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NEW-JERSEY COURT OF ERRORS AND APPEALS.

GIDEON QUICK, JACOB T. QUICK, and JOHN QUICK, executors of John P. Quick, deceased, and others, appellants,

and

ELIZABETH S. FISHER and LUCRETIA S. FISHER, complainants,

On appeal.

STATE OF THE CASE.

ELIZABETH S. FISHER and LUCRETIA S. FISHER, complainants,

and

EXECUTORS OF JOHN P. QUICK et al., defendants,

Bill.
Filed March 25, 1847.

In Chancery, New Jersey.

To his Honor Oliver S. Halsted, esquire, Chancellor of the State of New Jersey.

Humbly complaining, show unto your Honor your oratrixes, Elizabeth S. Fisher, of the townsnip of East Amwell, in the county of Hunterdon, and state of New Jersey, and Lucretia S. Fisher, of the township of Raritan, in said county of Hunterdon, infant boy Jacob S. Manners, her next friend, that Peter Prall, late of the township of Amwell, in the said county of Hunterdon, deceased, being in his lifetime seized and possessed of a considerable real and personal estate, and being of sound and disposing mind and memory, did, on or about the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and twenty-nine, 1 make and publish his last will and testament in writing, which was executed and attested in such manner as by law is required for passing real estate; and thereby, after devising his real estate, and giving a number of specific and pecuniary legacies, he gave and bequeathed all the residue of his personal estate as follows: All the residue and remainder of my personal estate, not herein before disposed of, I give and bequeath as follows: that is, I give and bequeath to my grandson, Peter P. Quick, one fourth part of the same; to the three sons of my grandson, Gideon Quick, named Jacob, John, and Farley, one fourth part equally between them; 2 to my grand daughter, Fanny Higgins, one fourth part, and the re-

maining one fourth part I give and bequeath to my son-in-law John P. Quick, in trust, nevertheless, for the use, benefit, and support of my grand daughter Mary Fisher, to be paid to her, the said Mary Fisher, by the said John P. Quick, as her necessities may require; and I have full confidence in the said John P. Quick, that he will faithfully discharge the trust confided to him." And the said testator therein appointed his son Abraham Prall, his son-in-law John P. Quick, and his grandson Peter P. Quick, executors of his said last will and testament, as by the said last will and testament, now in the possession of your oratrix and orator, and to which they pray leave to refer, will more fully appear. And your oratrixes further show unto your Honor, that the said Peter Prall departed this life on or about the second day of March, in the year of our Lord one thousand eight hundred and twenty-nine, without having altered or revoked the said will.

And your oratrixes further show, that soon after the death of the said testator, and on or about the twelfth day of March, in the year of our Lord one thousand eight hundred and twenty-nine, John P. Quick and Peter P. Quick, two of the executors named in the said last will and testament, duly proved the same before George W. Seymour, esquire, the surrogate of the said county of Hunterdon, and took upon themselves the burthen and execution thereof.

And your oratrix and orator further show, that, shortly after the death of the said Peter Prall, the said John P. Quick and Peter P. Quick, in virtue of their said character of executors, possessed themselves of the personal estate and effects of the said testator to a large amount and value, and greatly more than sufficient to pay and satisfy his just debts, funeral expenses, and legacies; and that, at the term of February, in the year of our Lord one thousand eight hundred and thirty-one, the said John P. Quick and Peter P. Quick made a final setttlement of their accounts, as executors of the last will and testament of the said Peter Prall, in the orphans' court of the county of Hunterdon, by which settlement it appeared that, after the payment of all the just debts, funeral and testamentary expenses and legacies, there was a residue of personal estate remaining in their hands, amounting to the sum of eight thousand seven hundred and seventeen dollars and fifteen and a half cents, to be divided and disposed of according to the directions contained in the said will.

And your oratrix and orator further show, that, in pursuance of the provisions of the said last will and testament of the said Peter

Prall, the said John P. Quick became entitled to the one fourth part of the said residuary estate, in trust for the use, benefit, and support of the said Mary Fisher, the grand daughter of the testator, and to be paid to her, as her necessities might require.

And your oratrixes further show, that the said John P. Quick, on or about the first day of April, in the year of our Lord one thousand eight hundred and thirty, did in fact receive the one forth part of the said residuary estate as aforesaid, amounting to the sum of two thousand one hundred and seventy-nine dollars and twenty-eight cents, in trust for the said Mary Fisher; and that the said John P. Quick did, during the life of the said Mary Fisher, from time to time pay to her small sums of money, towards her support and on account of said trust fund; but the whole of the said payment did not, as your oratrixes have been informed, and believe, amount to as much as the lawful interest of the said fund.

And your oratrixes further show, that the said Mary Fisher departed this life on or about the sixth day of February, in the year of our Lord one thousand eight hundred and thirty-five, leaving six children, *to wit:* Catharine M., wife of Cortenius S. Young, Peter P. Fisher, Fanny Fisher, Israel Fisher, and your oratrixes; which said children, as next of kin to the said Mary Fisher, became entitled, as your oratrixes have been advised, to the principal of the said trust fund, together with interest which had accrued thereon up to the death of their said mother, deducting the payments made to her during her lifetime.

And your oratrixes further show, that the said Fanny Fisher, one of the children of the said Mary Fisher, departed this life on or about the sixth day of December, in the year of our Lord one thousand eight hundred and forty-three, intestate and without issue, and that the said John P. Quick also departed this life on or about the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and forty-five, leaving a large real and personal estate, having first duly made, executed, and published his last will and testament in writing, and therein, among other things, constituted and appointed his son, Gideon Quick, and his grandsons, Jacob F. Quick and John Quick, executors thereof.

And your oratrixes further show, that the said Gideon Quick, Jacob F. Quick, and John Quick, the executors in the said will named, on or about the fourteenth day of January, in the year of our Lord one thousand eight hundred and forty-six, duly proved the said will before George C. Seymour, the surrogate of the coun-

ty of Hunterdon, and took upon themselves the burthen and execution thereof.

And your oratrixes further show, that they have been informed, and believe it to be true, that the said John P. Quick, trustee as aforesaid, during his lifetime and after the death of the said Mary Fisher, had a settlement, of some kind or other, with the said Cortenius S. Young, in right of his wife Catharine, Peter P. Fisher, and Israel Fisher, for and on account of the shares of said trust fund, to which they became entitled upon the death of the said Mary Fisher; but what the nature and terms of such settlement were, your oratrixes do not certainly know, and are therefore unable to state.

And your oratrixes further show, that, as two of the said next of kin to the said Mary Fisher, they became entitled, upon her death, to the two sixth parts of the principal and interest of the said trust fund, after deducting the payments made to their said mother during her lifetime; and, being so entitled, they have frequently and in a friendly manner, by themselves and others, applied to the said John P. Quick in his lifetime, and to the said Gideon Quick, Jacob F. Quick, and John Quick, executors as aforesaid, since his death, and requested them to render unto your oratrixes an account of the said trust fund, and of the payments out of the same, and to pay to your oratrixes the two sixth parts or shares of the residue thereof.

And your oratrixes well hoped that the said John P. Quick in his lifetime, and the said Gideon Quick, Jacob F. Quick, and John Quick, executors as aforesaid, since his death, would have complied with such reasonable requests, as in justice and equity they ought to have done.

But now so it is, may it please your Honor, that the said Gideon Quick, Jacob F. Quick, and John Quick, executors as aforesaid, combining and confederating with the said Cortenius S. Young, and Catharine M. his wife, Peter P. Fisher and Israel Fisher, and divers other persons at present unknown to your oratrixes, but whose names, when discovered, your oratrixes pray may be inserted herein, and they made parties hereto, with proper and apt words to charge them, absolutely refuse to comply with your oratrixes' said requests, and, to countenance such refusals, they pretend that there is little or no surplus of the said trust fund remaining, after deducting the payments and disbursements made by the said John P. Quick to and for the said Mary Fisher in her lifetime, the contrary whereof your oratrixes charge to be the case,

and that so it would appear if the said Gideon Quick, Jacob F. Quick, and John Quick, executors as aforesaid, would set forth a full, true, and particular account of the receipts of the said testator on account of said trust fund, and of his payments and disbursements out of the same; and this the said confederates, Gideon Quick, Jacob F. Quick, and John Quick, executors as aforesaid, will sometimes admit, but then they pretend that your oratrixes are not entitled to any part or distributive share of the residue of said trust fund, and that the said John P. Quick, the trustee, became entitled to whatever remained of the said fund at the death of the said Mary Fisher; whereas your oratrixes charge and submit, that upon the death of the said Mary Fisher, her next of kin became entitled to the clear residue of the said fund, after deducting the payments made to the said Mary Fisher out of the same, and that your oratrixes, as children of the said Mary Fisher, are two of the next of kin, and, as such, are entitled to a distributive share of the said residue: all which actings, doings, and pretences of the said confederates are contrary to equity and good conscience, and tend to the manifest wrong and injury of your oratrixes.

In tender consideration whereof, and forasmuch as your oratrixes are remediless in the premises by the strict rules of the common law, and cannot have adequate relief, save in a court of equity, where matters of this nature are properly cognizable and relievable, to the end, therefore, that the said Gideon Quick, Jacob F. Quick, and John Quick, executors as aforesaid, Cortenius S. Young and Catharine his wife, Peter P. Fisher and Israel Fisher, and their confederates, when discovered, may, upon their several and respective oaths or affirmations, true, full, direct, and perfect answers make to all and singular the matters herein before stated and charged, and that as fully and particularly as if the same were here again repeated, and they thereto severally and specifically interrogated, according to the best of their respective knowledge, information, remembrance, and belief, and that the said defendants, Gideon Quick, Jacob F. Quick, and John Quick, executors as aforesaid, may set forth a full, true, and particular account of the moneys and effects which were possessed by, or came to the hands of the said John P. Quick in his lifetime in trust for the said Mary Fisher, under and in pursuance of the last will and testament of the said Peter Frall, deceased, and of the payments and disbursements made by the said John P. Quick out of the same, and how and in what manner the same, and every part thereof, was disposed

of, and to whom and for, and upon what consideration, and of the amount of the said trust fund at the death of the said Mary Fisher; and that the said Cortenius S. Young, and Catharine M., his wife, Peter P. Fisher, and Israel Fisher, may set forth and discover whether the said John P. Quick in his lifetime ever accounted with them, or either of them, for the amount of the said trust fund remaining in his hands at the death of the said Mary Fisher, and whether he ever paid them, or any, or which of them, any and what sums of money for or on account of their respective shares in the said fund; and that an account may be taken, under the direction of this honorable court, of the moneys and effects which were possessed by, or which came to the hands of the said John P. Quick in his lifetime, as trustee of the said Mary Fisher under the will of the said Peter Prall, deceased; and that an account may also be taken of the payments and disbursements made by the said John P. Quick out of the same; and that the clear residue of the said fund at the death of the said Mary Fisher may be ascertained, together with the interest which has since accrued thereon; and that the two sixth shares or parts of such clear residue, with the interest which has accrued thereon, may be decreed to be paid by the said executors to your oratrixes; and that your oratrixes may have such other and further relief in the premises as to your Honor may seem meet, and shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, &c.

IN CHANCERY OF NEW JERSEY.

The joint answer of Gideon Quick, Jacob F. Quick, and John Quick, executors of John P. Quick, deceased.

They answer and say, that they have been informed, and, for any thing they know to the contrary, the same may be true, that Peter Prall, late of the township of Amwell, in the county of Hunterdon, was in his lifetime seized and possessed of considerable real and personal estate, and, being of disposing mind and memory, died on or about the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and twenty-nine; and that before his death he made and published his last will and testament in due form of law to pass real estate, as in the complainants' said bill of complaint is set forth; and that thereby, after devising his real estate, and giving a number of specific and pecuniary legacies,

he gave and bequeathed all the residue of his personal estate, as set forth in the complainants' said bill; and that the said Peter Prall, in his said will, appointed his son, Abraham Prall, his son-in-law John P. Quick, and his guardian, Peter P. Quick, executors of his said last will and testament.

And these defendants further admit, that they have been informed that the said Peter Prall departed this life on or about the second day of March, in the year of our Lord one thousand eight hundred and twenty-nine, without having altered or revoked his said will; and that, on or about the twelfth day of March, in the year of our Lord one thousand eight hundred and twenty-nine, the said John P. Quick and Peter P. Quick, two of the said executors therein named, duly proved the same before George Maxwell, esquire, then surrogate of the said county of Hunterdon, and took upon themselves the burthen and execution thereof.

And these defendants further admit, that they have heard, and believe it to be true, that the said John P. Quick and Peter P. Quick, after the death of the said Peter Prall, possessed themselves of the personal estate and effects of the said deceased to a considerable amount and value, and more than sufficient to pay and satisfy his just debts and funeral expenses, and also to discharge the pecuniary legacies bequeathed in said will; and that, at the term of February, in the year of our Lord one thousand eight hundred and thirty-one, the said John P. Quick and Peter P. Quick made a final settlement of these accounts of the said Peter Prall, deceased, in the orphans' court of the county of Hunterdon, by which settlement it appears that, after the payment of all just debts, funeral and testamentary expenses and legacies, there was a residue of personal estate remaining in their hands, amounting to the sum of eight thousand seven hundred and seventeen dollars and fifteen and a half cents, to be divided and disposed of according to the directions of the said last will.

And these defendants, in further answering admit, that, in pursuance of the provision of the said last will and testament of the said Peter Prall, the said John P. Quick became entitled to the one fourth part of the said residuary estate, in trust for the use and benefit, and support of the said Mary Fisher, the grand daughter of the said testator, and to be paid to her as her necessities might require.

And these defendants in further answering admit, that they have heard, and believe the same to be true, that some time in the month of April, in the year of our Lord one thousand eight hundred and

thirty, the said John P. Quick did leave the principal part of the sum of two thousand one hundred and seventy-nine dollars and twenty-eight cents, a few small sums having been previously received by him from the said Peter P. Quick, as the one fourth part of the said residuary estate in trust, to be applied to the support of the said Mary Fisher, as directed by the said last will of the said Peter Prall, deceased.

And these defendants further admit, that the said Mary Fisher departed this life on or about the sixth day of February, in the year of our Lord one thousand eight hundred and thirty-five, leaving six children, *to wit:* Catharine, the wife of Cortenius S. Young, Peter P. Fisher, Fanny Fisher, Israel Fisher, and the said complainants; and that they have been informed that the said Fanny Fisher, one of the said children of the said Mary Fisher, departed this life on or about the sixth day of December, in the year of our Lord one thousand eight hundred and forty-three, intestate and without issue; and they also admit that the said John P. Quick departed this life on or about the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and forty-five, leaving a considerable real and personal estate, having just made and published his last will and testament in writing, and therein, among other things, constituted and appointed these defendants the executors thereof; and that they duly proved the same, on or about the fourteenth day of January, in the year of our Lord one thousand eight hundred and forty-six, before George C. Seymour, the surrogate of the county of Hunterdon, and took upon themselves the burthen and execution thereof.

And these defendants in further answering admit, that they have always been willing to pay to said complainants, or to any person legally authorized to receive the same for them, the two sixth parts of the principal of the said trust fund, after deducting the payments to their said mother and for her benefit, and which these defendants aver they have always heard from the said John P. Quick he intended to pay them, had he lived until they arrived at the age of twenty-one years, or else to give them the same amount in some other way; and that he has so paid in full the other children of the said Mary Fisher, who arrived at that age previous to his decease; but not because he considered himself bound so to do, but because the said children of the said Mary were his grandchildren, and he was willing and anxious, and always intended, they should have that amount, in some way, by his last will or otherwise, besides what he intended to leave them out of his other estate.

