that he would not lend it to Samuel B.; and she said that she did not want him to lend it to Sam B.; Horace asked her when she would pay him back the money; she said that when she got the residue of her father's estate; that was the end of it; the money was not loaned that day. She came there again with her daughter four or five days after this time; she and Horace and her daughter went into the parlor together, and my son Charles, that is all I seen go in there. I saw Samuel B. Evens that day, 40

but I did not see him go in the parlor; he may have gone in the front door but I did not see him. I did not see to whom the money was handed. That is all I know.

On being cross-examined by Mr. Voorhees, witness says: Horace Lippincott boarded with me at that time at the hotel at Marlton; he does not now board with me; he left my place last June; he boarded with me up to that time; he is a married man; his wife did not board at my place with him; they did not live together at that time. Horace and me have had some talk over the matter; 10 not frequently. Horace has often named it; that he ought to have his money. I do not recollect seeing Mrs. Evens more than those two times at my house about this matter. Keturah and her daughter, and Horace and myself were present at the first visit; there was no money loaned on this day. On the second visit I do not know what occurred in the room; I was not present in the room. Her daughter was present on the second visit. The second visit was on or about the thirtieth of March, A. D. eighteen hundred and seventy-five. I do not know of my own knowledge that any money was loaned. I did not see any money pass. I saw Sam 20 B. on the day of the second visit on the street, but did not see him at my house.

U. BAREFORD.

Sworn and subscribed before me this

8th day of May, A. D. 1879.

J. EUGENE TROTH, M. C. C.

LEWIS LIPPINCOTT, a witness produced on the part of the complainant, being duly sworn on his oath saith: I live near Hartford, Burlington county. The complainant is a brother of mine, and Keturah M. Evens is my sister. I farmed the old place where 30 father died several years before his decease; near Cropwell. My sister Keturah, after my father's death came there and she saw Horace in my presence, in the old kitchen. She said she wanted some money; she was as mad as hops; she could not get any from the Executors. She told him she wanted fifteen hundred dollars. My father died four years ago last November. I can't tell how long it was after my father died before she came; it was some time between that and the first of the year; it was before March. Horace told her that he would lend the money to her, but that he would not lend Sam B. Evens a damn cent; this was about the 40 end of it then. I was not present when she got the money. She

said, lend it to Samuel and he said no, he would not lend Samuel a damn cent.

On being cross-examined by Mr. Voorhees, witness says: She wanted Horace to loan Samuel the money. Samuel B. Evens was her husband; he at that meeting refused to loan it to Samuel; there was no money loaned or borrowed at that meeting. I do not know what occurred between them at any other meeting. I think the money was wanted to take up a note of Sam B's in the Camden bank. I don't know anything about it. I know he had one protested for fifteen hundred at that time. On this visit to the kitchen 10 her daughter came with her, or some of the rest of the family, but I think only us three were present at the talk. She and Horace were talking at that time about the note of Samuel's in bank. I do not recollect whether she said the money was wanted to take up that note.

LEWIS LIPPINCOTT.

Sworn and subscribed before me this

8th day of May, A. D. 1879.

J. EUGENE TROTH, M. C. C.

20

THOMAS EVENS, a witness produced on the part of the complainant, being duly sworn on his oath saith: I live in Burlington, township of Evesham. I know Horace Lippincott and Keturah M. Evans. I happened to be at Marlton one day and Horace and Lewis came along, and they wanted me to go up to Samuel B.'s with them; and I went with them; about the fore part of March, eighteen hundred and seventy-five; the year my brother, Samuel B. failed. Keturah said she must have some money; she was speaking to Horace Lippincott and Lewis. She said she wanted fifteen hundred dollars, and Horace told her she could 30 have it, and she said she would pay him when her father's estate was settled up.

On being cross-examined by Mr. Voorhees, witness says: She did not say what the money was wanted for to me, nor to them either, in my presence. I speak to my brother Samuel but I do not speak to William. Last Spring a year ago I saw Samuel and was talking to him about an hour; when Aunt Lydia Saunders died; that was the last talk I had with him. We had the talk referred to in the sitting-room of Samuel's house. Keturah was present, Horace and Lewis, and I think one of the girls; I disremember 40

which one of them was in there; I most think it was Lizzie.  
Samuel B. was not present. THOMAS EVENS.

Sworn and subscribed before me this  
8th day of May, A. D. 1879.

J. EUGENE TROTH, M. C. C.

HORACE LIPPINCOTT, a witness being produced on the part of the complainant, being conscientiously scrupulous of taking an oath, and being duly affirmed on his solemn affirmation, says: I am  
10 the complainant in this cause. Keturah M. Evens is my sister. Being shown note (exhibit A) says, that this note was given to me by her and her husband Samuel B. Evens, for fifteen hundred dollars; it was signed at Uzziel Bareford's, Marlton. I loaned the money to my sister, Keturah M. Evens. Previous to the date of that note I had had conversations about loaning her the money. The first time she applied to me for the money was sometime in the winter after father's death; before the twenty-fifth of March, eighteen hundred and seventy-five; it was at the old place on the  
20 Cropwell farm; she asked me if I would let her have it; she said she would like right well to have two thousand dollars, but that she could get along with fifteen hundred. I told her I would let her have it. We were in the kitchen when she first asked me; her daughter was with her. I did not let her have it at that time. I moved to Marlton on the twenty-fourth of March, and she came to see me at the hotel; at Uzziel Bareford's, Marlton. She said she wanted the money and wanted it at such a time, and I said I would get it for her. She asked me for it at Samuel B.'s before I moved to Marlton. She, Thomas Evens, and one of the girls were there.  
30 I do not recollect which one. I do not recollect any one else being there. She told me then she would like to borrow fifteen hundred dollars of me. I told her I would let her have it. When she came to Marlton her daughter came with her and nobody else was present at that meeting. She did not get the money then. I fixed the time, then, when I would give her the money; that time was the twenty-fifth of March, eighteen hundred and seventy-five. When the note was given and the money was paid we were in the old man Bareford's parlor. I gave a check for the money; I gave the check to her. She Keturah, Samuel  
40 B., and Elizabeth her daughter, I think were there; the check

was a check that David D. Griscom gave me; he had charge of my money. The amount of the check was fifteen hundred dollars. This is the only money I ever loaned her. Being shown note (exhibit A,) says: that all the payments made upon this note appear indorsed on the back of it. Uzziel Bareford was present I think once when she said she would like to have some money. Since these credits on the back of the note, I have received no other money but what I received from the Sheriff. Paper produced marked exhibit B, entitled certified copy of execution, Sheriff's levy, and return with indorsement of receipt on account of 10 execution of five hundred and fifty-six dollars and eight cents. The execution was issued for thirteen hundred and thirty-one dollars and fifty-seven cents.