But these defendants deny that they are legally and equitably bound to pay said two sixth parts of said residue, and allege that they, as well as the said John P. Quick, deceased, in his lifetime, were always informed that whatever sum might remain of said bequest to him, after being applied as directed by the will of the said Peter Prall, deceased, towards the support of the said Mary Fisher, as her necessities might require, belonged to him absolutely, and could not be called out of his hands, or out of the hands of these defendants, as his representatives.

And these defendants in further answering say, that they have been informed, and believe, that the said John P. Quick in his lifetime did pay to the said Mary Fisher not only several small sums of money towards her support, on account of said trust fund, but that he paid to her, and for her benefit, very considerable and large sums of money, and greatly beyond the lawful interest of the said fund; that the said Mary being a daughter of his, for whom he had strong affection, he was greatly solicitous, with the said Peter Prall, and more anxious that she should be well provided for, and these defendants have always heard and believed that he was very careful to, and did provide for all her wants with the greatest assiduity, and so appropriated said fund, and paid such sums of money to her, from time to time and for her benefit, as always to keep her comfortable and happy, as far as in his power lay, and that she never wanted for any of the necessaries or comforts of life that he did not immediately provide for her, as soon as her wants came to his knowledge.

And these defendants in further answering say, they have been informed, and believe it to be true, and as by an account of the same, which they find among the papers of the said John P. Quick, deceased, appears, that in the year of our Lord one thousand eight hundred and twenty-nine, the said John P. Quick, as trustee as aforesaid, received several small sums of money from the said Peter P. Quick, the other executor, out of said trust fund, which he immediately paid over to the said Mary Fisher, for her support, as they were received by him, amounting to the sum of eighty-six dollars.

That the said Mary was the wife of one Amos Fisher, who was in good health and vigorous constitution, and that some time in the year eighteen hundred and twenty-nine and thirty, about the time of the settlement of the estate of the said Peter Prall, deceased, and before the said John P. Quick had received so much of the sum of one hundred dollars of the said trust fund, as appears by

accounts found among his papers since his death, she and her said husband, and his friends, all became anxious that the said John P. Quick should apply the residue of the said trust fund which then remained towards the purchase of a certain tavern property, situate in the city of New Brunswick, in this state, which the said Mary Fisher and her husband wished to occupy, urging and insisting that the application of said trust fund in this way would be much more advantageous to the said Mary and her family, than in any other way which the same could be applied; that it would afford the said Amos an opportunity to apply his personal labor and attention in a profitable way toward making a support for his family; that he could operate upon that amount of capital, applied in that way, to much better advantage and greater profit than the mere legal interest of said sum could possibly amount to, and urging that the property was then offered for sale at a very cheap rate, much below its real value; and stating at the same time that the deed therefor could be taken in the name of the said John P. Quick, which would always afford a security for the safety of said fund. That the said John P. Quick at first strongly objected to said purchase, fearing that some difficulty might grow out of it, and declined making said investment, as he was getting in years, and the property lay some twenty-five miles distant from where he then resided, and expected to reside; but upon the repeated solicitations of his said daughter, and being waited upon and urged by the friends and connections of the said Amos Fisher, as well as by himself and wife, and being desirous to gratify his said daughter, and to do, as he considered, for the best, and what he then thought would so turn out, he finally permitted himself to be taken, by one of the brothers of his said son-in-law, to look at the said property, and finally, at the request of his said daughter and friends, reluctantly consented to the purchase of said property with the said trust fund as aforesaid. That he made the purchase of said property, which consisted of a house and lot in the said city of New Brunswick, situate on the corner of Burnet-street and New-street, with stables attached, and which was then, and had been for some time used and occupied as a tavern, for the sum of two thousand four hundred dollars, being then considered a very low price for the same, but above five hundred dollars more than was in his hands of the said trust fund, after what he had then already paid to the said Mary Fisher, and took the deed in his own name.

That the said John P. Quick was very reluctant to make said purchase, not desiring to take hold of a property so far removed

from him, besides not wishing to invest any of his other funds in said property.

But believing that said fund was placed in his hands to be used at his discretion to the best advantage, and being led to believe the property was offered at a very low price, and that should any loss accrue thereon, the same could not fall on him in any way, he finally, for the sake of gratifying his said daughter and her husband, and he was then persuaded to believe for their benefit, yielded to their repeated urgent solicitations.

That the said tavern property was then considerably out of repair, and required a considerable expenditure of money to put the same in proper order for the use of his said daughter and her husband and family.

That about the first of May, eighteen hundred and thirty, the said Amos Fisher, with his said wife and family, moved into, and took possession of said tavern property, where they remained until about the first of May, eighteen hundred and thirty-three, without accounting to the said John P. Quick for any rent for the same.

That during the first year the said tavern was so occupied by his said son-in-law and daughter, he, the said John P. Quick, paid the sum of five hundred dollars for repairs to the said tavern property, making in all about one thousand dollars more invested in said property than the amount of said trust fund, after what he had advanced to said Mary in person.

That during the last year the said tavern property was occupied by the said Amos and wife, as these defendants have been informed, and believe, the health of the said Mary somewhat declined, and the custom fell off from said tavern, the said Amos not proving very efficient in the prosecution of his business, and the said Mary became satisfied that it was not profitable longer to keep a public house, and determined to abandon the same, and did, with her said husband and family, leave the same the first day of May, in the year of our Lord one thousand eight hundred and thirty-three, when they obtained the consent of the said John P. Quick to rent said tavern to a man by the name of Nicholas E. Huff, for the sum of two hundred and twenty-five dollars per year; and that the property was rented to the said Huff, at the request of the said Amos Fisher and wife, by the said John P. Quick, deceased, and they a rented a smaller and less expensive tenement, to which they removed, and continued to occupy such until the death of the said Mary, as these defendants have been informed, which took place,

as stated in said bill, on the sixth day of February, in the year of our Lord one thousand eight hundred and thirty-five.

That said Huff failed in business, and ran away some time in the early part of the year of our Lord one thousand eight hundred and thirty-four, leaving, as these defendants have understood and believe, some part of the rent unpaid, after which the said house remained for some time unoccupied, until afterwards rented by one Thomas I. Strong.

And these defendants have been informed the said Huff never accounted to the said John P. Quick for any rent for said tavern property; but that whatever he paid he accounted for to the said Mary Fisher and her said husband, but to what amount, these defendants, not being informed, are not able to state.

And these defendants further allege, that the said John P. Quick never recovered any rent for the said tavern property during the lifetime of the said Mary Fisher; but, after having purchased it for her benefit, and at her urgent request, he left the management of it to her and her husband, so long as she lived, and permitted her to take the profits thereof, after having expended a considerable sum of money in order to put the same in a comfortable and permanent state of repair, so as to enable them to use the same profitably.

And these defendants further allege, that they have been informed, and believe, that some time in August or September, in the year of our Lord one thousand eight hundred and thirty-four, the said Thomas I. Strong rented and removed into the said tavern house, and remained there until the same was sold, on the first of May, in the year of our Lord one thousand eight hundred and thirty-six, and who, after the death of the said Mary Fisher, paid the rent thereof to the said John P. Quick, at the rate of two hundred and twenty-five dollars per year.

And these defendants allege, that on the nineteenth day of June, in the year of our Lord one thousand eight hundred and thirty-five, a tornado swept over the city of New Brunswick, whereby the said tavern house and property was greatly injured, so much so that the said John P. Quick did pay the sum of five hundred and forty-two dollars and twenty cents for the necessary repairs of the same, which he was obliged to do before the same could be sold or in any way profitably disposed of.

That during the lifetime of the said Mary Fisher, she was opposed to the sale of the said tavern property, because the same was then renting for a sum annually over and above the legal in-

terest on the cost of said property. But as soon as the said Mary had deceased, the said John P. Quick was desirous and anxious to sell the said property, and offered the same, but was not able to effect a sale thereof until the month of September of that year, when he sold the same to one John D. Ascough for the sum of three thousand dollars, which was the highest price he could obtain for the same, to be paid on the first day of May then next, by an article of agreement between himself and the said Ascough, bearing date the fourteenth day of September, in the year of our Lord one thousand eight hundred and thirty-five, as by reference to said article will more fully appear, and which is now in the possession of these defendants, and ready to be produced, as this honorable court shall direct.

And these defendants further allege, that they have been informed, and believe, that after the death of the said Mary Fisher, and after some of the children had arrived at the age of twenty-one years, about the first of March, in the year of our Lord one thousand eight hundred and forty-one, the said John P. Quick made a statement of his account as trustee as aforesaid, and which he then filed in the surrogate's office of the county of Hunterdon, which said account was based on the position that the said property was purchased for the benefit of the said Mary; and that whatever loss had accrued thereon was to be borne by the said trust fund, but which has since been mislaid or lost, and cannot now be found. That these defendants have no knowledge what has become of the same; but they find among the papers of the said John P. Quick a paper, which they are informed, and believe, is a copy of the same, and which is in the following words and figures, to wit:

The account of John P. Quick, trustee of Mary Fisher, concerning the payments and disbursements out of a certain legacy bequeathed by the last will and testament of Peter Prall, deceased, to John P. Quick, "in trust for the use, benefit, and support of Mary Fisher," who is now deceased.

April 28,	1829,	Paid	Mary	Fisher,	$20	00
Oct. 2,	"	"	"	"	10	00
Nov. 12,	"	"	"	"	10	00
Jan. 2,	1830,	"	"	"	20	00
" 25,	"	"	"	"	26	00
May 1,	"	"	for purchase of tavern property in N. Brunswick,		2500	00

May 15, 1830,	Paid for recording deed,		$1 50
M'ch 15, 1831,	"	for repairs, &c., tavern property,	500 00
April 25, 1834,	"	Probasco & Watson,	40 20
" " "	"	Jeptha Cheesman,	9 05
June 2,	" "	" "	12 00
Aug. 15,	" "	J. D. Sutphin, for rent,	7 50
Nov. 10,	" "	" " " " "	7 50
Feb. 10, 1835,	"	" " " " "	7 50
" 11,	" "	J. M. Hagerman,	15 47
" "	" "	for a coffin,	11 00
" 12,	" "	P. and U. rent,	5 46
" "	" "	J. Polhemus,	8 00
" "	" "	for conveying corpse,	5 50
April 30,	" "	J. Van Lieu,	5 00
" "	" "	Dr. Rex,	5 00
May 1,	" "	J. D. Sutphin,	7 50
" "	" "	for insurance,	12 00
Oct. 1,	" "	for repairs to tavern property, by tornado, as per bills,	522 20
Dec. 31,	" "	for taxes,	6 50
May 1, 1836,	"	Scrivener, for drawing deed and article of agreement,	7 50
" 17,	" "	for tomb stone,	9 00
M'ch. 1, 1841,	"	attorney, for counsel,	3 00
	"	for settlement and drawing the acc't.,	5 00
	"	interest due,	414 63
	"	commissions on $5381.25, at 6 per ct.	322 87
	Total amount of expenditures,		$4534 38
	Balance in hand of trustees,		845 87
			$5380 25

April 23, 1827,	Received of Peter P. Quick,		$20 00
Oct. 2,	"	" " "	10 00
Nov. 12,	"	" " "	10 00
Jan. 2, 1830,	"	" " "	20 00
" 25,	"	" " "	26 00
April 28,	"	" " "	2100 00
May 1, 1835,	"	of T. I. Strong, one quarter's rent,	56 25
Aug. 1,	"	" " " " " " "	56 25
Nov. 1,	"	" " " " " " "	56 25

Feb. 1, 1835, Received of T. I. Strong, one quarter's rent,	$56	25
May 1, " " " " " " " "	56	25
" " " " for sale of tavern property in N. Brunswick,	3000	00
	$5381	25

May 1, 1841, Balance in hands of trustees,	$845	87
" 1, " Interest on balance for 5 years,	253	75
" 1, " Amount this day to be distributed, among Mary Fisher's children, who are six in number, making each child's share,	$1099	52
	$183	27

which said account is based upon the principle of charging said trust fund with the loss consequent upon the purchase of said tavern property, and of which these defendants allege the said John P. Quick informed said heirs at the time of his several settlements with them, respectively, as herein after mentioned, and by which said account it appears that the balance in the hands of the said John P. Quick to be distributed among the heirs of the said Mary Fisher was the sum of one thousand and ninety-nine dollars and sixty-two cents, including interest after the death of the said Mary Fisher, which was to be divided into six shares, making each child's share amount to the sum of one hundred and eighty-three dollars and twenty-seven cents, which account these defendants have always been informed, by the said John P. Quick in his lifetime, was just and true, and they so believe; but which from the loss or mislaying of papers, under the belief that the same was arranged upon a just and satisfactory basis, they are unable to state with any more particularity; and they deny that there is any balance of the said trust fund in their hands, other than the said two sixth parts above mentioned.

That after filing said account in the surrogate's office, the said John P. Quick proceeded to settle with four of the children and heirs of the said Mary Fisher, who arrived at legal age before his death; and after having presented them the said copy of said account, with no item of which either of them found any fault, he settled with each, and took their respective discharges in full.

That at first he settled with Cortenius S. Young and Catharine M., his wife, and Peter Fisher, to each of whom he paid the said sum of one hundred and eighty-three dollars and twenty-seven cents,

in full of their respective shares in said trust estate, and took their several refunding bonds, conditioned for the payment to him of their respective shares of any sum or sums which it might be necessary to raise to pay any debts or claims against the estate of the said Peter Prall, which said trustee might not have other assets to pay; which said several bonds bear date on the twenty-fourth and twenty-fifth days of March, in the year of our Lord one thousand eight hundred and forty-one, and which are now in the possession of these defendants, and to which they beg leave to refer.

And these defendants in further answering allege, that afterwards, when the said Israel Fisher, another of said heirs of the said Mary, arrived at the age of twenty-one years, the said John P. Quick made a settlement with him upon the same principle, and by the same account before herein set forth, with which the said Israel was perfectly satisfied, and executed a receipt in full to the said John P. Quick for all his interest in said legacy, bearing date on the eleventh day of May, eighteen hundred and forty-four, on receiving the said sum of one hundred and eighty-three dollars and twenty-seven cents, with the interest thereon from May first, one thousand eight hundred and forty-one.

And that afterward, when Fanny Fisher, another of said heirs, arrived at the age of twenty-one years, the said John P. Quick had a like settlement with her upon the same principle, which she understood, and for the like sum of one hundred and eighty-three dollars and twenty-seven cents, with interest from said first day of May, one thousand eight hundred and forty-one, and took her receipt in full for her interest in said trust fund, bearing date the twelfth day of May, in the year of our Lord one thousand eight hundred and forty-three, which receipts are in the possession of these defendants, and to which they beg leave to refer.

And these defendants in further answering allege, that they have always been informed by the said John P. Quick, and believe the same to be true, that he was always willing that the heirs of the said Mary Fisher should have whatever residue of said trust fund might remain in his hands after the death of the said Mary Fisher, and that he always intended they should have the same, by will or otherwise; and that when some of them desired him to account with them concerning the same, although he did not acknowledge or believe they had any right so to call upon him, yet meaning they should have the same, he did so account with and pay off in full all of the said heirs that had arrived at the age of twenty-one years during his lifetime; that in and by the said will

of the said Peter Prall, deceased, it is directed, if any of his legatees should die without having received the legacy thereby bequeathed to them, leaving heirs under the age of twenty-one years, that then his executors should place the share of such heir at interest, and pay the same, with interest thereon, to them respectively, as they arrived at the age of twenty-one years, to which said will, for greater certainty, these defendants beg leave to refer.

And these defendants in further answering allege, that since the death of the said John P. Quick, *to wit*, on the eleventh day of July, in the year of our Lord one thousand eight hundred and forty five, they caused the said sum of one hundred and eighty-three dollars and twenty-seven cents, with interest thereon from the first day of May, in the year eighteen hundred and forty-one, to be legally tendered to Jacob S. Manners, esq., who was then the guardian of the said Elizabeth S. Fisher, one of the said complainants, and who had demanded settlement of said share, and that said guardian refused to accept the same.

And that again, on the tenth day of February, in the year of our Lord one thousand eight hundred and forty-seven, after the said Elizabeth S. Fisher had arrived at the age of twenty-one years, these defendants caused said sum of one hundred and eighty-three dollars and twenty-seven cents, with the interest thereon from the said first day of May, in the year of our Lord one thousand eight hundred and forty-one, again to be tendered to the said Elizabeth S. Fisher in person, and that the said Elizabeth refused to accept the same, or any part thereof, whereby these defendants claim to be exonerated from the payment of any interest or costs accruing upon the same since the date of the said tender first mentioned.

And these defendants tender themselves ready to pay to the said Lucretia S. Fisher, or to any person lawfully authorized to receive the same for her, the said sum of one hundred and eighty-three dollars and twenty-seven cents, with legal interest thereon from the said first day of May, in the year of our Lord one thousand eight hundred and forty-one, upon arriving at the age of twenty-one years, which, as these defendants believe, the said Lucretia is not entitled to by law, but which the said John P. Quick always declared his willingness she should have, and they therefore are willing to pay her the same.

And these defendants in further answering allege, that they have been informed, and believe, that shortly after the death of the said Mary Fisher, the said John P. Quick made his last will and testament, in which he bequeathed a considerable sum of money to the

heirs of the said Mary Fisher, on account of what remained in his hands unexpended of said trust estate, under the supposition and belief they have no right to call upon him to account for the same, but intending that they should, notwithstanding, have the benefit thereof; and when thereupon afterwards, and shortly previous to the settlement with part of said heirs, in the year of our Lord one thousand eight hundred and forty-one, those of them who had arrived at age, *to wit*, Peter P. Fisher and Cortenius S. Young and wife, expressed some dissatisfaction, and desired some statement as to the condition and amount of said trust fund, and a payment of their respective shares of the same, the said John P. Quick, without objection, made the settlement and payment above stated, which they all appeared quietly and peaceably to acquiesce in, until after the death of the said John P. Quick, since which all the the present trouble and difficulty in regard to said trust fund has arisen.

And these defendants in further answering allege, that in and by the said last will and testament of the said John P. Quick, among other things, he bequeathed the sum of two thousand dollars, equally to be divided among his said grandchildren, the children of the said Mary Fisher, all in one year after his decease, as they arrive at age, to which said will, for greater certainty, these defendants beg leave to refer.

And these defendants allege, that they have been informed, and believe the same to be true, that shortly after the said settlement with the heirs above mentioned, in the spring of the year of our Lord one thousand eight hundred and forty-one, the said John P. Quick made and executed a testament and last will, in which, recollecting the dissatisfaction of said heirs in reference to said settlement, he left said sum of two thousand dollars to be distributed among the said children of the said Mary Fisher, upon the express condition, only, they should make no disturbance in regard to said trust fund, and that if any one of them should make any difficulty in regard thereto, or attempt to recover any larger sum than appeared to be due by said account, that such child should lose the benefit of said bequest; but that afterwards finding they all acquiesced in said settlement quietly and peaceably for so long a time, and the principal and details of said settlement having been recognised and consented to at so many different periods by four out of six of said heirs in the several settlements, when he came to execute his last will and testatement, above mentioned, he remarked to the scrivener who prepared his last will, that that prohibitory

clause might as well be omitted, at the same time giving as a reason, that it was not now necessary, because said children were perfectly satisfied with his adjustment of said trust estate; in consequence of which said prohibitory clause was omitted in said last will.

That, at the time of filing said account, the said John P. Quick had, as these defendants have been informed, and believe, receipts and vouchers for each and every charge against said trust estate contained in said account.

But believing the same to be ended, and no further question likely to arise concerning the same, as appeared from the acquiescence of all parties concerned, he became less careful of said vouchers, or, by some means, some of the same have been mislaid, and cannot be found by these defendants, but which payment they hope to be able mainly to supply by parol proof.

And these defendants in further answering insist, that, by the terms of the bequest by the said Peter Prall, deceased, to the said John P. Quick, in trust for the use, benefit, and support of the said Mary Fisher, whether he, the said John P. Quick, or these defendants, as his executors, are liable to pay any interest on the said trust fund during the lifetime of the said Mary, even if her heirs are entitled to the surplus of said bequest remaining unexpended after her death; because, by the said will, the said trust fund was placed at his discretion, to apply as he thought proper, and, besides, was contemplated constantly to remain in his hands to answer the present necessities of the said Mary.

And they further insist, if in the opinion of this honorable court the said heirs should be considered as entitled to any larger residue of said trust fund than appears due by said account, that they should not be permitted to take the said legacy of two thousand dollars, bequeathed them in and by the said last will and testament of the said John P. Quick, deceased; because the said bequest was made expressly upon the condition that they should receive no larger amount out of said trust fund than appeared due by said account, or, at least, that they should be decreed to surrender so much of said legacy as they may receive out of said trust fund over and above what appeared due them, respectively, by said account.

And these defendants insist that the present is a stale claim, and ought, if at all, to have been prosecuted during the lifetime of the said John P. Quick, deceased, and not to have been left to sleep for so many years and until after his death, in order that they might attack his representatives, whom they know have not the know-

ledge of the facts and circumstances possessed by him, nor the means of obtaining such knowledge, and who must necessarily be ignorant of and unprepared to avail themselves of the full merits of their defence.

And these defendants in further answering state, that they find among the papers of the said John P. Quick the following bills and receipts, which are included in the before stated account, in the gross sums therein stated, for repairs to the said tavern property, *to wit:*

JOHN P. QUICK to THOMAS I. STRONG, *Dr.*

To cash paid for removing timber and chimney,	$5.00
Putting boards on roof,	2.00
Lawshe's bill,	27.50
	$34.50

Received payment,

THOMAS I. STRONG.

Sept. 3, 1835,	Cash paid Henry Sanderson for painting sign,		$22.00
" 14,	"	To cash paid Wm. Forman, for carting dirt,	12.20
Nov. 1,	"	Cash paid Thomas I. Strong,	4.50
" 2,	"	Cash paid Francis F. Randolph,	4.36
			$77.56

And these defendants deny, &c.

IN CHANCERY OF NEW JERSEY.

The joint and several answer of Cortenius S. Young and Catharine M., his wife, Peter P. Fisher and Israel Fisher, four of the defendants, to the bill of complaint of Elizabeth S. Fisher and Lucretia S. Fisher, complainants.

These defendants, severally answering, say, that in the lifetime of the said John P. Quick, and since the death of the said Mary Fisher, these defendants applied to him, the said John P. Quick, trustee of the said Mary Fisher, as in the bill of the complainants is set forth, and demanded of him that he should render unto these defendants an account of the said trust fund, and of the payments out of the same, and to pay to these defendants the three sixth parts or shares of the residue thereof, that is to say: the one sixth part or share thereof to the said Cortenius S. Young, by right of his wife Catharine M., daughter of the said Mary Fisher, deceased, and one sixth part or share thereof to the said Peter P. Fisher,

and the one sixth part or share thereof to Israel Fisher, the sons of the said Mary Fisher, deceased.

And these defendants further answering say, that the said John P. Quick, trustee as aforesaid, at first refused to pay to these defendants, when applied to as aforesaid, any part or share of the said trust fund, pretending that there was little or no surplus of the said trust fund remaining after deducting the payment and disbursements made by him to the said Mary Fisher in her lifetime.

And these defendants further answering, severally say, that the said John P. Quick, trustee as aforesaid, always and at all times refused to render any account of the said trust fund, and of the payments and disbursements out of the same, and of the surplus of the same, to these defendants, although often requested so to do.

And these defendants further answering, severally say, that, after the said John P. Quick had so refused to account to these defendants, as requested to do, and after he had refused to pay any part or share of the said trust fund to these defendants, he stated to them that he would pay them their parts or shares of said trust fund, if they would give him their receipts in full for their said shares thereof; and he held out to these defendants, and assured them, that the sum of one hundred and eighty dollars, or thereabouts, the precise sum these defendants do not now recollect, was the full amount of each sixth share; and these defendants, being the grandchildren of the said John P. Quick, and confiding in his representations, were induced to accept of the sum of one hundred and eighty dollars, that is to say: the said Cortenius S. Young and Catharine his wife received that amount, and the said Peter P. and Israel Fisher, each, received that amount; and that, upon the receipt of these several amounts, these defendants believe that they did execute and deliver to the said John P. Quick, trustee as aforesaid, their several receipts in full for their several shares of the said trust fund; but for greater certainty as to the character of said receipts, as also for the precise amount thereof, these defendants crave leave to refer to the said receipts, when the same shall be produced.

And these defendants further answering, severally say, that they believe they have not received all that they ought to have received from the said John P. Quick, trustee as aforesaid, as their full respective shares of the said trust fund, and they ask that what may be right and equitable in the premises may be decreed in this honorable court.

And these defendants deny all unlawful combination and con-

federacy in said bill charged, without that any other matter or thing, material for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, or avoided, traversed or denied, is true, to the knowledge or belief of these defendants.

All which matters and things these defendants, severally, are ready to aver, maintain, and prove, as this honorable court shall direct; and they join in the prayer of the complainants, that an account may be taken, under the direction of this court, of the moneys and effects which were possessed by, or which came to the hands of the said John P. Quick in his lifetime, as trustee of the said Mary Fisher, under the said will of the said Peter Prall, deceased; and that an account be taken of the payments and disbursements made by said John P. Quick out of the same; and that the clear residue of the said fund, at the death of the said Mary Fisher, may be ascertained, together with the interest which has since accrued thereon; and that the one sixth share or part of such clear residue, with the interest which has accrued thereon, may be decreed to be paid to the said Cortenius S. Young and Catharine M., his wife, and a like share or part thereof to the said Peter P. Fisher, and a like share or part to the said Israel Fisher. But these defendants, severally, consent and are willing to allow that, in making such decree, the payment that has been made by the said John P. Quick to these defendants, as herein before stated, and which is the only payment ever made out of said trust fund to these defendants, shall be allowed and deducted from their said several shares: and that these defendants may severally have such other and further protection and relief in the premises as to your honor may seem meet, and shall be agreeable to equity and good conscience.

J. F. Hagerman,
Solicitor and of counsel with defendants.

Depositions on part of defendants, December 11, 1848.

George Eldridge, of the city of New Brunswick, a witness produced and sworn on the part of the above named executors of John P. Quick, deceased, defendant, being duly sworn, deposeth and saith—I was acquainted with the tavern property on the corner of Burnet and New streets, in the city of New Brunswick, where Amos Fisher resided in the years eighteen hundred and thirty and

thirty-one. I think Amos Fisher moved to that house in the spring of eighteen hundred and thirty, and lived there, I think, three years. The former owner of that property was Joseph Hall. At the time Mr. Fisher moved there, they commenced making repairs and alterations to that property, in the bar-room especially, and elsewhere; the repairs, I think, were charged to Amos Fisher, that is the labor; I was one of the carpenters who helped to do the repairs. During the time I worked there, there was a considerable amount of repairs done to the property; I suppose that five hundred dollars would not be far out of the way, at which to set down the cost of the repairs to these premises during the time Amos Fisher lived there. I have seen Francis F. Randolph write frequently; I think the signatures to the two papers marked *Exhibits A and B*, on the part of the executors of John P. Quick, now shown to me, are in the proper handwriting of the said Randolph.

Being cross-examined, the said witness saith—I live in New Brunswick at this time; I was both apprentice and journeyman under Mr. Randolph, while he was making the repairs for Amos Fisher; I never saw any, nor do I know of any bills presented by Mr. Randolph to Mr. Fisher for the repairs done; I do not know that Mr. Fisher ever paid any amount of money for the repairs done to that house by Mr. Randolph; I think the largest job done in the repairs was about the bar-room, the front door, and making a sign; I think there was some work done in the yard, a shed built or a cistern, or something of that kind; there was mason work and painting done; I should think the work done there amounted to more than two hundred dollars; I know that bills run up pretty fast; I cannot pretend to say how many days I worked there. It was understood, with us men who worked there, that we were working for Amos Fisher, and when Mr. Randolph charged the work, he charged it to Amos Fisher, as near as I can recollect; I think I did see Mr. Randolph make a single charge against Mr. Fisher in his books for work done; I think I know it. The general ground of my belief is, because when we were asked by Mr. Randolph, who we had been working for, we told him for Amos Fisher. Mr. Fisher lived in the house at the time these repairs were being made. It was understood some one else had bought the property for Mr. Fisher to move there. Mr. Fisher lived there, and he had the talk and direction, and telling Mr. Randolph what he wanted to have done. It was on this account that I reported to Mr. Randolph that the work had been done for Mr. Fisher.

GEORGE ELDRIDGE.

Alexander Watson, of the city of New Brunswick, deposeth and saith—I reside in the city of New Brunswick. I knew John P. Quick in his lifetime; I did some work for him in the year eighteen hundred and thirty-four. The paper shown me, marked *Exhibit D*, on the part of the said executors, is the bill for the work done by Mr. Probasco, my partner, and myself for Mr. John P. Quick. The work was done under the direction of Mr. Quick himself; it was done on the property at the foot of New-street, where Mr. Amos Fisher then lived. Mr. Fisher never gave me any directions about the repairs; no one did so but Mr. Quick himself. The name Probasco and Watson, as well as the whole bill, I think is in my own handwriting.

Being cross-examined, the witness saith— did not frequently see Mr. Quick about the premises; I did not see him from the time I commenced the work till it was finished. I made the agreement with him about the work, and how it was to be done; I then told him the day it would be finished, and on the day it was finished he came down.

Being again examined in chief, he says—I do not know any thing about it, whether Mr. Quick ever paid any money for Mr. Fisher or his family; he paid me, and that is all I know about it.

ALEXANDER WATSON.

Jeptha Cheesman deposeth and saith—I knew John P. Quick in his lifetime; never had much acquaintance with him. I knew his son-in-law, Amos Fisher. I did mason work on the house where Amos Fisher lived, on the corner of New and Burnet streets, in New Brunswick; Mr. Fisher called on me to look at the premises, and to make an estimate of the probable cost of the repairs which he wanted to have done there; and either told me that he would see his father-in-law about it first, or that I should go on and do the work, and his father-in-law would be down and pay for it; I don't precisely recollect which. Amos Fisher lived on the property during the whole time I was at work there. The two papers, marked *Exhibits E and F*, on the part of the defendants, executors of John P. Quick, deceased, are the bills and receipts for the work done above mentioned.

JEPTHA CHEESMAN.