Mr. Voorhees objects to copy of execution as produced and offered in exhibit B, because it is not accompanied with the sworn statement of the Sheriff as to the amount of money received and disbursed, required to be filed by the statute.

The only money I have received on the above execution of thirteen hundred and thirty-one dollars and fifty seven cents, is the credit endorsed thereon of five hundred and fifty-six dollars and 20 eight cents.

Mr. Voorhees objects to the copy execution above produced because complainant does not produce a properly certified manuscript of the judgment upon which the alleged execution was issued.

At the alleged talk I had with Keturah at the homestead my brother Lewis, I think, was present at one time; I do not know whether she talked to me at that time about the note in bank or not; she did talk to me about the note of fifteen hundred dollars at one time. I can't say that the note at that time was protested; I can't say whether it was ever protested or not. She never wanted 20 me to loan Samuel fifteen hundred dollars; I don't recollect her ever asking me to loan Samuel fifteen hundred dollars; Samuel never opened his mouth to me that winter about money; he never said anything to me about his affairs; she told me that Samuel owed a note in Camden bank and William Evens was the endorser and she wanted to release him. I suppose she used the money for that purpose. She told me she wanted the money for that purpose. I did not know that Samuel was pressed by his creditors. I did not know anything about his financial affairs, where he owed moneys or what his debts were; I never refused to loan Samuel any money; 40

I don't know that I did if I had it. I went once to see Keturah at her house before I lent the money. I do not know that I ever went there more than once to see her before loaning her the money; I do not recollect talking the matter over at Sam B's house in his presence before I loaned her the money; Tom Evens was there when I had the talk about the money with Keturah; I do not recollect whether Lewis was there or not; I think Elizabeth was going back and forwards in the room at the time.

*Question:* Do you recollect on that visit or some other visit at  
10 the house of Samuel B. Evens, about this time, asking Keturah if she was not going to help Sam B. out, or words to that effect?

No; I do not recollect going back then; she had told me what she wanted the money for; to take up the note of Sam B.; that Bill had indorsed it, and she wanted to release William.

*Question repeated.*—She had told me at that time or before what she wanted the money for, what her troubles were; she wanted the money to take up the note to release Bill Evens, her brother-in-law. The amount of the note in bank she told me was fifteen hundred dollars; that is all that I know about the  
20 amount. I don't recollect asking Keturah "if she was going to help Sam B. out;" she told me what she wanted the money for. At the first meeting at Bareford's hotel, Samuel B. Evens was not present; no one was present but Keturah, her daughter and myself; at that meeting we fixed the time when she should come and get it; I got the money from David D. Griscom, by his check; it was my money; the check was for fifteen hundred dollars; I do not know to whose order it was drawn; I don't recollect whether I indorsed the check or not.

*Question:* When you went to Mr. Griscom for the money, did  
30 you not tell him that you wanted the fifteen hundred dollars to loan to Samuel B. Evens and his wife, on their note, to take up note of Samuel B. then in Camden bank, or words to that effect?

I don't recollect mentioning Sam B. at all. I went to David D. Griscom's about this money and got the check. She was to meet me at Bareford's hotel, in the afternoon. Elizabeth, I think, and Sam B. and Keturah were there, and myself. I don't recollect anybody else. Stacy Bareford wrote the note; he was in back and forth. Both of Samuel B. and his wife signed the note; at the same time; same day; at the hotel.

40 *Question:* Did you not present a claim to the assignee of Samuel

B. Evens for this note, as a debt of Samuel B. Evens, to you, under oath?

Yes; I put in my claim under oath. Yes; I received a payment from David D. Griscom, assignee of Samuel B. Evens, on account of this note. I received two payments; the first, three hundred dollars and the other two hundred and twenty-five dollars. I think I gave him a receipt in his receipt book for the first payment; I don't recollect about whether this payment was made before the dividend was declared or not; I don't know how the receipt was written for the first payment; did not agree to pay interest on the first payment. Paper shown to witness, being receipt of witness to assignee, dated Sixth month twenty-third, eighteen hundred and seventy-six. (Marked exhibit No. 1, on the part of the defendant.) This signature is my signature in my hand writing. The hand writing of the first receipt endorsed on note is in David D. Griscom's hand writing. I think it is Mr. Griscom's hand writing in the second receipt; I do not know whose it is; some money has been paid me which is not endorsed on the above exhibit A. 10

Re-examined by Mr. Hugg: I never refused to loan Samuel B. Evens money; because he never asked for any for a long time; Keturah signed the note because I gave her a check to get the money, I suppose. 20

*Question:* Who advised you to put in your claim to the assignee for the amount of this note?

Mr. Voorhees objects to question as illegal and irrelevant.

*Answer:* David D. Griscom, the assignee of the estate of Samuel B. Evens.

*Question:* What did the assignee say to you about getting the money out of her when you presented the claim? 30

Mr. Voorhees objects to question as illegal.

*Answer:* David D. Griscom told me that it would be easier for me to get what I could out of Samuel B. Evens' estate, and easier for my sister Keturah to pay the balance. The two hundred and twenty-five dollars is the last payment I got from the estate of Samuel B. Evens. David D. Griscom never asked me to give up the note.

HORACE LIPPINCOTT.

Sworn and subscribed before me this

8th day of May A. D. 1879.

J. EUGENE TROTH, M. C. C.

Mr. Hugg, solicitor for complainant, here offered certified copies of summons, order and judgment in case of Horace Lippincott vs. Keturah M. Evens in the New Jersey Supreme Court, and certified copy of Sheriff's statement in the case of Albert Hansell vs. Keturah M. Evens, in the Burlington Circuit Court (marked exhibits C and D), on the part of the complainant. The above exhibits being offered by consent of counsel for defendants, the solicitor of the complainant declared his testimony closed. Dated, May the eighth, A. D. eighteen hundred and seventy-nine.

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J. EUGENE TROTH, M. C. C.

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the State of New Jersey, wherein Horace Lippincott is complainant and Keturah M. Evens and others are defendants, taken at the office of Walter A. Barrows, Attorney at Law, in the town of Mount Holly, on Saturday, the 'twenty-fifth day of October, eighteen hundred and seventy-nine, before Walter A. Barrows, one of the Masters and Examiners of the said Court, in the presence of Alfred Hugg, Solicitor and of Counsel with the complainant and Frederick Voorhees, Solicitor and of Counsel for the defendant. Keturah M. Evens.

20

October 25, 1879.—10 A. M.

DAVID D. GRISCOM, of the township of Evesham, county of Burlington, a witness produced on the part of the aforesaid defendant being duly affirmed, deposeth and saith:

I have been a resident of the township of Evesham thirty-five years; I was out at one time for a few years but came back; I knew Samuel Lippincott in his life time; he died in November, eighteen hundred and seventy-four. I think he left Keturah Evens, wife of Samuel B. Evens, two of the defendants to this suit; Horace Lippincott, the complainant in this suit; Lewis Lippincott, Elizabeth H. Griscom, my wife; Charles Lippincott, Joseph Lippincott and two grandchildren, the children of Marmaduke Lippincott, deceased. He left a last will; Joseph H. Lippincott and myself were named executors in that will; the will was subsequently proved by the executors named therein; both executors acted in settling the estate; the will contained a trust clause of six thousand dollars, for the executors to hold for the benefit of

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40

Keturah M. Evens; Joseph refused to act as to this trust, and I took sole charge of it.

Exhibit No. 1, copy of last will and testament of Samuel Lippincott, deceased, and probate thereof certified, offered in evidence and marked exhibit No. 1, on the part of the defendant, Keturah M. Evens. On the settlement of the estate this six thousand dollars trust money was left in my hands, to be invested under the will. Samuel B. Evens and his wife Keturah, at this time, lived on a farm in Evesham township, containing about sixty-two acres; their homestead farm. Shortly after this Samuel B. Evens made an 10 assignment to me of all his property for the benefit of his creditors. I accepted the trust and proceeded and sold all his real and personal estate, except some in litigation. Keturah requested me to invest the trust fund in the purchase of the homestead farm. I sold the farm at public sale as assignee. I made arrangements with Jesse Evens to buy the farm for me, for the trust fund. The farm was struck off at the price of seven thousand and fifty-nine dollars and sixty cents, to Jesse Evens. I, as assignee, conveyed that property to Jesse Evens pursuant to said sale.

Exhibit No. 2. Paper shown to witness being deed from David 20 D. Griscom, assignee, to Jesse Evens, dated March the twenty-fifth, A. D. eighteen hundred and seventy-six, marked exhibit No. 2, and the same being duly acknowledged and recorded at Mount Holly, in book H9 of deeds, page 463. He says that is the deed. Jesse Evens and wife afterwards conveyed the property back to me as trustee under the will of Samuel Lippincott, deceased. That deed contained a trust clause for the benefit of Keturah M. Evens.

Exhibit No. 3. Paper shown to witness being a deed from Jesse Evens and wife to David D. Griscom, trustee, dated March the twenty-eighth, eighteen hundred and seventy-six, duly acknowl- 30 edged and recorded at Mount Holly, in book H9 of deeds, page 466. He says, (deed marked exhibit No. 3) that is the deed. The trust clause in this deed is substantially like the trust clause in the will. At the time of the purchase of this farm, there was due for interest on the trust fund in my hands, the sum of three hundred and sixty-one dollars and some cents. I subsequently raised the balance of the consideration money, by a mortgage on the farm; I gave the mortgage as trustee on this same homestead farm. The mortgage was for fifteen hundred dollars, and dated on or about July the fifteenth, eighteen hundred and seventy-eight. 40

There was no clause in the deed from Jesse Evens to me authorizing me to mortgage this farm. To remedy this I conveyed the farm to William C. Lippincott, and he conveyed it back to me with a trust clause giving me power to mortgage.

Exhibit No. 4. Paper shown to witness, being deed, David D. Griscom, trustee, to William C. Lippincott, dated July the fifteenth, eighteen hundred and seventy-eight, recorded the same day, in book U9, page 94, marked exhibit No. 4. He says, that is the deed from me to Mr. Lippincott for this same farm.

- 10 Exhibit No. 5. Paper shown to witness, being deed from William C. Lippincott and wife to David D. Griscom, trustee, dated July the fifteenth, eighteen hundred and seventy-eight, and recorded same day in book U9 of deeds, page 98, &c., and marked exhibit No. 5. He says, that is the deed from William C. Lippincott to me, conveying back the same farm. I think the mortgage for fifteen hundred dollars, was executed by me immediately after the deeds, and on the same day. The mortgage was executed to Samuel Lippincott and William J. Evens, executors of Isaac Evens, deceased. That mortgage still stands as a lien upon the
- 20 farm and is wholly unpaid. I appropriated the balance of the money raised by the mortgage, after paying the consideration money, to the benefit of Keturah M. Evens. I still hold the farm, in trust subject to the above mortgage; I have no fund or money invested in it at this time, except this trust fund under the will of Samuel Lippincott; I hold the farm as an investment under the clause in that will. The complainant in this suit presented a claim to me as assignee, against the estate of Samuel B. Evens; the claim so presented was a note of fifteen hundred dollars given by Keturah M. Evens and Samuel B. Evens to the order of
- 30 Horace Lippincott, dated March the thirtieth, eighteen hundred and seventy-five, payable one day after date. This claim was presented to me under oath by the complainant, against the estate of Samuel B. Evens. I have not got this claim here with me; it is agreed by the counsel that this claim may be subsequently produced, and marked exhibit No. 6, on the part of the defendant. I afterwards paid Horace a dividend on this claim; paid him at two several times. The first payment was made Sixth month twenty-third, eighteen hundred and seventy-six, for three hundred
- 40 dollars. The second was made March the fourteenth, eighteen hundred and seventy-seven, amounting to two hundred and twenty-