Robert Adrain, on his oath says—The paper marked *Exhibit H*, and now shown to me, is in my own handwriting, and I am the subscribing witness to the execution of it. I have no recollection of the transaction.

Being cross-examined, the witness says—I have no recollection of the transaction whatever, except that the lot mentioned in that agreement was sold, and purchased by a man in New York. I do not know what was the value of real estate in New Brunswick in eighteen hundred and thirty-five; the succeeding year it went up. My impression is that I drew the deed from Quick, and he paid me for it.

ROBERT ADRAIN.

John Hicks deposeth and saith—I have resided in the city of New Brunswick upwards of thirty years; I am fifty-four years old; I am acquainted with the property on the corner of Burnet and New streets in New Brunswick, where Amos Fisher resided in the years eighteen hundred and thirty and thirty-one. It was considered that the property on the corner of Burnet and New streets was a cheap property when Mr. Fisher bought it, at twenty-five hundred dollars. The property was bought of Joseph Hall. At the time of the purchase, that property had not a very good run of custom, but the custom increased, and after Fisher had been there a little while it fell off again, some time before he went away from the house. It was so part of the time while Fisher was there, that I had sometimes to accommodate part of his lodgers; he had not room to accommodate them. I think there were considerable repairs done to the property after Fisher came there; Randolph did considerable repairing there. The reason why Fisher's business fell off, was that he neglected his business, and left it to his barkeeper, a Mr. Lane, who also neglected it. Mr. Randolph, the carpenter, is not now living; his name was Francis F. Randolph. I have been acquainted with the property for fifteen or sixteen years last past, and during that time lived opposite to it, except for a short time, when I moved away. When that property was sold to Mr. Ascough it was thought that it brought a fair price; some thought it was cheap enough, others thought it was well sold. There was a tornado passed over this city in June, eighteen hundred and thirty-five; it took down all the stables belonging to the property flat; how much damage it did to the house, I cannot tell; I cannot tell how much it took to put the premises in repair after the tornado. It cost me a good deal to repair mine, and at that time the carpenters raised their wages considerably. They had to build an entire new barn, and they built it larger than the old one; I should think five hundred dollars would not be much out of the way to repair those premises. I think the barn was not rebuilt larger than

it ought to have been for the property; the object was to make it a more desirable place for farmers to stop. John D. Sutphin moved to the new countries some ten or twelve years ago; I do not know his handwriting.

Being cross-examined, the witness saith—Mr. Fisher resided in that house for two or three years. After Fisher left, and prior to the tornado, I am not able to say who occupied the house; I think that in eighteen hundred and thirty, it was the talk that a railroad from here to Trenton was to be made. I do not know the amount of any bills that were paid for the repairs of that property after the tornado. When I speak of the probable cost, I speak without knowing positively any thing about it. The barn that was demolished by the tornado was an old building when the property was bought.

JOHN HICKS.

William Kent deposeth and saith—I knew Amos Fisher in the years eighteen hundred and thirty-four and thirty-five; I did not know John P. Quick. The signature to the receipt marked *Exhibit K*, on the part of the executors of John P. Quick, is in my own handwriting; the receipt was given for butcher's meat furnished for Mr. Fisher's family, while he was keeping tavern in New Brunswick.

WILLIAM KENT.

Henry Sanderson deposeth and saith—The paper marked *Exhibit N*, on the part of the said defendants, and now shown to me, is in my own handwriting; it is a bill for painting a sign, which hung in front of the house which Amos Fisher occupied, to the best of my recollection. I have no recollection of any transactions with Mr. Quick. Fisher requested me to make out the bill in Quick's name. I think that Mr. Fisher handed me the money for the bill. As far as I recollect, Fisher's name was put on the sign.

HENRY SANDERSON.

John M. Hagaman deposeth and saith—The paper marked *Exhibit C*, on the part of the said executors, is in my handwriting. The receipt was given for groceries furnished for Amos Fisher's family, while he kept the tavern, and before Mrs. Fisher's death. Mrs. Fisher sent for these groceries, and I did not like to credit them much. I went there and saw her, and she promised me it should be paid, and upon her word I let them have the things. It seems to me that one of the girls came up, and said her mother wanted to see me; so I went down there, and she promised me it should positively be paid. Mr. John P. Quick paid me the money;

when Quick paid me, he told me it was his daughter's request, on her death bed, that the money should be paid. When Quick paid this bill, I asked him whether, if I trusted Fisher any further, he would pay it; he said if I did, he would not pay it.

JOHN M. HAGAMAN.

Samuel Reamer, on his oath says—I knew William Forman; he is dead; I knew his handwriting; the signature to the paper marked *Exhibit O*, on the part of the defendants, is the handwriting of William Forman.

SAMUEL REAMER.

Exhibits made in this cause in behalf of John P. Quick's executors, defendants, and marked December 11, 1848.

A. A paper writing, dated 2 November, A. D. 1835, purporting to be Francis F. Randolph's bill and receipt for work done for John P. Quick.

B. A paper, bearing date February 11, 1835, purporting to be an order drawn by F. F. Randolph on John P. Quick, for eleven dollars.

C. A paper writing, dated 11 February, 1835, purporting to be J. M. Hagaman's receipt for fifteen dollars, from John P. Quick.

D. A writing, dated April 25, 1834, purporting to be Probasco & Watson's bill, and receipt from John P. Quick of $40.20.

E. A writing, dated June 2, 1834, purporting to be Jeptha Cheesman's receipt of twelve dollars, from John P. Quick.

F. A writing, dated April 20, 1834, purporting to be Jeptha Cheesman's receipt for nine dollars and five cents, from John P. Quick.

G. A writing, dated March 11, 1834, purporting to be a lease between John P. Quick and Nicholas E. Huff, for premises in the city of New Brunswick.

H. A writing, dated September 14, 1835, purporting to be an agreement between John P. Quick and John D. Ascough, for the sale of premises in New Brunswick.

I. A paper, dated May 17, 1836, purporting to be W. Veghte's receipt to Mr. Quick, for nine dollars.

K. A paper, dated February 12, 1835, purporting to be P. & N. Kent's receipt to Amos Fisher, by the hand of John P. Quick, for five dollars and forty-six cents.

L. A paper, dated December 21, 1835, purporting to be Josiah

Ford's receipt to Thomas I. Strong, for six dollars and fifty cents, for taxes.

M. A paper, dated May 1, 1834, purporting to be a policy issued by the New Brunswick Fire Insurance Company to John P. Quick, for twelve hundred dollars.

N. A paper, dated September 3, 1835, purporting to be Henry Sanderson's receipt to John P. Quick, for twenty-two dollars.

O. A paper, purporting to be William Forman's receipt to John P. Quick, for twelve dollars and twenty cents, dated September 14, 1835.

Depositions on the part of defendant, December 15, 1848.

John Kee saith—I was acquainted with John P. Quick in his lifetime; I came into his neighborhood in 1804; I was acquainted with him from that time till his decease. My belief is that he bore the character of an honest man; this, I believe, is the character he bore among the people. I once wrote a will for him; I can't state precisely the time, but my impression is that I wrote it after the death of Mrs. Amos Fisher.

Question. In that will, what provision was made for the heirs of Mrs. Mary Fisher?

This question was excepted to on the part of complainants, and witness answers—

I can't tell the amount, but my impression is that he left them all two or three thousand dollars; but I am afraid to name the amount, lest I should err. That amount, whatever it was, included whatever amount was in his hands as trustee of Mrs. Mary Fisher. He said that a good deal of that fund had been expended, but that whatever was left was included in this bequest.

A paper, marked *Exhibit P*, for defendants, being shown, witness says—It is in my handwriting. I drew this paper as a form of a receipt for John P. Quick, which he should take when he paid money to Mrs. Mary Fisher.

And being cross-examined on the part of the complainants, says—I understood that the will I wrote for John P. Quick was destroyed; I never heard John P. Quick say so, but I have heard so from others. I never wrote but this one will for him. At the time I wrote this will for him, I do not recollect that he stated any specific sum as the amount of the trust fund in his hands. I am now a farmer, and have formerly been a school teacher. I think it likely that I was a teacher of a school at the time I wrote this will, but I

am not positive. I will not say positively that it was not before the death of Mrs. Mary Fisher that I wrote this will.

JOHN KEE.

James L. Fisher says—I am the brother of Amos Fisher, who married Mary Quick. I was acquainted with John P. Quick in his lifetime; I knew him thirty years, up to the time of his death. I am acquainted with the tavern property in New Brunswick where Amos Fisher lived, being the property which John P. Quick purchased. I went with him to New Brunswick to look at that property before he bought it, or rather he went with me. He said if I would take him down, he would go and look at the property. He said this to me at his own house. I went there at the request of my brother Amos, who wanted me to get the old man to look at the property. Amos, at this time, had come to my house from New Brunswick, and was with me at Mr. Quick's when this conversation took place. Amos talked to the old man about the property, and thought it was cheap. Amos then went to the house, and left the old man and myself at the barn, and we then talked about it. I said to him, if it was as Amos represented it, I thought it would be to his (the old man's) interest to buy it. I also said to him that he had the trust money by the will of Peter Prall, and that he might use it in the purchase of this property. He said that money was his. I was urging him to buy this property for Amos; that he (Amos) was as well calculated to keep a public house as any thing else, and perhaps better. I also said that such kind of property would rent for the interest of the money better, almost, than any kind of property that could be purchased. Why, says he, the price of the property ($2500) would be more than the amount of the trust money. I said to him, he could buy the property, and take the deed in his own name; and then he concluded he would go and look at the property, if I would go and take him.

When Amos talked to him, he said nothing; but after Amos went away, then this conversation, as I have detailed it, took place, and the old man began to listen to me. Amos had said to him, that the property was for sale; that it was cheap, and wanted him to buy it; that he had come there for that purpose (that is) to get him to buy it.

Amos did not bring his wife with him; he came up alone. I don't know that Amos said any thing to him about the trust fund; I am inclined to think he did not. Amos first came to my father's, and said to my father and me, that the property was cheap,

&c., and that he would like to have it. My father said, you know I can't buy it (for he had just been purchasing a property), and Amos said no, I know you can't buy it, but my father-in-law (John P. Quick) can; and then Amos wished my father to speak to him on the subject. Why, (says my father) speak to him yourself. Amos said it would be of no use; and, after some further conversation, I agreed to go with Amos, and did go, and had such conversation with Mr. Quick as I have stated. I can't say whether Amos urged upon the old man the application of the trust money in the purchase of this tavern property, as being the most advantageous use of it. It is a good while, and I cannot recollect, likely, near all that passed. I said to the old man, you say you are doing something for Amos and his family, and I know my father is, and you will soon be spun out; now, if you mean to make your children equal, you will be done giving them by and by. After I closed my conversation with the old man, I can't say whether Amos had any further conversation with him. My conversation with the old man was in the barn yard, after which, my impression is, we went to the house.

I don't remember of seeing Amos after this conversation, till I saw him again in New Brunswick; I don't remember whether we went home together or not. Shortly after this conversation, the old man and I went to New Brunswick to look at and view the property. We did so. We both concluded that he could not lose any thing by buying the property; we thought it was cheap. I think we did not go to Amos'. I saw Amos at this time; he was tending bar for Henry Smith, at New Brunswick. I don't recollect whether, at this time, I saw Amos' wife; the old man might have seen her at this time, and I might have gone there myself, but I don't recollect.

My impression is, that the old man stayed with me that night at the tavern of Henry Smith. I don't remember of ever hearing Amos' wife speak about her father's purchasing this property for them. My impression was that he made use of the trust money, as far as it went, in the purchase of that property. I can't say positively whence I got this impression; I might have received it from the conversations with the old man, as detailed heretofore in my examination; I can't tell of any other source from which I could have received this impression.

I think the old man bargained and articled for this property during this visit to New Brunswick. I know that there were writings drawn. I think that Amos and the old man talked about the

property at this time. Amos went with us to look at the property. I don't remember that either of us said any thing to the old man, at this time, about the trust fund. I don't recollect whether, at this time, Amos urged the old man to buy the property or not.

And being cross-examined on the part of the complainants, says—That I never heard the old man say any thing to the contrary of what he declared to me, in my principal examination, "that this trust money was his." He seemed to take with the proposition of buying this property, when I suggested to him the idea of his taking the deed in his own name. When I urged him to buy this property, I did it because I thought it a good investment. I had no reference to the trust fund or any other fund. The old man was the owner of considerable property. He owned one fine farm and a share of another, and was considered a wealthy farmer, having money at interest. I know that he had this trust fund in hand, and had not had it a great while before, as I supposed. When I said to him, that he and my father were giving from time to time for the support of Amos and his family, I did not know how far he had helped and assisted any of his children. I don't think he had at that time much helped his daughter Mrs. Mary Fisher.

And being again examined in chief, says—That till I mentioned to the old man that he had better take the deed for this property in his own name, he had not appeared to have thought of purchasing the property at all. I can't say whether I went there to get the old man to buy the property for himself or for Amos; but I wanted him to buy it, so that Amos and his family might have the benefit of it. It was not my contemplation or wish that the deed should be given to Amos at the time of this conversation. The old man would not entertain the idea of purchasing, until I suggested the trust fund, and also his taking the deed in his own name. At this time I did not know that he had the trust fund in hand, nor do I know that he had. I expected he either had, or would soon have it in his hands.

JAMES S. FISHER.

John D. Hagaman says—I was acquainted with John P. Quick in his lifetime; knew him forty years and upwards; I lived about a mile from him since I have had being. He always bore the character of an honest man in his neighborhood; he was a member of the first Presbyterian church in Amwell for the twenty last years of his life. I am a member of the session of that church. He

and I acted together in the eldership of that church for many years; can't say how long. He was much esteemed in that church. He was trustee of the congregation for many years before he was chosen elder; was president of the board of trustees. He was universally relied on in that church as a man of great integrity. He bore the character a kind, affectionate, and humane man. He was always greatly relied on to transact any business for the church.

And being cross-examined on the part of the complainants, says—That as a trust agent in the church, I considered him as a business man, but as an adviser he was not. His trust agency extended only to the temporalities of the church, as president of the board of trustees. Ecclesiastically he was not considered very intelligent. His domestic matters he managed very well. In general intelligence, he was among the mediocrity. The church had a fund of four or five thousand dollars while he was president of the board of trustees, the papers and the accounts of which were in his hands.

JOHN D. HAGAMAN.

George F. Wilson says—I was acquainted with John P. Quick in his lifetime; knew him about thirty years; lived within half a mile of him all this time, except one year. [Excepted to.] Shortly before the death of his daughter, Mrs. Mary Fisher, John P. Quick came to my house, and said that he had received a letter shortly before from Mrs. Mary Fisher, in which she stated that Amos was not at home; had not been at home in some days, and that she was in want of the necessaries of life, and wanted him to come and relieve her of her necessities. Upon this, he wanted to borrow my wagon, the next day, to go to New Brunswick to see her. He got my wagon for this purpose, and so used it, as I supposed. When he came back, he seemed to be very much hurt, and said that Amos' family gave him more trouble than all the world beside; and he seemed to be very much affected, and said he was getting too old to have such trouble; that it bore him down to the ground. It made a deep impression on my mind at the time. This is pretty much all I can remember in this conversation.

This part of the testimony is excepted to, on the part of the complainants.

Witness further says, that John P. Quick was always esteemed as an honest man in his neighborhood, and that if ever there was an honest man in the world, I believe he was one. Mr. Quick and myself were admitted to the communion of the church at the same time, and ordained elders at the same time.