five dollars. I took his receipts for these amounts, on or about March, eighteen hundred and seventy-five. I had moneys of Horace Lippincott in my hands to a considerable amount. He applied to me on or about March the thirtieth, eighteen hundred and seventy-five for fifteen hundred dollars; part of these moneys; I paid him fifteen hundred dollars by check. Paper shown witness, marked exhibit No. 7. He says that is the check. It bears date March the thirtieth, eighteen hundred and seventy-five; on the National State bank at Camden, to the order of Horace Lippincott, for fifteen hundred dollars; signed David D. Griscom, agent. Wit- 10  
ness says further, that is my genuine signature to that check. The name Horace Lippincott endorsed on check is his signature. Horace told me he wanted fifteen hundred dollars, when he came to me, to let them have to pay off a note in bank; I told him that I would not let them have it if it was me; that Samuel B. was in debt so much that I was afraid he would have trouble in getting his money; he said he had Keturah on the note and she was good enough. The note in bank referred to, was a note of Samuel B. Evens and William B. Evens. The note on which he said he had Keturah was the one then about to be signed. 20

Counsel for complainant objects to the evidence of this conversation passing between Horace Lippincott and witness, just related. Rest by Voorhees.

And on cross-examination by Mr. Hugg, witness further says:

*Question:* At the time that you as assignee of Samuel B. Evens, sold and conveyed the homestead farm of Samuel B. Evens to Jesse Evens, you knew that Horace Lippincott held the note mentioned in your examination-in-chief?

*Answer:* I knowed it by heresay; I had not seen the note at that time; I knew the note was in existence; I first saw it when I 30  
wrote a receipt on it; the homestead was sold at public sale; Jesse Evens did not pay any money down for it; the trust clause in the will instructs me to pay the six thousand dollars, in whole or in part, over to Keturah M. Evens, if she should request it; I made arrangement with Jesse Evens to buy the farm for me, for the trust fund.

*Question:* Do you mean to say that by that arrangement that there was a contrivance between you and Jesse Evens and Keturah Evens to have a conveyance made by Jesse Evens of the homestead farm, after the conveyance of it to him, to you as trustee of 40

Keturah M. Evens, to avoid the payment of the note held by Horace Lippincott against her and Samuel B. Evens?

*Answer:* There was no contrivance.

*Question:* What did Keturah say, if anything, to you in reference to her indebtedness to Horace Lippincott, when she requested you to invest this six thousand dollars in the purchase of the homestead.

*Answer:* I have no recollection of her saying anything to me about it; I don't think anything was said about this note or any  
10 indebtedness at that time or before; I advised her to invest this money in the homestead farm, if it did not bring too much; or, in other words, I consented to it. She first asked me to do it, and I assented.

*Question:* Why did you not make the conveyance directly to her instead of to Jesse Evens?

*Answer:* She wanted the money still kept in trust and invested in the farm.

*Question:* Who advised you that the money would still be kept in trust if invested in that way?

20 *Answer:* I think William Collins, for one; I think I asked him about it; he wrote the deed; he is not a lawyer; Keturah gave me a reason why she still wanted it kept in trust; she wanted her property to go to her children as her father had intended in his will. I did not advise her that the will gave her the money in whole or in part; I supposed she knew it.

*Question:* When the homestead was conveyed to you to whom did you pay the money?

*Answer:* There was no money paid. I conveyed the farm to Jesse Evens, and he conveyed it back to me, as trustee; seven  
30 thousand fifty-nine dollars and some cents was mentioned as the consideration in the deed. I paid no money to Jesse Evens. I paid the trust money to Samuel Evans' estate. I am to do so. The estate is not settled yet. Rest.

DAVID D. GRISCOM.

Affirmed and subscribed this 25th day  
of October, A. D. 1879, before me,

WALTER A. BARROWS, M. C. C.

Examination adjourned to Thursday, October thirtieth, at 9  
40 A. M., at same place.

Thursday, October 30th, 1879.

SAMUEL B. EVENS, a witness produced on the part of the defendants, being duly affirmed according to law, deposes and says: I live in Evesham township, Burlington county. I am one of the defendants in this suit; I am the husband of Keturah M. Evens, another defendant. In or about the month of August, eighteen hundred and seventy-four I borrowed some money from the State Bank, at Camden; I borrowed fifteen hundred dollars; I gave my note to the order of William Evens, and endorsed by him for three months, for fifteen hundred dollars. I wanted the money to pay my own debts; a part 10 of it to pay an aunt of mine. The money I received was used for that purpose; no part of it was used to pay any debts of my wife. The note was not paid when it fell due and was protested. The note was afterward, on or about February second, eighteen hundred and seventy-five, renewed; a new note was given; my note to William's order, and he endorsed it, for fifteen hundred dollars. for two months. It fell due on or about April second, A. D. eighteen hundred and seventy-five. I paid the note just before it came due. I got the money from Horace Lippincott to pay it. I borrowed it of him. He gave it to me by David Griscom's check. 20 Horace endorsed the check. Exhibit No. 7 shown to witness; he says: This is the check; I was at Uzziel Bareford's when I borrowed this money of Horace; Bareford's hotel, at Marlton. The first talk with Horace about the borrowing of this money was at our house, in our kitchen; well, he came in and after a bit he said, Kitty, aint you going to help Sam B. out of this thing. She said no; she had done all she would do for me. Horace said he thought she ought to help me out; said he had the money and was willing to let me have it, provided she would put her name on the paper; she said she wouldn't do it. Before he went away he told me to 30 come up there. He boarded at Bareford's hotel, Marlton. He knew about the note of mine maturing in bank, and talked about it. We went up to Bareford's hotel, some time afterwards; it may have been a week; me and my wife; it was in the afternoon: Lewis wa'nt very well and we went up to see him partly. In the parlor Horace Lippincott whispered to me if Aunt Kit would go on the note he would let me have the money. I did not get the money that night. I afterwards got my wife to consent to go on the note. I got the money; in the course of a week or so afterwards I got the money; I and my wife went to Bareford's hotel; 40

Charles Stacy Bareford drew up the note; I signed it; and my wife signed it. My wife signed it first by his persuasion. The money was loaned to me; it was not loaned to my wife; she signed the note as security, I suppose. Horace Lippincott did not say to me at any time, that he would not loan the money to me. but would loan it to my wife; or words to that effect. My wife never in my presence said to Horace Lippincott or to Uzziel Bareford that she wanted to borrow fifteen hundred dollars; nor, that she did not want Horace to lend it to me; nor, that she would  
 10 pay it back when she got the money from her father's estate. My wife never to my knowledge ever talked this matter over in the old kitchen at her old home. I was afterward sued jointly with my wife by Horace Lippincott upon this note; I did not put in any defence to the suit; and employed no counsel about it; I never received any notice that my name was stricken from the suit; and the suit prosecuted against my wife only. The money got from Horace was all appropriated to take up the note in bank. Rest.