GEORGE F. WILSON.

Mrs. Fanny Polhemus says—I am the sister of Mary Fisher, deceased, wife of Amos Fisher, and daughter of John P. Quick. I know of my father's purchasing a tavern property in New Brunswick for Amos Fisher and wife. It was said that this property was purchased with money left to Mrs. Mary Fisher by her grandfather, Peter Prall.

This last excepted to, on the part of the complainants.

I have visited my sister Mary Fisher, in New Brunswick; she was my only sister. I visited her there both before, after, and during the time she was in the tavern property. Part of the time, I should think, she was rather in poor circumstances. I understood he bought a piece of property for her before he bought the tavern property; I understood it so from the family. It was talked in the family that this other property was bought for her, if she would leave Amos and come and live there. Mrs. Fisher did not leave Amos, and this property was sold, and the tavern property afterwards bought. I think my father, during the last sickness of my sister, gave directions to get what things they wanted; that he would pay for them, and that they should not suffer. This I learned from my sister, while on a visit there. During her last sickness, and at all other times, she spoke affectionately of her father and of his kindness to her. I rather think she spoke of the tavern property, as having been her home. This she did when she lived in John D. Sutphin's house, where she died.

And being cross-examined on the part of the complainants, says—That after my sister left the tavern, I often heard her say that she wanted things to make her and the family comfortable. I don't know what she thought, but I thought she had a hard lot of it in New Brunswick. She had six children. When speaking of the tavern, as I before stated, my sister spoke of it as having once been her home. I was never in New Brunswick while my father was there. I have no knowledge, personally, of my father's giving her any money while she was there, but I always understood that he did give her money; I think I understood it from him. I think he did give her money. Before the tavern property was bought, it was talked of in the family, that it was to be bought for Amos and his family, and that they were to live there.

And being examined in chief, says—That I think my father provided for my sister's wants as soon as he ascertained them, as far as I know. I have heard her say she would like to have money. I don't know that I have ever heard her say that my father refused or neglected to supply her with any comfort that she desired of

him; I don't know that he ever neglected to supply her with any comfort that he knew she needed. I should not think that the hard lot of my sister in New Brunswick arose from the neglect or treatment of her father. I think I have seen Amos treat his wife in a way that I thought was unkind.

And being again cross-examined, says—It is very likely that her poverty contributed to make her lot hard while in New Brunswick.

FANNY POLHEMUS.

Jacob Polhemus deposeth and says—I was acquainted with John P. Quick in his lifetime. I am the husband of Mrs. Polhemus, the last witness. I know the tavern property in New Brunswick, where Amos lived in 1830, 31, and 32. I heard the old man say he bought this property for Amos and his wife. I heard him say that Amos wanted him to buy this property.

I was at Amos' while he lived on this property; I was there during the latter part of the time Amos lived there. I did not think he attended well to his business during the latter part of his time. I have known persons to go there, and not finding any accommodation, to hook up and go away. I was one of such persons, and Abraham Prall, one of my neighbors, another. We called for hay and oats for our horses, and finding none, we went to another tavern. At the bar people were going in helping themselves, and going out again. I did not see them pay; Amos was sitting in the bar-room at the time. The old man said he bought that property for them, and put them in rent free, and they could not live there.

A paper marked *Exhibit Q*, for defendants, being shown witness, he says—The old man and I went to New Brunswick together, and Mrs. Fisher wanted a little money, and the old man had not taken any money with him, and sought me out to get some of me. He did not find me, but sent an order to me by Amos, and I paid Amos on it eight dollars, and kept it till the old man paid me the money. This paper, *Exhibit Q*, is the order.

And being cross-examined on the part of the complainants, says—I can't say with what money he paid it; nothing was said about trust funds. The old man said, that when he left home he did not expect that Mrs. Fisher was in need of money, otherwise he would have taken money with him; but that he had found her in need of it, and that was the reason why he borrowed of me. He said that he had been down a short time before, and did not suppose that she wanted any money at the time spoken of. I think when I found him without hay and oats, was in the fall of the year,

shortly before he left the tavern. All that I know about Mrs. Fisher wanting money, I heard from the old man.

JACOB POLHEMUS.

George F. Wilson, being called again on the part of the defendants, says—I tendered some money to Elizabeth S. Fisher, one of the complainants in this cause; this was at February court, 1847, as I think, at the house of Peter P. Fisher, in this place. I kept no memorandum of the amount tendered. I did this at the instance of Gideon Quick, one of the defendants in this cause, and as a legacy due to her from his grandfather, Peter Prall. It was gold and silver money. About forty dollars of it was in gold, and the rest of it in silver half dollars. I understood it was Elizabeth S. Fisher's share of a legacy left her mother by the will of her great grandfather, Peter Prall. This I understood from Gideon Quick. The amount was between two and three hundred dollars. I counted out the money to her on the table, and told her what it was, as I have stated, and she refused to take it. Elizabeth S. Fisher is now the wife of Cortenius S. Young.

GEORGE F. WILSON.

Peter P. Quick deposes and says—I am the son of John P. Quick, deceased. My father was seventy-seven or eight years of age when he died. I, with my father, were the executors of Peter Prall, deceased. The trust money due to Mary Fisher, under the will of Peter Prall, passed through my hands into the hands of my father. My father called on me for various sums of money, at different times, which he said he wanted to pay to Mary Fisher, and I advanced him money accordingly, in sums of $20, $10, &c. I advanced the moneys, as contained in a certain statement and receipt signed by my father, and marked *Exhibit R*, on the part of defendants. I think the five first items in this receipt, amounting to $86, is the money I advanced to my father, in small sums, which he said he wanted for Mary Fisher, and I presume he paid them to her.

And being cross-examined on the part of the complainants, says—I don't know how this statement and receipt, signed by my father, got out of my hands. I have a recollection that this receipt was given to me. It had passed out of my mind, but I recollected it today before I came here. I don't know how my father came into the possession of this receipt. I can't say that I have any evidence in my possession showing that I paid this trust money to my father,

only I know that I paid it to him. I don't know that I have any personal knowledge that any of this trust money was paid to Mary Fisher.

PETER P. QUICK.

Hiram Servis deposes and says—That, in the year 1835, he was an apprentice to Isaac Lawshe, a carpenter. Isaac Lawshe moved out of the state in 1837, to the western country. The season of the tornado in New Brunswick, Isaac Lawshe did some work in New Brunswick for John P. Quick, on the tavern property where Amos Fisher formerly lived. The work was done by contract. I cannot tell the price positively now; I once knew, but I have not thought of it since till yesterday, and I cannot say how much it was; my impression is that one contract was $460. There was other work done, but I cannot say whether it was included in that contract or not. There were two chimneys topped out, and the roof repaired where the fallen chimneys had broken through, and other mason work done about the house. The $460 was, I think, on the contract for building the shed; I am not positive. I do not recollect whether the work done to the house was included in this or not. There was considerable work done about the house. I should think from $450 to $500 a pretty fair estimate of the whole amount of the work done there. Wages were higher in the city, and not so high in the country.

And being cross-examined on the part of the complainants, says—I have no accurate knowledge of the amount of lumber used in these repairs, or of the size of the building, and, therefore, my estimate cannot with certainty be relied upon.

HIRAM SERVIS.

Farley Quick deposes and says—That the paper marked *Exhibit S*, for defendants, is signed by me in my handwriting, as a witness thereto. I was present when my grandfather, John P. Quick, paid Israel Fisher the money mentioned in this receipt. He showed Israel the account of the settlement of the trust money; how he had disposed of it. Israel was satisfied with this settlement; he found no fault with it. I believe he was satisfied with the amount of money he received. There was not a great deal of conversation. Israel seemed pleased, and said nothing but what he thought the account was right. After he got the money, he invited my grandfather to come and see him.

I went once with my grandfather to New Brunswick, while Amos and family lived there. He went, as he said, to see how

they were getting along, and if they wanted any thing, to give it to them. He had no other business there, as I know of. I went with him for company.

And being cross-examined on the part of the complainants, says—I am the son of Gideon Quick. This receipt was given at my father's. My grandfather lived, at this time, at my father's. My grandfather called me in when this receipt was given. I was about the house at the time. Israel Fisher came for the money, as I expect; I don't know whether he was sent for to get the money, or whether he came of himself. When I came into the room, I found my grandfather and Israel Fisher with the rest of the family in the room. I can't say certainly which of the family were in the room or absent at the time. I can't say whether they were or were not alone.

I did not hear Israel tell my grandfather that he would give him a receipt for all the money he paid him, and not a receipt in full. I think my grandfather told him that all the others had given him a receipt in full. If I am not mistaken, Israel asked him if they had given him a receipt in full, and he told him they had. I think my grandfather made a statement to him at the time. I did not hear a statement read, or any questions asked about any item of the account. I don't know that any thing was said by my grandfather why the receipt should be in full. My grandfather said this was the amount due him after they had settled up their business. I think it was $240, or something like that. I can't remember the amount paid him without looking at the receipt. I wrote the receipt at the time, up stairs. He always did his business up stairs, and we went there to do it. I don't remember a single statement read by my grandfather at the time from a paper that I think he had. I would not say positively that Israel had any paper in his hands, except the receipt which he signed. I think my grandfather talked over the account with him.

FARLEY QUICK.

Runkle Rea deposes and says—I was acquainted with John P. Quick in his lifetime; lived a neighbor to him, about a mile from him. I know his grandson, Peter P. Fisher; he served his time in the village where I live, (the village of Greenville).

I heard Peter P. Fisher talk of money coming from his grandfather Prall's estate, being a legacy left to his mother, that he was to have the use of after his mother's death. I kept a store in Greenville, and Peter P. Fisher wanted some notions out of the store,

and this conversation took place when he spoke of his means of payment. He said, when he got that money, he would settle with me. He went and settled with his grandfather, and brought his grandfather's due bill, assigned it to me, and I gave him the balance in money for it. I don't remember the time; it was shortly after he got the due bill, as I think. He found no fault with the settlement. He seemed pleased; said he owed some little debts, and now he could pay them off. John P. Quick dealt some with me in my store; he bore the character of a very honest man.

And being cross-examined, on the part of the complainants, says—That I am not prepared to say whether the legacy Peter P. Fisher said was coming to him was a specific legacy or a part of the trust fund left to his mother; I don't recollect the sum exactly, but it was between $100 and $200. Upon reflection, I think that the money coming to him was the money left in trust for his mother. He might have had other due bills at the time; I only saw one due bill. In all my dealings with Peter P. Fisher I have always found him correct and upright. Whether the settlement of Peter P. Fisher with his grandfather was in full, or not, I do not know.

RUNKLE REA.

James N. Reading deposes and says—That in the spring of 1841, John P. Quick, deceased, called upon me, at my office in Flemington, and asked me some questions in reference to this trust fund. He brought with him some papers relating to the matter, which he wished me to look at, and which I did look at. The papers consisted of an account of the way in which he had disposed of the trust fund, together with some receipts; I mean receipts from persons to whom he had paid moneys of the trust estate, as he informed me. The paper marked *Exhibit T*, for defendants, is the account which he brought. The receipts were for the payments made by him, as set forth on one side of this account, marked *Exhibit T*. I can't be certain whether he brought receipts for every item on that side of the account, but my impression is that he did, except for one item of $500, charged March 15th, 1831. My impression is, that this charge of $500 was made up of several charges and receipts. Whether I saw all these charges and receipts, I cannot now be certain. He wanted me to look over, and examine the account, and see if the principle upon which it was stated was correct; that he wanted to make a settlement of that trust estate; that he had thought he had made an arrangement of the matter in his will, wherein he had left the heirs of Mrs. Mary Fisher a sum which

would cover all that remained in his hands of this trust fund, together with what else he thought would be their full share of his estate. That ever since Mrs. Fisher's marriage, he had done a good deal for her and her family above what he had paid them out of the trust fund.

I examined the account, and told him I did not see any thing wrong in the principle of the statement, and that, unless there was something wrong in the calculation of the interest, I did not see any thing that stood in need of being corrected. I said I was not sure, from appearance of the account, that he had not lost interest. He said that would make no difference. Said he knew there were other ways in which he had lost money, which were not charged in the account, or some such expression; but that he would rather his credits should be too small than too large. That Cortenius S. Young and Peter P. Fisher had complained about his not having settled this matter, and wanted their share, and that he meant now to settle it, so that they should be satisfied; and that it would make no difference, because whatever he paid them in this way out of the trust fund, he intended to deduct out of the amount which he had left them in his will. Said he intended to make a new will, in order to make this deduction. He said that money of the trust fund had been lost by the purchase of the tavern property in New Brunswick; but that Amos and his wife had both insisted upon his applying that fund to the purchase of this property; that he did not want to be bothered with the property; but that they, nor Amos' friends, would give him any rest till he bought it; and he had no doubt but that Amos would have done very well there, if he had not neglected his business.

My impression is, that I advised him to file this account in the surrogate's office, and have it passed by the court.

He paid me a fee for my advice, but whether I gave him a receipt for it, I don't recollect, nor do I recollect the amount of the fee he paid me.

The counsel for the complainants except to all the declarations of John P. Quick, as detailed in the examination of this witness.

And being cross-examined on the part of the complainants, says—I am not sufficiently acquainted with the handwriting of the account to state whose it is. I have no knowledge that this account was filed in the surrogate's office, or passed the court. I have been told, by Dr. George P. Rex, that it was filed, but that no attempt has been made to pass it. I think I was told, by John P. Quick, that he had not attempted to pass the account, for that he had set-

tled principally with the heirs, and a further settlement in the office was unnecessary. I have inquired of the present surrogate, and he informed me there was no such account on file. I have no recollection of any book in which the charges in this account were originally entered. I never heard John P. Quick say that any of the heirs of Mary Fisher were dissatisfied with the amount which he proposed to pay them. He told me of the amount he intended to pay them. My impression is, that I saw Mr. Quick, and had a conversation with him after he had paid Peter P. Fisher and Cortenius S. Young. I have no recollection of the time when I last had a conversation with John P. Quick about this trust fund; but the tenor of that conversation I do recollect. Upon reflection, I now think I had two conversations with Mr. Quick, after showing me the account, in the first of which he said he had settled with Cortenius S. Young and Peter P. Fisher, and that they had given him receipts in full, and were satisfied; that Mr. Young wanted to look at the account, to see if the calculation was correct; that Young took the account to look over, and that he told Young that I had looked over the account, and that if there was any mistake in it, it should be rectified. I do not now recollect any thing that would be advantageous, or otherwise, to the parties in controversy in this cause.

JAMES N. READING.

George F. Wilson, being again examined on the part of the defendants, says—That in my examination yesterday, I could not recollect the amount I had tendered to Elizabeth S. Fisher. The reason of my not recollecting it, is that I had never charged my mind with it till yesterday. I kept a memorandum of the fact and of the amount, which I had put on a slip of paper, and put away in a drawer at my house. This paper I have found since my examination of yesterday, and on it I find the amount which I tendered E. S. Fisher to be $245.87½ in specie. The tender was made on the 10th day of February, 1847. It was all in silver half dollars, except the gold pieces, and my impression is that the gold pieces were in American five dollar pieces. I can't say that the silver was in American half dollars, but my impression is that it was.

GEORGE F. WILSON.

George P. Rex deposes and says—I was acquainted with John P. Quick nearly eleven years before his death. I lived a neighbor to him from 1837 till his death, in 1845, except one year, when I

was in Philadelphia. I was his physician from 1837, but I was out of the neighborhood during his last illness.