All the testimony of this witness in reference to in what capacity Keturah M. Evens signed the note given to Horace Lippincott,  
 20 and also as to whom the money was loaned, objected to by Mr. Hugg.

*Cross-examined:*

This check of David D. Griscom endorsed by Horace Lippincott was handed to me by Horace, in Bareford's parlor; my wife, Stacy Bareford, myself and Horace Lippincott were present; I don't say I was present at every conversation Horace and my wife had about this money.

*Question:* Can you say that Horace Lippincott did not say to  
 30 your wife in a conversation or conversations he had with her in reference to the loan of this money to you, that he would not loan it to you, but to her?

*Answer:* Not in my presence; I never heard it.

*Question:* He might of said it and you not heard it?

*Answer:* Yes.

*Question:* Do you know why your wife signed the note first before you did?

*Answer:* Yes.

*Question:* Why?

40 *Answer:* Horace persuaded her to.

*Question*: What do you mean by Horace persuaded her to?

*Answer*: Why he told her to put her name down first; that is all I know about it; that is all the persuasion he used; he just told her; he never said anything else; I had not offered to put my name first before he told her to; I never asked Horace to loan this money to me; my wife did not negotiate this loan; it was his own offer; I did not tell Horace I wanted the money; I don't know how he knew I wanted it; he knew it.

*Question*: How did Horace offer the money to you?

*Answer*: He offered the money in this way: I will lend Sam 10 B. the money, provided you will go on the paper; he said this to my wife; in my presence. I don't know who applied to Horace for this money, for my benefit. What Horace said to my wife in my presence above stated is all I ever heard Horace say about it. Rest.

In chief by F. V.—The talk I last above referred to was the talk in the kitchen at our house. He wanted us to come up to Marlton, to the hotel, to see about this loan. I went; my wife went with me; and in the house he whispered to me he would let me have the money. 20

And being re-cross-examined, witness further says: With this note I was in failing circumstances; I was in debt to other persons at the time.

*Question*: You had debts coming due and owing, which you could not pay?

*Answer*: Not at that time.

*Question*: Then all the money you owed was \$1,500, was it?

*Answer*: I didn't say so; I had property, but there were mortgages on it. I made an assignment for the benefit of my creditors, May thirteenth, eighteen hundred and seventy-five, to 30 David D. Griscom, assignee.

SAMUEL B. EVENS.

Affirmed and subscribed this 30th day  
of October, 1879, before me.

WALTER A. BARROWS, M. C. C.

KETURAH M. EVENS, a witness produced on behalf of the defendants, being duly affirmed according to law, deposes and says:

I reside near Marlton; wife of Samuel B. Evens; and sister to Horace Lippincott, the complainant; and am the daughter of Samuel 40

Lippincott. I am the person to whom Samuel Lippincott left \$6,000 in trust, by his last will. This legacy was afterwards invested for my benefit by David D. Griscom in the purchase of the farm; it was so invested at my request. The farm was struck off at the sale to Jesse Evens, at seven thousand fifty-nine dollars and some cents. The balance of the consideration money was raised by a mortgage of fifteen hundred dollars. My trust money is still invested in that farm, and the mortgage is still on the farm. Horace Lippincott lent the fifteen hundred dollars above spoken to Sammy. He

10 did not loan it to me. I signed the note as security. I did not at that time need to borrow any money at all, for my own purposes. Samuel owed a bill in the bank and that was what this was for. I never stated to Horace Lippincott or to any one else, at or about this time, that I wanted to borrow fifteen hundred dollars. The first I ever heard about this loan was in our kitchen; my daughter Lizzie was there, and Samuel was near by; Horace was there and myself; I think some one else but don't recollect distinctly who. Horace came in from out doors and said, Aunt Kit, aint you going to help Uncle Sam. I said no; I had done all I expected to do.

20 I don't remember anything else was said at that time. I afterwards went with my husband to Bareford's hotel; we went once before the note was signed; nothing was then said to me about the note or the loan. I afterwards concluded I would go on the note; I did it very reluctantly though; we went to Bareford's hotel to sign the note; it was signed in the parlor. Stacy Bareford, Samuel, Horace and myself was present; no other person was there. I signed the note as security. Horace insisted on my signing the note first; I did so. He gave a check for the money that day; I saw the check but I did not read it; I am not certain

30 now that I saw the check. The check or money for the note was not given to me. This money was not borrowed for me, or any purposes of my own. Horace did not say on that day he would not loan the money to Sam B. but would loan it to me; nor words to that effect; nor at any other time did he say so. I never at any time said to Horace, in the presence of Uzziel Bareford, that I wanted fifteen hundred dollars, or that I did not want him to loan it to Sam B.; I never said to Horace, in the presence of Uzziel Bareford, or of any one else, that I would pay this money back when I got my money from my father's estate; I never had

40 any conversation with Horace, or any one else, about the loan of

this money, in the kitchen at my old home. I never applied to Horace for any loan at the old home. I was afterwards sued upon this note jointly with my husband; I put in no defence to the suit; I employed no counsel about it; I never received any notice or heard any word that they had taken my husband's name out of the suit; I supposed that it remained against both of us, until recently. Rest.

On being cross-examined by Mr. Hugg, witness says: The farm was struck off to Jesse Evens because the trustee thought proper to do so. I did not say anything to Jesse Evens about buying the 10 property in; the trustee attended to it. Jesse Evens did not have the seven thousand and fifty-nine dollars to pay for it. I wished the farm bought if it could be bought right; my father wished it before he died.

*Question:* What did you say to your trustee about putting the six thousand dollars, left to you by your father in his will, in the farm?

*Answer:* I don't remember saying anything about it to him; only, that I wanted the farm bought.