He once called upon me to visit his daughter, Mary Fisher, in New Brunswick. I then lived at Clover Hill. In December, 1834, he called upon me, and said that his daughter Mary had a particular desire to see me personally, and said he would pay me for my visit. I accordingly went. The charge in the account of April 30, 1835, of five dollars paid me, is the charge for this service. In the spring of 1841, he called upon me on the subject of the settlement of the trust fund under the will of Peter Prall, deceased. He said that Peter P. Fisher had called upon him for a settlement. I think he said he had been told that this money was his, to do as he pleased with, but if it was not his, he was willing to settle. He said he was in a good deal of trouble about it, and wanted some advice. I advised him that I was not lawyer enough to tell him who that money belonged to after the death of Mary Fisher, and that he had better make out his account, and consult some legal gentleman in Flemington. He asked me if I would make out the account for him, and go with him to Flemington. I consented to do so, and the time was agreed upon when I should go to his house to do it. At the time agreed upon I went to his house, and made out the account, marked *Exhibit T*, for defendants. He then fixed upon a time to bring me to Flemington in his son Gideon's carriage. A short time after this, we came to Flemington, and consulted James N. Reading, esq. The whole matter was submitted to him in his office, who, as near as I can recollect, gave his opinion, first upon the will of Peter Prall. His opinion was that it was a doubtful point whether the trust money went at all to the children of Mary Fisher; but as they were his grandchildren, and to save trouble, or something like that, he would advise him to pay them the residue. The account that I had drawn up was then shown to Mr. Reading, and the papers and receipts from which I had made out the account, which, after he had examined, he said the principle was right. He (Mr. Reading) advised a copy of this account to be made out and filed in the surrogate's office, as that was all that would be necessary to enable Mr. Quick to settle with the children of Mary Fisher, as they came of age. Mr. Quick said he thought there was $500 coming to him in that settlement, but that he would rather give them this, than take a penny away from them.

A copy of this account was made out by me, and filed in the surrogate's office in the presence of Mr. Quick. Mr. Reading further directed Mr. Quick to take receipts from those children, as he

settled with them; have them duly acknowledged and recorded in the surrogate's office. I, being a commissioner to take acknowledgment of deeds, Mr. Quick pressed me to go with him to aid him in a settlement with the children, and to take their acknowledgment to the receipts, and I did so. Mr. Quick told me that Cortenius S. Young and his wife and Peter P. Fisher would meet him at my house to conclude a settlement. Peter P. Fisher came to my house accordingly, but Young and his wife did not come. He and Peter P. Fisher settled there that day, and I took the acknowledgment of the receipt. Paper marked *Exhibit U*, for the defendants, is the receipt.

Peter P. Fisher, at the same time, executed to Mr. Quick a refunding bond, being *Exhibit V*, for defendants. I am the subscribing witness to this bond. I saw it executed. Peter P. Fisher appeared to be pleased, and expressed himself, as I think, that he was pleased he had got the matter settled. I believe that Mr. Quick showed Peter P. Fisher the account, and my impression is that he said it would be right. Upon reflection, I can't say whether Peter P. Fisher came to my house on the day appointed for settlement or after. My impression now is that a settlement was first made with C. S. Young. Mr. Quick called upon me to go to Mr. Young's for the purpose of a settlement. He said that he was worried; that he had not slept, and he wished to have it settled and off his mind. I was just preparing to go out, and told him he had better get some one else to go with him. He said I would do him a particular favor if I would go with him. I consented to go with him. We went to Mr. Young's, and made the settlement, and I took the acknowledgment of the receipt, being the paper marked *Exhibit W*, for defendants. Mr. Young gave, at the same time, a refunding bond, being the paper marked *Exhibit X*, for defendants. I am the subscribing witness to the bond; I saw it executed. Mr. Quick showed Mr. Young the account marked *Exhibit T*, for defendants. Either he or I showed it; at any rate Mr. Young saw, and examined it. Mrs. Young seemed to be pleased to see us, but Mr. Young was huffish and angry when he came in, and said he would not settle. Mr. Young was not in the house when we first came; he was in the woods, and his wife sent for him. We then related to him our business, and he said he would not settle. One of us told him that Mr. Reading had examined, and said the account was right. Mr. Young said it might be right for all he knew, but he wanted some business man to examine it. Mr. Quick said it would make no difference; that here it was, and that a copy was left in the surro-

gate's office, and he could get some business man to examine it; and if it was not right he would make it right. Mr. Quick being so anxious for a settlement, I prevailed upon Mr. Young to sign the receipt, with the understanding that he should get some business man to examine it, and if there were errors in the account, they should be corrected; and I added to the receipt, marked *Exhibit W*, for defendants, the words "errors excepted," in order to convey this understanding before the receipt was signed, and I read the receipt to him before he signed it as it is now written. I did not understand Mr. Young as objecting to the principle upon which the account was stated, but only that he wanted some business man to look over it, to see that it was calculated right. He made no objection to the charge of the repairs of the tavern property, contained in the account; nor did he make any objection to the loss which had accrued to the trust fund in consequence of the purchase of the tavern property. Neither did Peter P. Fisher, after the time of the settlement with him, make any objection on these, or any other accounts. I was present, also, at the settlement with Fanny Fisher. The paper marked *Exhibit Y*, for defendants, is the receipt of Fanny Fisher, which I attested as a witness, and saw her execute. She made no objection to the settlement; she said nothing about it. She was sick with the consumption at the time, but she was about the house. This settlement took place at the house of Josiah Higgins, where she had her home. She appeared to be pleased, and took the note which her grandfather gave her for the account, and gave her receipt.

When Mr. Quick first spoke to me to aid him in the settlement, I asked him what the nature of it was, and he said it was in reference to the disbursements of the trust fund under the will of Peter Prall. He first brought out various bills and receipts, among which he produced several receipts signed by Mrs. Fisher, of moneys paid to her, in several small sums. The papers marked *Exhibit Z*, for defendants, and *Exhibit P*, with the names torn off, are two of the receipts. One of these receipts is in the handwriting of John Kee, the other, I think, is in the handwriting of Mr. Quick. I think the endorsement on *Exhibit P* is in the handwriting of Mr. Quick. To the best of my recollection, he had like receipts for the first five items in the account, except for my account; to the best of my recollection, Mr. Quick had receipts for all the items contained in the account. I drew up the account from the receipts furnished me by him, and from the deed for the tavern property, which was then presented, which he said he had bought for his daughter and son-

in-law with the trust fund. He said that his daughter had wanted him to buy that property as a home for her, and she had made him do so. He said that she and her husband were both anxious that he should buy that property with her money. I understood her money to be the trust money.

The paper marked *Exhibit Q*, for defendants, he spoke of as being the order drawn by him on Jacob Polhemus, in favor of Amos Fisher, at New Brunswick; that the money was raised on this order, and paid by Amos to his wife, in his presence, and that he afterwards paid it back to Mr. Polhemus. He gave as a reason why he paid his daughter in small sums from time to time, was that if he should pay her in larger sums, Amos would get it away from her, and it would do her no good, and that he therefore had to provide for her necessities in New Brunswick; that he had paid considerable moneys to her, which he had no account of; that, in order to provide for her, he had to make arrangements with the bakers and the butchers in New Brunswick. He said that Amos had lived there four years, and that he had never paid him any rent for it.

When I paid Mrs. Fisher the professional visit, she lived in an upper room in a house in Burnet-street, below the tavern; she was pleased to see me, and expressed herself grateful to her father for sending me.

I drew up a will for John P. Quick about the first of April, 1841. He said he wanted me to draw up a will like the one that Mr. Kee had drawn up for him, except the clause relating to the children of Mary Fisher. The will drawn by Mr. Kee was dated in, I think, 1836, and which I had before me; it was in the handwriting of Mr. Kee. Mr. Quick burned this will, in my presence, after the one drawn by me was executed. In the will written by Mr. Kee, he had bequeathed a certain amount to the children of Mary Fisher, which amount included the balance due them out of the trust fund, and was to be a settlement of that matter. He then looked at the account marked *Exhibit T*, and, after figuring awhile, he directed me to write in his will a clause leaving to these children the sum of $2000. To this bequest of $2000 he attached a condition, that before these children should receive this bequest, they should enter into bonds to his executors in double the sum, with good security, conditioned that they would not disturb the settlement, as contained in the account marked *Exhibit T.* He did this, he said, because of the manner in which Cortenius S. Young

had acted at the settlement, and because he had heard that he (Young) meant to disturb the settlement.

This will was afterwards destroyed. Shortly previous to the destruction of this will, I drew another will for him, which is his last will. This last will is dated the 26th of December, 1843.

In the last will, he directed me to leave out the condition annexed to the bequest, saying, that recently Mr. Young had been to see him, and seemed friendly and satisfied, and some time had elapsed, and he had got no one to examine his account, as he knew of, and he thereupon concluded he was satisfied with it. Besides, that he had since united with the church, and he hoped he was a better man; and he did not wish to leave behind him any thing of an unpleasant character to wound his feelings. And that he then further said, that he did not think that Mr. Young would ever disturb that settlement. He then added, that he would not leave them a cent, if he thought they would ever disturb it. He said that, from what he had expended for Mary Fisher, when the children got this bequest, they would have more than their proportion of his estate. He said that his son Gideon had always staid at home, and helped him earn his money, and that he never had had much of any thing.

I have heard C. S. Young, one of the defendants, say, that he either had, or would, (my impression is it was had) furnish money to carry on this suit.

I at one time offered money to Jacob S. Manners for Elizabeth S. Fisher, as her guardian. I saw a letter to the executors of Jacob P. Quick from Jacob S. Manners, as guardian of Elizabeth, demanding of them her share of this trust fund. At the request of the executors, I went to the house of Jacob S. Manners to pay this money, on the 11th day of July, 1846. I tendered to him $240.54 in American gold and silver coin, as Elizabeth's share. I told him what it was, and that, in obedience to his demand, I had brought the money. He refused to take the money.

All the declarations of John P. Quick, in this examination, are excepted to on the part of the complainants.

And being further examined in chief, says—That at the time of the settlement of C. S. Young, there were present Mr. Quick, Mr. Young and his wife, their hired girl, and myself. There were no other persons present that I remember of.

And being cross-examined on the part of the complainants, says—That with regard to the prohibitory clause in his will, that I did not advise Mr. Quick to insert it in his will; I did not advise

him it would be right to cut off the children of Mary Fisher, if they did disturb the settlement.

Question by complainants' counsel: Were you not the efficient agent of Mr. Quick and of his executors in effecting a settlement with the heirs of Mary Fisher? *Answer.* I was no more the efficient agent than what I have stated in my examination in chief. I drew the refunding bonds; I drew the account; I filed the account in the surrogate's office; I left it there with Adams C. Davis, the surrogate, to be filed; I do not remember the time; it was before a settlement was made with any of the heirs. The account filed with the surrogate was a copy of the account marked *Exhibit T.* I do not know that any one took this account away from the office.

I have no interest in this suit. I am not employed to conduct this suit, or to assist in the prosecution of it in any way. I was present at New Brunswick a short time since, at the examination of witnesses in this cause. I am giving to Mr. Reading all the aid and assistance I can in defending this cause. I am looking up evidence and getting proof to aid Mr. Reading in defending this cause; I mean all that I honestly can. I did not go with Mr. Quick to the house of C. S. Young, to settle with him, before the day appointed for Mr. Young and P. P. Fisher to meet Mr. Quick, to settle with him. Upon reflection, I think there was an appointment to meet at the house of Mr. Quick before the time appointed for the meeting at my house.

Mr. Young refused to sign the receipt until he was assured by Mr. Quick that the errors should be excepted, and it is my impression that, upon this assurance, I prevailed upon him to sign it. I have no recollection of C. S. Young and P. P. Fisher coming to my house, and meeting there Mr. Quick, and having there some conversation about the settlement, at a time before there was a settlement.

I am not in the habit of attending to such business as this. I have helped settle estates in several instances.

When I tendered the money to Jacob S. Manners, I offered to take it out of the bag, and count it. He said it was not necessary, he would acknowledge it; that he was satisfied there was money there. I don't remember why he refused to receive the money. I have no recollection that he said, that he had not yet settled with Mr. Quick, and he did not know what the amount was, as a reason why he refused to receive the money.

It was at the dinner table to day that I heard C. S. Young say,

that he had furnished money to carry on this suit, and that he wanted it known. I took it as the truth, spoken in jest.

Question. Are you and C. S. Young on friendly terms? To which the witness refuses to answer. Witness says I will answer, if Mr. Reading says I must. Mr. Reading then advised the witness to answer, and he refused to do so.

I have kept a written memorandum of some things that I have done in these matters, and of some of my conversations that I have detailed in my examination in chief. I made those memoranda at the time, or shortly after the transactions took place. I made these memoranda because I keep a diary. I keep a diary of some conversations with some individuals. I continued this diary to the present time; have kept it since 1834. I don't know whether I shall or not enter into my diary the conversation at the dinner table to-day. I was not subpœnaed as a witness at the two examinations of witnesses in this cause in New Brunswick, at which I attended. I went there in company with Gideon Quick.

I was subpœnaed as a witness to give evidence in this cause here, yesterday and to-day.

And being again examined in chief, says—That I have done no more in this matter for these executors than I would do for any neighbor who had been imposed upon as much as they have in this affair. I made this answer to Mr. Hagerman, the counsel for the complainants, in answer to his question, whether I had not looked up evidence in this cause for the executors.

And being again cross-examined, the following question is put to the witness: whether you meddle or interfere with any or every lawsuit in your neighborhood, in which one party or the other is imposed upon?

Answer. I don't interfere or meddle with any body's lawsuit, and never have.

GEORGE P. REX.

Witnesses for complainants.

Peter C. Schenck, a witness sworn and examined on the part of the complainants, deposes and says—I have on a certain time, to wit, on the 16th of August, 1846, heard Dr. Rex, the last witness, say that John P. Quick had called on him to go over to C. S. Young's to make a settlement with Young of a legacy that was due him. There appeared to be some controversy between Dr. Rex and Mr. Young, and they were brought at this time before the church at Clover Hill concerning this controversy. They were

both members of the church. Dr. Rex said, before the session of the church, that he had no agency in this matter, further than to draw a receipt for Mr. Young to sign, from a copy furnished him by Mr. Reading. He said he did this at the request of Mr. Quick, Mr. Quick alleging that he could read the handwriting of Dr. Rex better than he could that of Mr. Reading. There was nothing further, except that he had no interest in this matter, than to draw this receipt and to calculate a little interest. This statement was made by Dr. Rex before the session, upon a charge made by Mr. Young, that the doctor had been intermeddling with the settlement. Dr. Rex alleged before the session, that he had done nothing in this matter, except to draw this receipt and calculate a little interest.

Mr. Young charged before the session, that Dr. Rex had read the receipt different from what it was; that he (Young) had signed the receipt, not knowing what it was, just as he was going to dinner, and that he afterwards found the receipt different from what it had been read to him by the doctor. This I understood was the alleged cause of the difficulty between them. I was then a member of the session.

And being cross-examined on the part of the defendants, says—I will not be positive upon whose complaint this matter was brought before the session. It appears to me that the matter was brought before the session upon the complaint of Dr. Rex of Mr. Young, that he (Young) had charged Dr. Rex with reading that receipt differently from what it was written, but of this I am not positive.

PETER C. SCHENCK.