*Question:* Did you wish to purchase the farm? 20

*Answer:* I wanted a home for my family and myself, of course.

*Question:* Did you know that your trustee held the six thousand dollars for your benefit?

*Answer:* Yes.

*Question:* Knowing that, did you request him to purchase this farm for you?

*Answer:* Yes. I wanted the home of course, if it did not bring too much.

*Question:* Did he suggest to you to purchase it in Jesse Evens' name, and then for Jesse Evens to convey it to your trustee; so 30 that the trustee might hold the farm in trust?

*Answer:* Yes.

*Question:* Was anything said by your trustee in reference to the debts of yourself or your husband when he made the suggestion referred to in the above question?

*Answer:* No, not one word. I had no debts at that time.

*Question:* Had you not made a note to Horace Lippincott at that time, for fifteen hundred dollars?

*Answer:* No; never. I did not have anything to do but put my name on the paper. 40

*Question* : What was that paper ?

*Answer* : I suppose it was a note drawn up.

*Question* : At the time you put your name on this piece of paper, this conveyance to the trustee by Jesse Evens had not been made, had it ?

*Answer* : No.

*Question* : Did you tell Horace at the old homestead that Samuel B. Evens, your husband, had a note to pay, and ask him for the loan of it to your husband ?

10 *Answer* : No; never. I never spoke of it at the old homestead or at any other place in my life; never.

*Question* : Who told you that you signed that note as security ?

*Answer* : I knew it myself.

*Question* : How did you know it ?

*Answer* : Because I was asked to put my name on the paper, and very reluctantly I did it.

*Question* : And by putting your name there as security, you expected to pay the note if your husband failed to pay it. Is that what you meant by security ?

20 *Answer* : It was to be settled; at the time his business was to be settled up, it was to be settled.

*Question repeated.*

*Answer* : I never expected to have to pay; I expected his estate would pay it all.

*Question* : Did you put your name there as a meaningless form ?

*Answer* : I put it there as security, expecting his property would pay it all.

*Question* : If your husband's property was not sufficient to pay it all, then you expected to pay it; is that what you mean by  
30 security ?

*Answer* : At that time I expected he had sufficient property to pay all his debts, and some besides.

Mr. Voorhees objects to the above questions as asking witness a conclusion of law, and not any matter of fact whatever.

*Question repeated.*

*Answer* : I should have expected to have been called upon for it.

*Question* : Did you tell Horace Lippincott that Samuel had a note in bank for fifteen hundred dollars, and would he, Horace, loan him the money to pay it with ?

40 *Answer* : No, never; I had no conversation with him about it.

*Question* : Did not Horace say he would lend you money and not Samuel ?

*Answer* : No, I did not need to borrow any ; I had no call for it ?

*Question* : You and your husband lived together at this time ?

*Answer* : Yes ; always lived together since we were married.

*Question* : When did you first discover that a wife couldn't be held as security for another ?

*Answer* : I have heard it very lately, that is all I ever heard about it ; I never knew such a thing before. It is not many weeks 10 since.

*Question* : Who informed you ?

*Answer* : Our neighbors ; I heard them speak of it.

*Question* : Did they ever tell you, you could get out of this in that way ?

*Answer* : No ; not at all.

*Question* : What brought up the subject ?

*Answer* : I suppose they had heard of this. I had not any conversation with them about it.

*Question* : Who were the neighbors ? 20

*Answer* : Lizzie Warner.

*Question* : Where was this conversation ?

*Answer* : At our house ; she is my washerwoman.

*Question* : Did she tell you this ?

*Answer* : She spoke of it ; did not tell me particularly ; she is the only one I ever heard speak of it.

*Question* : You and she had some talk about this note of Horace's ; had you not ?

*Answer* : I suppose so ; she asked me about it.

*Question* : What did she ask ; and what was answered ? 30

*Answer* : She asked me about this affair ; but says she, Hannah says (that is her mistress at home) a wife should not pay her husband's debts. That is the first I heard of it. I told her I did not expect I should ever have it to pay.

*Question* : You say that Horace insisted on your signing the note first. What was the language he used ?

*Answer* : I expected Samuel to sign first ; he says, I want thee to put thy (my) name first.

*Question* : Are you quite sure the check was not given to you ?

*Answer* : Very sure ; it was given to Samuel. 40

*Question:* How do you know it was given to Samuel?

*Answer:* He was the one that had need of the money and I had no occasion for it.

*Question repeated.*

*Answer:* I saw Horace hand Samuel the paper; I supposed it was the check.

*Question:* Do you know what the amount of it was?

*Answer:* Fifteen hundred dollars I suppose; I didn't read it.

All the testimony of this witness in her examination-in-chief in  
10 reference to the capacity in which she signed the note objected to  
by Mr. Hugg. KETURAH M. EVANS.

Affirmed and subscribed this 30th day

of October, A. D. 1879, before me,

WALTER A. BARROWS, M. C. C.

ELIZABETH H. HANSELL, a witness produced on the part of the  
defendants, being duly affirmed according to law, deposes and says:  
I am the wife of Albert Hansell and the daughter of Samuel B. and  
20 Keturah M. Evans; I reside near Rancocas; I was in the kitchen  
at my mother's when Horace Lippincott was there and spoke about  
this loan of fifteen hundred dollars; mother, Uncle Horace and  
myself were there, and papa was in the door; Thomas Evans was  
not there. Uncle Horace asked mother if she intended to help  
papa out; she said no; she didn't intend to. He said he would let  
him have fifteen hundred dollars if she would go his security. She  
said no; she was not willing to do it. I was never present at  
any other conversation about this matter between my mother and  
Uncle Horace. I was never present at any talk between them  
30 about it, at the old place. Rest.

On being cross-examined by Mr. Hugg, witness says: I don't  
know the date when this conversation took place; it was in eigh-  
teen hundred and seventy-five; I don't believe I could tell the  
month; I think it was in the Spring; I told mother what I heard  
Uncle say; I don't just remember how I came to tell her; I don't  
remember whether she said anything about it to me first; it was  
before this suit in Chancery was brought that I talked with mother  
about it; I don't remember whether it was after or before the first  
suit was brought that I talked with her about it; I talked with  
40 her several times about it; I don't remember whether it was before

the note of Horace Lippincott's became due. It was before and after the sale of my mother's things by the Sheriff.

*Question:* Can you say on your oath that you have repeated the exact language of Horace Lippincott and your mother used in their conversation in reference to the loan of fifteen hundred dollars to Samuel B. Evans?

*Answer:* I can.

*Question:* Do you remember whether you spoke to your mother about what you knew of that conversation before she spoke to you about it? 10

*Answer:* Yes; I spoke to her first.

*Question:* Why did you speak to her first about it?

*Answer:* Because I happened to think of it.

*Question:* Why did you happen to think of it?

*Answer:* Well, because I had never forgotten about it, I suppose.

*Question:* Was it in the morning, afternoon or evening that this conversation between your Uncle Horace and your mother took place?

*Answer:* Some time in the forenoon, I think. 20

*Question:* What kind of a day was it?

*Answer:* I think it was clear.

*Question:* What part of the house were you in when you reminded your mother of this conversation?

*Answer:* I think the first time I was in her sitting-room.

*Question:* How long was it after the conversation occurred when you told your mother of it?

*Answer:* I don't just remember that.

*Question:* Was it not after this suit was brought that you told your mother? 30

*Answer:* No; it was a long time before that I told her first about it.

*Question:* What induced you to bring this subject up?

*Answer:* Just because I thought of it and told it.

*Question:* Was there any question at the time between your mother and Uncle Horace about this loan?

*Answer:* None that I know of.

*Question:* Didn't your mother ask you what you remembered about this conversation?

*Answer:* No. 40

*Question:* Do you mean to say that you voluntarily, without any reason for it whatever, told your mother the conversation that you heard between your Uncle Horace and your mother, in reference to the loan of fifteen hundred dollars as above stated by you?

*Answer:* I do.

LIZZIE H. HANSELL.

Affirmed and subscribed this 30th day  
of October, 1879, before me.

WALTER A. BARROWS, M. C. C.

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#### OPINION OF ADVISORY MASTER.

1. I find and determine, that the judgment at law recovered by the complainant against the defendant, Keturah M. Evens, is conclusive as between the said parties thereto, and that neither the pleadings nor the proofs in the cause disclose any grounds on which the validity and force of said judgment can be questioned in this court—the defendant merely seeks to set up matters which she might have set up in defense of the suit at law, but which she neglected to avail herself of in the suit at law.

2. I find and determine, that Samuel Lippincott, the father of Keturah M. Evens, by his will gave and bequeathed to the executors thereof the sum of six thousand dollars in trust, to invest the same on good security, and to collect the income or interest arising therefrom and to pay the same to said Keturah yearly during her natural life, and empowered and directed (see will) said trustees to pay her from time to time such part or the whole of the principal sum as she might demand, and directed said trustees to pay the said sum of six thousand dollars or such part as remained in their hands to such person or persons as she might appoint by her last will, and in default of such appointment, to pay the same in equal shares to the children of said Keturah. That the defendant David D. Griscom, who was one of said executors, received the said bequest of six thousand dollars upon the trusts aforesaid, and at the request of the said Keturah M. Evens invested the same in the purchase of the lands described in the bill of complaint, and took a conveyance thereof dated March twentieth-eight, eighteen hundred and seventy-six, substantially upon the same trusts declared in the

aforesaid will. That said Keturah M. Evens shortly after demanded of the said Griscom that he should pay her a part of the principal of said bequest for her use, and the said Griscom determined to raise the sum so demanded by mortgaging said farm therefore, and that to accomplish that purpose, and by direction of said Keturah, the said Griscom on July fifteenth, eighteen hundred and seventy-six conveyed said lands to William C. Lippincott for the nominal consideration of one dollar, and that on the same day in the execution of the same purpose, the said Lippincott re-conveyed said lands to said Griscom for the nominal consideration of one dollar, upon 10 substantially the same trusts declared in said will, but with power to mortgage said lands at the request and for the benefit of said Keturah; and that on the same day the said Griscom, at the request of the said Keturah, borrowed the sum of fifteen hundred dollars for her use from the defendants, Samuel Lippincott and William G. Evens, and executed to them a mortgage upon said lands to secure said loan.

3. I find and determine that the said Griscom holds the said lands, subject to said mortgage, upon the same trusts created by the will of Samuel Lippincott, deceased, that the said lands are and 20 constitute the said trust fund, converted into land, and that said Keturah has demanded and received of the principal of said fund only that part thereof, raised by said trustee upon the mortgage aforesaid.

4. I find and determine, that the investment of said trust fund of six thousand dollars in land, and the aforesaid dealings with said land, were not a complete execution of the trusts declared in said will, and that the trusts are still active, and that the said Griscom is still charged with the active duties of a trustee in respect to said land, as well in respect to the children of said Keturah, as to 30 the said Keturah.

5. I find and determine that the said lands are the investment of trust funds which proceeded from a person other than Keturah M. Evens, the judgment debtor, and are held in trust for her and contingently for her children, and that such trust has been created by a person other than the said Keturah; and that this Court has no power to subject the said lands to the payment of the complainant's judgment. *Hardenburgh vs. Blair*, 3 Stew., 645; *Force vs. Brown*, 5 Stew., 118.

6. I find and determine that the children of Keturah M. Evens 40

have a material interest in the said lands and in this suit, and are necessary parties to the suit, and that the suit is fatally defective for want of the said parties, who are admitted to be in *esse*.

The bill of complaint must be dismissed with costs.

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**FINAL DECREE.**

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This cause, coming on to be heard at the last regular term of the Court of Chancery, held at the State House, in the city of Trenton, in the presence of Alfred Hugg, of counsel with the complainant, and Frederick Voorhees, of counsel with the defendants, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by him in his bill of  
 20 complaint, it is on this twenty-third day of November, in the year of our Lord one thousand eight hundred and eighty, by the Chancellor of the State of New Jersey, ordered, adjudged and decreed that the complainant's bill be and the same is hereby dismissed with costs.

THEODORE RUNYON, C.

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**APPEAL.**

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The complainant hereby appeals from the whole and every part of the final decree made in this Court in the above stated cause, declaring that the bill of complaint be dismissed with costs, to the Court of Errors and Appeals, in the last resort in all causes.

ALFRED HUGG,

Solicitor and of Counsel with Complainant.