Cortenius S. Young, jun., deposes and says—I am the son of David W. Young. In 1831, I lived at my uncle's, Cortenius S. Young, one of the defendants in this cause. I was present when a receipt was given by Cortenius S. Young and wife to John P. Quick; it was given at my uncle's. I was not present at the fore part of the settlement. When the receipt was signed, my uncle and his wife, Rebecca Hoover, Dr. Rex, John P. Quick, and myself were present. In the first place, my uncle refused settling with Mr. Quick. He said he did not want to settle; as Mr. Quick had had business men hold of it, he wanted business men hold of it to look into the matter for him. He signed the receipt with the understanding that if there was an error, it was to be made right by John P. Quick's executors or administrators, and that he would not sign it, unless they would agree to give him a receipt in that way. Dr. Rex read the receipt over before my uncle signed it; I mean the re-

ceipt that was signed. Dr. Rex read the receipt in the manner that the errors should be corrected by his executors or administrators. I don't recollect that I was charged by my uncle to remember this fact after they left. He might have done so, and I have forgotten it. Neither my uncle, nor any of the rest of the family, charged me to remember this fact. I don't recollect whether Dr. Rex or Mr. Quick acted prominently in this matter; Dr. Rex did the writing. I feel clear that the receipt was read in the manner I have stated; I have no doubt about it, that Dr. Rex read it in that manner.

And being cross-examined on the part of the defendants, says— I never made a memorandum of this transaction in writing. Dr. Rex wrote the receipt at my uncle's at that time. The only receipt I saw there that day was the paper read as a receipt by Dr. Rex. I did not read the receipt. Dr. Rex did not bring with him a receipt already written, as I recollect. I was in the room until the business was closed, and the papers put up. I can't say that I saw Dr. Rex write more than once during this transaction. I was not near enough to Dr. Rex to see what he did write. I don't recollect of Dr. Rex taking the acknowledgment of my uncle and aunt to the receipt. I saw my uncle sign the receipt; I don't remember of seeing my aunt sign it. I did not see my uncle sign any other paper during this transaction. I have no recollection of seeing any body sign any other paper during that transaction. I know that Dr. Rex wrote a receipt from the conversation, as I have detailed it. I know that he read the paper that he wrote, because I do not recollect of there being any other paper on the stand where they were busy. If the receipt and acknowledgment were upon the same paper, I could tell the receipt by the way it read.

Quest. As you say you did not see what Dr. Rex wrote, and as you never saw the receipt, nor heard it read before, how do you know that he read what he wrote at that time?

Ans. I can't answer you in any different manner than in what I have said before.

Quest. If the acknowledgment and the receipt are both written upon the same paper, can you say positively whether it was the receipt or the acknowledgment which Dr. Rex then wrote?

Ans. It was the receipt which he wrote. I can say that positively from the conversation then had, which I have stated before.

Quest. What was the conversation then had from which you can tell this?

Ans. The conversation was this: that if there be an error, it was to be rectified by John P. Quick's executors or administrators.

Dr. Rex then said that was all that they wanted. There was nothing else said, from which I draw the inference that Dr. Rex read the same paper that he then wrote.

There was nothing else done from which I draw this inference, except that Dr. Rex wrote the receipt, and read it, and my uncle put his name to it. My uncle did not read the receipt, as I saw. He can read writing.

I can't say positively, but I think the receipt was signed upon the stand. I was in the same room where my uncle signed the receipt, a few yards from him. I saw the paper that my uncle signed, at some distance from it. I don't recollect whether it was on a quarter, a half sheet, or a whole one. I would not know the paper again if I were to see it. I don't know what sized paper it was on which my uncle wrote his name. There was writing on the paper on which he wrote his name. I don't know how much writing there was. I don't know how much writing there was contained in the receipt. I can't say whether the writing covered a quarter or a half sheet. I don't recollect on which side of the paper my uncle wrote his name. He might have put it at one end of the receipt, in the middle, or at the other end. I know he signed the receipt, for I saw him write. Dr. Rex told him to write his name to the receipt, and he did so; so he wrote, and he must certainly have written his name.

I am positive that these errors were to be corrected by John P. Quick's executors, and not by Peter Prall's executors. I don't think that Peter Prall's name was mentioned while I was in the house. The errors were to be corrected by John P. Quick's executors and administrators, and not by John P. Quick himself.

I can't say positively that I saw any writing on the piece of paper which my uncle signed. I might have seen writing, and not now remember that I saw it. I don't remember of my uncle's going out of the room while my aunt acknowledged the receipt. I don't recollect of seeing my grandfather, Henry Young, sen., there at that time. I was born the third of October, 1829.

And being again examined in chief, says—That my uncle signed on that day the receipt the doctor read to him, unless the doctor practised a fraud on him. At, and during the time I was in the room, I saw nothing in the conduct of my uncle towards Mr. Quick but what was friendly and kind. I cannot say what took place when I was not there; before I came in, I believe, I eat dinner with them.

And being again cross-examined says—That my uncle never

spoke to me about this till I had first told my aunt I recollected the transaction. I first mentioned this to her two years ago this last summer; she was talking to me of the difficulty between my uncle and the doctor, while she was dressing a sore for me, and I said to her, that I recollected the transaction, and spoke of it to her. What my aunt said to me was the first I ever heard of any difficulty about that receipt, though I had frequently before, by myself, thought of the receipt, and of the manner in which it was written.

CORTENIUS S. YOUNG, jun.

George P. Rex, being again called on the part of the defendants, deposes and says—That Henry Young, senior, was at C. S. Young's either at the time of the giving of the receipt spoken of by me, or immediately after. To the best of my recollection he was there when the receipt was given. A refunding bond was executed there at the same time. Henry Young, senior, was the security on the refunding bond.

GEORGE P. REX.

Depositions on part of complainants, December 18, 1848.

Amos Fisher, a witness produced on the part of the above named complainants, and being duly sworn, deposeth and saith—I was the husband of Mary Fisher; I was married to her on the sixteenth day of January, eighteen hundred and thirteen. I was well acquainted with John P. Quick, who was the trustee of my wife. I remember of his purchasing the tavern property in New Brunswick; he bought it of Joseph Hall, in the winter of the year eighteen hundred and thirty, I think in February; my wife and I lived in New Brunswick at the time. Before Mr. Quick purchased this property, I understood it was for rent. After hearing that the house was for rent, I went to my father, and told him I would like to rent the property, and wanted some one to go security for me. He said he could not. I then went over to see my father-in-law, and told him about it, and that I thought I could make a living there, and asked him to become my security for the rent, which I understood was two hundred and fifty dollars. He did not agree right away to do it, but went right away with me over to my father's to talk about it; they talked about it, and finally Mr. Quick concluded that I should go and rent the property, and he would go security for me. My wife and two children went with me to father's; but I think they did not go with me to Mr. Quick's. On our way home,

we stopped at Van Doren's tavern, at Flaggtown or Millstone, and upon inquiring for Van Doren, I was informed that he had gone to New Brunswick to rent this tavern. I then got in the wagon, and drove to New Brunswick as fast as I could, that I might get there before him. Mr. Hall declined renting the property, saying he had made up his mind not to rent it, but would sell it for twenty-five hundred dollars. I told him I thought I could get him a purchaser for twenty-five hundred dollars, and he said he would take it. The next day, I think, I went up to my father's, and told him what I could get the property for, and that I wanted to get my father-in-law to buy it; my wife was not then with me. I wanted father to go with me to Mr. Quick's, which he declined doing, not being well enough; my brother James was at my father's at the time, and he accompanied me. I saw my father-in-law, and told him I wished him to buy this property, because I thought it was cheap, and I could make a good living there; and I said he had some money of my wife's in his hands, and it would be a safe investment; that the property would be growing all the while, and never depreciate. I then went away to the house, leaving Quick and my brother talking together. Eventually, and some little while after the conversation, Mr. Quick authorized me to go and buy the property for him, in his name. He said the money in his hands of my wife's would not amount to twenty-five hundred dollars, the purchase money. I told him I thought it was a good investment; it would be his own property, he would take the deed in his own name, and he could lose nothing by it; he then seemed very willing to it. I was authorized to go and buy it, and did so; the deed was made to him. I bought it for Mr. Quick, and told Hall, at the time, that he was the man, and Hall was satisfied with him. It was within a day or two after he authorized me to purchase the property, that I did buy it. The deed was not delivered to me; I never saw it to my knowledge. I took possession of the premises on the first day of May, eighteen hundred and thirty. Mr. Quick told me that he would let my wife and me have that property without paying any rent. Quick told me that he meant the rent of the house in lieu of the use of the money which he held in trust. I occupied the premises four years. I got behind, and asked my father-in-law to assist me with a little money; he told me he could not do it, and refused altogether. I then told him I could not keep the house, and could not keep it up, unless I could get some assistance. He allowed then he would have to rent it to somebody else, and I told him he would have to do so. I left the house on

the first day of May, eighteen hundred and thirty-four. Quick rented the house to Nicholas E. Huff, for two hundred and fifty dollars, I think, but am not positive. My wife was as keen for giving up the house as I was, and rather started giving of it up in the first place. Afterwards she reconsidered the thing, and asked her father to let us stay, but he said it was too late then. Huff occupied the house less than a year; I think he left it in August of the first year. Quick then rented the house to Thomas I. Strong, as I understood. I and my wife had nothing at all to do with the property after I left it. I understood that Mr. Quick sold the property in a few years. My wife died on the sixth day of February, eighteen hundred and thirty-five. The property was sold after her death; I understood that it brought three thousand dollars. I should have thought that if the property had been put up at public auction at that time, it would have brought thirty-five hundred dollars, at least. It was my impression at the time, from what I was told. It was sold at private sale. From my knowledge of the value of that property, I believe that it was worth thirty-five hundred dollars; and that a man who could buy it for three thousand dollars, could make five hundred dollars by it. While I occupied that house I became unfortunate in business, and my property was sold by the sheriff under an execution. I could not accommodate my customers as I had done previously, in consequence of my being sold out by the sheriff. The sheriff sold my property either in the fall or winter before I left the tavern, I think in January. All my personal property was sold. My wife was sick for some time before she died. She took a cold about two weeks before we moved from the tavern, and when preparing to move, and was never well afterwards. She died of consumption arising from that cold. She applied to her father for money while she was lying upon her death bed. It might have been two or three months before she died; it might not have been two months. She could not do any thing of consequence at the time, but was up and down; I do not think there was any chance for her recovery at the time; she appeared to be in deep consumption, and her case was looked upon as a hopeless one. I was not able to do much for her at that time, and was not in any steady business. When she asked her father for money at the time spoken of, he said he had none to give her. She said to him that she wanted some of her own money; that he had money in his hands belongingging to her, and she wanted to have it. He replied, Molly that money was left to me; grandpapa left that money to me; he did not leave it to you. My wife stood very

much in need of money at this time. Some few days after, my father was down, and she asked him for money; he pulled out his pocket-book, and gave her some, I don't know how much. When he gave her the money, she said, thank God I have a father, and turning to me she said, it is not my own father, it is your father. I cannot state, to a certainty, what money Mr. Quick let my wife have. I recollect her having eighty dollars from him at one time, just previous to his buying the tavern; and I think, possibly, he let her have one hundred and twenty dollars altogether. I do not think that all the money he let her have after her grandfather's death exceeded one hundred and twenty dollars. I do not believe my wife could have received any considerable sum of money from her father without my knowing it. I do not think my wife knew any thing about the purchase of the tavern property until after it was made. She knew, when I started up to see about purchasing the tavern, that my purpose was to get John P. Quick to purchase it. To the question, did your wife know that Mr. Quick was to purchase it in his own name, and at his own risk? the witness says, yes, she knew all about that. She understood it just as I have stated it; she knew it would be his own, and he would do with it as he pleased.

Being cross-examined, the witness says—I cannot say that my wife was actually anxious that I should go and get Mr. Quick to buy the tavern, but she was very well satisfied with it. I told her what I was going up for. We might have talked about Mr. Quick buying it with her money, but I cannot say. But if we did, it was in the way in which I stated it to Mr. Quick, that it would be a good investment. What I mean by saying that the old man was not willing to purchase the property until I made him understand, is, that the property would be his own after he purchased it; he could take the deed in his own name, and do with the property as he pleased. I told him that if he bought it with my wife's money, which he had in his hands, he would buy it at his own risk. To the question, did you tell the old man that if he bought the property, he bought it at his own risk? he says, I do not know that I told him in those words; I told him I thought there would be no risk, because I thought it was a safe investment. I do not remember that I told him any thing else. This was not all the conversation, I presume, which took place at the time. I went up to get him to purchase the property. To the question, what was the balance of the conversation, state every thing that you can? he says, I do not recollect that I can state any thing more at present. I don't re-

member that I said any thing else to him. To the question, you did not then state, at that time, that if he bought that property with your wife's money, he bought it at his own risk? he says, I do not know that I did in them words; but I told him that I thought the property was cheap, and he could run no risk in buying of it: and I think I told him that if he paid for it with whatever money he had a mind to, it was a good speculation. To the question, would you have told the old gentleman to take your wife's money for the purchase of that property, without having consulted her about it? he says, I cannot recollect now what I would have done then; what I meant by saying that I had bought the property, was, that I told Mr. Hall that Mr. Quick had authorized me to say that he would buy it. The old gentleman never was in New Brunswick without being at my house. I knew nothing about the article, nor when it was entered into. After agreeing with Mr. Hall for the property, I don't recollect whether I went up to tell the old gentleman or not. I don't know how I let him know it. I don't recollect of the old man coming down shortly after I made the agreement. I do not remember when he came down; but I knew the article was made. I knew Mr. Quick meant to put my wife's money in the purchase of the property. I knew it was his intention to take that money to purchase the property with; I believe my wife knew all about that too; I suspect I told her. It was some time that winter before I moved on the property, that Mr. Quick told me I might live there rent free for the interest of the trust fund.