I conceive there is good cause for appeal in the above stated cause.

ALFRED HUGG,

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Of Counsel with Complainant.

## PETITION OF APPEAL.

The humble petition of Horace Lippincott, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by His Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the            day of            in the year of our Lord one thousand eight hundred and eighty, wherein the said Horace Lippincott was complainant, and the said Keturah M. Evens, David D. Griscom, trustee of Keturah M. Evens and Samuel Lippincott and William G. Evens, trustees of Rachel G. Haines, were defendants, in this respect, to wit: That the said decree adjudges that the bill of the complainant be dismissed with costs. And your petitioner humbly appeals from said decree, upon the ground that said decree is erroneous for that the master before whom the hearing in said cause was had. 10

2. Found and determined, among other things, that Samuel Lippincott, the father of Keturah M. Evens, by his will gave and bequeathed to the executor thereof, the sum of six thousand dollars in trust, to invest the same on good security, and to collect 20 the income or interest arising therefrom, and to pay the same to said Keturah yearly during her natural life, and empowered and directed said trustees to pay her from time to time such part, or the whole of the principal sum as she might demand, and directed said trustees to pay the said sum of six thousand dollars, or such part as remained in their hands, to such person or persons as she might appoint by her last will and testament, and in default of such appointment, to pay the same in equal shares, to the children of said Keturah; that the defendant, David D. Griscom, who was one of said executors, received the said bequest of six thousand 30 dollars upon the trusts aforesaid, and, at the request of the said Keturah M. Evens, invested the same in the purchase of the lands described in the bill of complaint, and took a conveyance thereof dated March twenty-eighth, eighteen hundred and seventy-six, substantially upon the same trusts declared in the aforesaid will; that said Keturah M. Evens shortly after demanded of the said Griscom, that he should pay her a part of the principal of said bequest for her use, and the said Griscom determined to raise the sum so demanded by mortgaging said farm therefor, and that to accomplish that purpose, and by direction of said Keturah, the said 40

Griscom, on July fifteenth, eighteen hundred and seventy six, conveyed said lands to William C. Lippincott for the nominal consideration of one dollar, and that on the same day, in the execution of the same purpose, the said Lippincott re-conveyed said lands to said Griscom for the nominal consideration of one dollar, upon substantially the same trusts declared in said will, but with power to mortgage said lands at the request and for the benefit of said Keturah; and that on the same day the said Griscom, at the request of the said Keturah, borrowed the sum of fifteen hundred  
 10 dollars for her use from the defendants Samuel Lippincott and William G. Evens, and executed to them a mortgage upon said lands to secure said loan.

3. Found and determined that the said Griscom holds the said lands, subject to said mortgage upon the same trusts created by the will of Samuel Lippincott, deceased; that the said lands are and constitute the said trust fund, converted into land, and that said Keturah has demanded and received of the principal of said fund only that part thereof raised by said trustee upon the mortgage aforesaid.

20 4. Found and determined that the investment of said trust fund of six thousand dollars in land, and the aforesaid dealings with said land, were not a complete execution of the trusts declared in said will, and that the trusts are still active, and that the said Griscom is still charged with the active duties of a trustee in respect to said land, as well in respect to the children of said Keturah, as to the said Keturah.

5. Found and determined that the said lands are the investment of trust funds which proceeded from a person other than Keturah M. Evens, the judgment debtor, and are held in trust for her, and  
 30 contingently for her children, and that such trust has been created by a person other than the said Keturah, and that this Court has no power to subject the said lands to the payment of the complainant's judgment.

6. Found and determined that the children of Keturah M. Evens, have a material interest in the said land and in this suit, and are necessary parties to this suit, and that the suit is fatally defective for the want of said parties, who are admitted to be in  
*esse*.

Your petitioner therefore prays that the said decree of the said  
 40 Chancellor may be reversed, set aside and for nothing holden and

that your petitioner may have such relief in the premises as to this honorable court shall seem meet, &c.

ALFRED HUGG,  
Solicitor for and of Counsel with Appellant.

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ANSWER TO APPEAL.

The answer of the above named respondents to the petition of 10 appeal of the above named appellant.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true for answer thereto, nevertheless say and admit that a decree was on the twenty-third day of November last, past, made and entered in the Court of Chancery, in the cause for that purpose, mentioned in the said petition, as is therein stated; but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity, and they pray 20 that the same may be affirmed with costs to be adjudged to these respondents.

FREDERICK VOORHEES,  
Solicitor for and of Counsel with Respondents.

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EXHIBITS ON THE PART OF COMPLAINANT.

EXHIBIT B.

Certified copy of *fi. fa. de bonis et terris*, in case, issued out of the New Jersey Supreme Court, Horace Lippincott vs. Keturah 30 M. Evens, and levy made by the Sheriff of Burlington county.

EXHIBIT C.

Certified copy of summons, order and judgment in the New Jersey Supreme Court, Horace Lippincott, plaintiff, vs. Keturah M. Evens.

EXHIBIT D.

Certified copy of Sheriff's statement, Albert Hansell vs. Keturah M. Evens, on *fi. fa.*, &c., in debt, issued out of the Burlington Circuit Court.

## EXHIBITS ON THE PART OF DEFENDANT.

## EXHIBIT No. 1.

Copy of the last will and testament of Samuel Lippincott, deceased, and probates thereof certified.

## EXHIBIT No. 2.

Deed from David D. Griscom, assignee, to Jesse Evens, dated March twenty-fifth, one thousand eight hundred and seventy-six,  
10 recorded at Mount Holly in book H, 9 of deeds, page 463.

## EXHIBIT No. 3.

Deed from Jesse Evens and wife to David D. Griscom, trustee, dated March twenty-eighth, one thousand eight hundred and seventy-six, recorded at Mount Holly in book H, 9 of deeds, page 466.

## EXHIBIT No. 4.

Deed from David D. Griscom, trustee, to William C. Lippincott, dated July fifteenth, one thousand eight hundred an seventy-eight,  
20 recorded same day, in book U, 9 of deeds, page 94, at Mount Holly.

## EXHIBIT No. 5.

Deed from William C. Lippincott and wife to David D. Griscom, trustee, dated July fifteenth, one thousand eight hundred and seventy-eight, and recorded at Mount Holly in book U, 9 of deeds, page 98, &c.