I don't know that my wife ever objected to Mr. Quick applying the money in the purchase of the property. I do not know that she objected to his applying it in any way he pleased, provided she could get some of it when she needed it. I did not pay any rent for the time we lived there. I do not know who collected the rent from Huff; I never saw him pay any. Huff ran away, and left the tavern; I don't know that any rent was collected of him. Some time through the course of the season, we moved from the tavern. Mr. Quick gave my wife some money, not able to say how much. I at that time lived in a house belonging to John D. Sutphin. I lived in his house about one year. I only rented rooms in the house, the second floor, at the rent of twenty-eight dollars a year. I think I paid part of the rent; Mr. Quick paid some of it. I think the papers shown me, marked *Exhibits A* 2, *A* 3, and *A* 4, are signed in the handwriting of John D. Sutphin. I can't tell whether I paid Sutphin more than one quarter's rent; my impression is that I paid him for one quarter, but am not certain. I did pay him some mo-

ney. I know that neither I nor my wife got the rent from Strong. It was some time after the first of January before I left the tavern, that I told Mr. Quick that I could not stay in the tavern any longer; it might have been as late as March. I can't say it was previous to middle of March, but think it was before the first of April, that my wife told her father she would like to stay in the tavern. The reason he gave why he was not willing we should stay there, I am not able to state now. I can't say whether he did, or did not, assign as a reason that it was already rented. I did repairs to the property after I moved into it. For the comfort of the house and the good of the house, I had a new bar built, and made other alterations up stairs in rooms and bed rooms. The old man never did any repairs to it while I lived there, to my knowledge; he never, to my knowledge, employed any body to do any repairs to it while I lived there. I don't know that he ever paid for any of the repairs made while I lived there. I don't think I ever employed Jeptha Cheesman to do repairs to the property, and told him that my father-in-law would pay for it. I don't remember that after Cheesman had done the work, that I told him my father-in-law would be down shortly, and pay him for it. I never employed Probasco and Watson to do any repairs on the property. Cheesman never did any thing for me. Probasco and Watson never did any repairs while I lived there; I never knew those persons. I employed Randolph, the carpenter, to do some work while I lived there, and I guess all the money he got I paid him. Sanderson painted the sign; I paid him for it; very likely I took a receipt, but can't say whether I did or not; I paid him before I left the property. The witness being shown *Exhibit N*, says, there were two signs; the sign I had first made was blown across the river by the tornado, I have been told. I don't remember that the old man ever paid a butcher's bill for me; he might have paid two or three small grocery bills for me; I never saw him pay any. I have heard that the property was held for sale, before it was actually sold; the price was three thousand dollars. A short time afterwards I heard that it was sold. I lived in New York at the time. I never let the old man know he was offering the property too cheap. It was Quick's own property, and I did not know that I had any right to inform him that he was selling it too cheap. I considered it was his property, and I did not know that I had any right to dictate to him at all about it, that he was selling it too cheap, nor did I write to him upon the subject. The reason I did not write to him was because it was his own, and I did not think I had any right to dictate about it, nor did I think I

had any interest in it any way or shape whatever. The misfortune that befel me at the tavern was, I got in the drag paying old debts contracted before I went there. Mr. Quick visited us as often as four or five times a year while we lived in New Brunswick. I never saw him unkind to his daughter; I don't remember that he ever refused her money, except the one occasion spoken of before.

When she applied to him then for money, she wanted it to live upon; I don't remember what she wanted to lay it out for. I don't know what money my wife received, but I should suppose she would have told me when she did receive any. I believe Mr. Quick was at the expense of her funeral. He was at her funeral. Doctor Rex was there to see her. The last three months of her life the old gentleman was there, perhaps three times. The purchase money for the tavern was paid before I moved there. The note, marked *Exhibit A* 5, was for money loaned of Quick; that note I put in the bank, and got the money. Quick paid the note when it came due. I gave my note for the money borrowed, and some other money besides. I told him I had got behind, that I had paid considerable for the repairs done to the property; the repairs and other things had put me behind, and I borrowed the money to pay my debts. The note I gave him was for one thousand dollars; I paid Mr. Quick with a ticket. I took the benefit of the insolvent law. This note, marked *A* 5, and money which I had before had, made up the thousand dollar note I gave. The other money had been had of him, some of it perhaps two or three years; I can't tell how long. The paper, marked *A* 6, is a letter in my writing; my letter refers to the paper marked *Exhibit A* 7, I believe. I don't know what the note spoken of in the paper marked *A* 7, was given for; that paper is one of the State Bank notices, I believe. I know nothing about such a note as mentioned in the notice. The paper marked *A* 8, is a due-bill given by me. My wife could write her name. The due-bill was given for something about the funeral of my wife.

To the question, did Mr. Quick entertain your proposition favorably, that he should buy the tavern property, until you mentioned that he could apply your wife's money towards paying for it, and take the deed in his own name? he says, in the first place, his impression was that I wanted him to buy the tavern property with my wife's money, and take the deed in my own name. I got him to understand that it was a safe investment; that I wanted him to take the deed in his own name, and the property to be his own; then he agreed to it. To the question, did you make him understand that if there was any loss, he would be the loser? he says, I

do not know that there was ever any thing ever said like it or about it between us.

And being again examined in chief, he says—I do not remember of any repairs being made to the property, about the time of my leaving it, or a short time before; there could have been no repairs made at that time without my knowing it.

AMOS FISHER.

Thomas I. Strong deposeth and saith—I rented Mr. Quick's tavern house and lot about the first September, eighteen hundred and thirty-four, next day after the sheriff's sale of Huff's property. The rent was to be one hundred and twenty-five dollars till the the first of next May. I rented of John P. Quick; he rented it as his own property. I did not know of Amos Fisher or his wife in connection with the property at all. I lived there about one year and eight months. The second year I was to pay two hundred or two hundred and twenty-five dollars. I paid the rent to Quick, or his agent, Mr. Van Deursen. During the whole time I lived there Quick acted as the owner of the premises, and I knew of no person else as interested therein. Quick never intimated to me that he held the property in trust for Mrs. Fisher. The property was sold by Mr. Quick before I left there. If the property had been sold at public sale at that time, I think it would have brought thirty-five hundred dollars.

Being cross-examined, he says—The property might have been offered for sale one, two, or three months. Quick wanted me to purchase it when the August quarter's rent was paid. I think I would have given thirty-five hundred dollars, if I had had the money. I knew it was offered for three thousand dollars. Hicks wanted me to purchase it, and offered to assist me; but he could not raise the money himself. I was not about to purchase it. The signatures to papers marked *A* 9 and *A* 10 are my writing; they were deducted from the rent paid by me. I suppose the tax was taken from the rent, but cannot say. I won't be positive, but think I paid a hundred dollars for the first year I was there.

THOMAS I. STRONG.

Jeremiah Kershow saith—I purchased the tavern property at New Brunswick for Mr. Ascough, of John P. Quick. Amos Fisher told me the property was for sale. I told Mr. Ascough of the property, and he and I went to Brunswick and looked at it. Ascough and I lived in New York. We went to see Mr. Quick. He asked thirty-two or three hundred dollars. After talking some time, I

offered three thousand dollars. Ascough told me to offer that, and said it was all he would give. After some talk, and it was not long, he agreed to take it. The deed was made to Ascough. I considered that he got a bargain. The property, in my opinion, was worth more than three thousand dollars at that time. It was understood that we were to buy the property, he take the deed, and we divide the profits, and he to pay the money. Ascough kept the property, and he paid me what I agreed to take as my share of the profits. I had rented the property for him to James Servis for three hundred dollars, I think. Ascough gave me two hundred dollars for my share of the profits; I was satisfied. I took two hundred dollars. I thought the property was worth five hundred dollars more than he gave, and he thought it worth four hundred dollars. I wanted money, and took two hundred dollars, and have never been sorry for it since. My impression is that the property, at the time Ascough bought, was worth thirty-five hundred dollars.

Cross-examined, says—If Mr. Quick had not taken the three thousand dollars, Ascough would not have bought it, and to induce Quick to take it, he said he would pay in specie. No man will buy three thousand dollars' worth of real estate unless he thinks he is to be benefited. Ascough owns the property now. The favorable opinion I then had of Brunswick property, has not been realized. Ascough bought a better property there than this, and sold that. Strong was the tenant in the property when Ascough bought it; Strong left because he would not pay the rent I asked. It has never been rented for three hundred dollars but one year. Servis sold out before the year was out. The year after Servis went out, it rented for about two hundred and fifty dollars, I think, but don't know. Ascough wanted, three months ago, to lease me the property; he told me it rented for two hundred dollars.

JEREMIAH KERSHOW.

James S. Fisher saith—I advised the Fishers, my nephews, the heirs of Mary Fisher, if they gave receipts, to give them only for what they received, and not in full; I mean receipts to John P. Quick for legacies. From what Peter Quick had paid them, I advised them after that to give receipts for what was paid them only; because Catharine had given a receipt, which did not please me, for money paid by Peter Quick. In giving this advice, I don't recollect that I spoke of the trust fund; I meant the money they were to receive from Gideon Quick, under Peter Prall's will, a legacy left by him to Mary Fisher. I think it likely I told them the mat-

ter would be looked into some day. I know Gideon Quick; his father gave him a good farm and a good start in the world. Peter Quick got a large amount of property from his grandfather. My father contributed largely to the support of Amos Fisher's family. He bought a farm worth six thousand dollars, and put him on it. He contributed to the support of Amos' family till Mary Fisher's death. My father complained that Mr. Quick did not do as much as he ought to for the support of his daughter and family. When they were living in New Brunswick, my father contributed to the support of Mary Fisher. While they were in the tavern they lived well enough, and appeared to make money for a while; after they left the tavern it went pretty tough. I don't know whether he assisted them much after they left the tavern. The funeral of Mary was from my father's house, in Amwell township, Hunterdon county. Some people said John P. Quick was a very tight man. I respected him very much. He was considered a tight man.

Being cross-examined, he says—I suppose Mary Fisher desired to be buried from my father's house. My mother was with her when she died. Amos did pretty well for a spell on the farm, then was appointed constable, and did not make out much after that. He was on the farm seven or eight years, I think. He got in debt after he was constable, and left the farm; he did not make a living from his farm and business both. He then went to New York, and the family came to father's, and remained a year or more, perhaps two years. Some of his family were there all the time; children were educated there. She was at our house while he was in New York; they moved then to Church-street in New Brunswick. Father helped Amos while she was at our house. He helped them while there, before they went into the tavern. Gideon Quick's father gave him a good start, both before and at his death. He was on the old man's farm, and I suppose had a good lay, for he soon bought another farm. I don't know, except from hearsay, what lay Gideon had; and what I heard only applies to one year. My father and me had a talk that the trust matter would be looked into; that was one reason I had for warning the heirs; the talk was a good spell before John P. Quick's death. I don't remember hearing that Dr. Rutsen Schenck advised that this thing should rest till the death of John P. Quick.

I dare not say that I have not heard it from Cortenius S. Young, nor would I like to say that I have heard it, that this matter was to be left till Mr. Quick was dead, and then stirred in. To the question, have you not a strong impression that you have heard

that there was an intention, by the heirs, to let this matter rest until the death of John P. Quick, and then prosecute it, or disturb it? he says, I dare not say that I have heard it, nor do I deny that I have heard it. I had been told , some time ago, that if the executors did not subpœna me, the complainants intended to.

JAMES S. FISHER.

Andrew Agnew saith—I have lived in New Brunswick, near this tavern property, a long number of years. The property was repaired after the tornado, part of the roof of the dwelling house and the stable on the premises were blown down. I would judge the expense of the repairs to be in the neighborhood of from five to six hundred dollars. I think the premises, at the time Ascough bought it, worth in the neighborhood of three thousand dollars; I should think that a very liberal price. I was not often in Fisher's house; he was regarded as being indolent.

Being cross-examined, he says—The stables on the premises were rebuilt on a larger scale than they had been before. I suppose the stables to have cost two-thirds of the whole expense, four hundred dollars, of the repairs. I have no knowledge of what was actually expended, and I estimate by comparison with similar buildings. I have no accurate knowledge of what was done. My brother-in-law occupied the next building, which made me observe more closely what was going on.

ANDREW AGNEW.

DECREE.

This cause coming on to be heard before his Honor the Chancellor, and the same having been argued and debated by Richard S. Field, solicitor for and of counsel with the complainants, and James N. Reading, solicitor for and of counsel with the said Gideon Quick, Jacob F. Quick, and John Quick, executors of John P. Quick, deceased, and John F. Hageman, solicitor for and of counsel with the said Cortenius S. Young and wife, Peter R. Fisher, and Israel Fisher—It is, on this eighteenth day of June, in the year of our Lord one thousand eight hundred and fifty-one, or-

dered, adjudged, and decreed, and his Honor the Chancellor, by virtue of the power and authority of this court, does hereby order, adjudge, and decree, that it be referred to William H. Leupp, one of the masters of this court, to take and state an account of the amount of moneys received by John P. Quick, deceased, in his lifetime, as trustee for Mary Fisher, under the will of Peter Prall, deceased, as mentioned in the pleadings in this cause, and of the payments and disbursements made by the said John P. Quick, out of the said trust moneys, to and for the use of the said Mary Fisher; and that the said master do further report what shall be deemed a fair and reasonable rent for the tavern house and lot in New Brunswick, mentioned in the said pleadings, and for what period of time the same was possessed and occupied by the said Mary Fisher; and that, in stating the said accounts, the said tavern house and lot are not to be deemed or taken to have been purchased with the trust moneys or to constitute any part of the trust estate, nor is any allowance to be made to the executors of the said John P. Quick, for the moneys expended in the purchase or the repairs of the said tavern house and lot, or for any loss sustained by the said John P. Quick in the purchase and sale of the said property; but that the said executors are to be charged with the one fourth part of the residuary personal estate of the said Peter Prall, received by the said John P. Quick, as trustee for the said Mary Fisher, and to be allowed for all payments made by him to the said Mary Fisher, on account of the said trust; and also, a fair and reasonable rent for the said tavern house and lot during the time that the same were in the use and occupation of the said Mary Fisher; and that, for the residue of the said trust fund remaining in the hands of the said John P. Quick, after the making the before mentioned allowances, the said executors be charged interest, at the rate of six per cent. per annum, and that the complainants are entitled to receive the two sixth parts or shares of the clear residue of the said trust fund in the hands of the said John P. Quick at the death of the said Mary Fisher, together with the interest which has accrued thereon; and all further equity and directions are reserved until the coming in of the said report. And that the rights of all the parties may be brought fully and properly before the court, for its determination—It is further ordered and directed, that the defendants, Cortenius S. Young and wife, Peter P. Fisher, and Israel Fisher, do exhibit a cross-bill, in this court, against their co-defend-

ants, the said Gideon Quick, Jacob F. Quick, and John Quick, executors of John P. Quick, deceased, and all directions or declarations which it may be necessary to give or make, touching the matters not fully in litigation by the present bill, are reserved until the cross-bill, hereby directed to be filed, is brought to a hearing.

O. S. Halsted, *C.*

Court of Errors and Appeals.

GIDEON QUICK, JACOB T. QUICK, and JOHN QUICK, executors of John P. Quick, deceased, appellants,
and
ELIZABETH S. FISHER, and LUCRETIA S. FISHER, by her next friend, Jacob S. Manners, respondents,
} *On appeal.* 10

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

The humble petition of Gideon Quick, Jacob F. Quick, and John Quick, executors of the last will and testament of John P. Quick, deceased, respectfully shows, that your petitioners find themselves aggrieved by an interlocutory decree made in the Court of Chancery, by his Honor the Chancellor, bearing date the eighteenth day of June, in the year of our Lord one thousand eight hundred 20 and fifty-one, wherein the said Elizabeth S. Fisher and Lucretia S. Fisher, by Jacob S. Manners, were complainants, and the said Gideon Quick, Jacob F. Quick, and John Quick, executors of John P. Quick, deceased, were defendants, in this respect, *to wit:* that, in and by said decree it is directed, that, in taking and stating the account therein ordered to be taken, the said tavern house and lot, situated in New Brunswick, and mentioned in the pleadings, cannot be decreed or taken to have been purchased with the trust moneys, or to constitute any part of the trust estate, and that no allowance is to be made to the said appellants for the moneys expended in 30 the purchase or the repairing of the said tavern house and lot, or for any loss sustained by the said John P. Quick in the purchase and sale of the said property. And your petitioners humbly appeal from that part of the decree of the said Chancellor, which decrees

as aforesaid, upon the ground, that the same is erroneous, for that the said tavern house and lot ought to have been decreed to be taken and considered as having been purchased with the trust moneys, or a part thereof, and that allowance should be made to the appellants for the moneys expended in the purchase or the repairs of the said property, and for any losses sustained in the purchase and sale of the same.

Your petitioners therefore pray that the said decree of the Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

JAMES N. READING,
Solicitor of the appellants.

P. D. VROOM,
Of counsel with appellants.