

COURT OF ERRORS AND APPEALS.

In the matter of the Final Account
of
FARRINGTON BARCALOW,
Executor of
WILLIAM BARCALOW,
Deceased.

Exception to the
Account.

POINTS.

The acceptants object to the account for the following reasons :

First, Because the accountant is not charged in his account with any interest on moneys remaining in his hands.

Second, Because the accountant is allowed to deduct from the balance in hand the costs and expenses of the settlement of the account, in the year 1874, and which were not actually paid or incurred until the year 1874, without charging him with interest on such sum.

Third, Because the accountant has been allowed certain credits for debts claimed to have been paid in Florida, which credits are specifically mentioned in Schedule No. 4, page 187, and numbered 68, 69, 70, 72, 73 and 74.

Fourth, Because the executor has been allowed commissions.

As to the first point :

1. It is the duty of an executor not only to exhibit

his account for allowance, but to use due diligence to bring it to a final settlement.

Edgerton v. Edgerton, 2 C. E. Greene 419.

2. While an executor is not to be *prima facie* chargeable with interest during the time the law allows him for the settlement of the estate, which is usually one year, after that time he will be chargeable, *prima facie* with interest, for all money coming into his hands.

Boynton v. Dyer, 18 Pick. pages 2 and 8.

He is to be charged with interest when he mingles the funds of the estate with his own, or uses it in his private business.

Jacot v. Emmett, 11 Paige, 142.

Kellett v. Rathbun, 4 Paige, 102.

DePeyster v. Clarkson, 2 Wend. 77.

King v. Berry, 2 Gr. Chy. 261.

Frey v. Demarest, 1 C. E. Gr. 236.

3. The accountant, although executor, sells all the real estate in 1842 to his personal friends, who act for him, take the title to the real estate, and then convey it to the accountant; see pages 44 and 45. He kept the real estate for some years, appropriated the rents and profits to his own use, and is not charged with any interest on the amount of such sales.

In his first account of August 20, 1847, page 201, he charges himself with \$2,354.11, as interest, and in his account on page 209 he charges himself with \$2,354.13, as interest, thus recognizing his liability.

As to the second point.—The decree of the Orphans' Court on page 179 finds in the accountant's hands \$6,828.67, and decrees interest on that amount generally without fixing the amount of interest. It will be observed that this balance is ascertained among other

ways by crediting the accountant with the following items:

Page 177, Court and Surrogate fees, former ac-		
count	.	\$ 15 50
Page 177, Copy and recording	.	3 00
“ “ Advertising and posting notices	.	4 20
“ “ Commissions \$12,015.72.	.	841 10
“ 178 Extra allowance	.	100 00
“ “ Line 16, fees to Master	.	50 00
“ “ “ 18, Costs on exceptions, etc.	.	108 90
“ “ “ 20, Surrogate on account, etc.	.	10 80

As to all except the commissions payments were not actually made until the year 1874, although by the account he is credited as though he had paid the money in 1845.

As to the commissions he was not entitled to them in 1842,, and not until the settlement of his account by the court.

Lathrop vs. Smalley's Executors, 8 C. E. Green,
192.

As to the third point.—The testator was doing business in Florida; went there for his health; as it did not improve he sold out and came home to New Jersey to die. It is fair to presume that he collected claims due him and paid all debts except those against which he had set off. The accountant says that in settling such claims he took vouchers; pages 70 and 71.

The objection to the items in Schedule 4, page 187, is that the vouchers were taken in settlement of accounts where there were mutual accounts, and not being charged with such debts due he should not be allowed these credits: The truth of this contention is manifested by the fact that when the accountant made his two accounts, in 1847 and 1848 respectively, when all these matters were fresh in his mind, and when the parties in Florida were alive, he made no such claims for allowances.

As to the fourth point.—The executor should not be

allowed commissions, because he has in numerous instances violated his trusts.

First, In selling the real estate to himself through the intervention of third parties—pages 44 to 50, and 118 and 119—a very improper thing to do when the persons entitled to the fund, as in this case, were some of them minors and not able to protect their own interests.

Second, That he did not settle his accounts with the Orphans' Court for nearly 40 years.

Third, That he did not invest the \$2,000—the interest of which was left to the widow, see pages 49 and 50.

Fourth, If entitled to commissions he cannot charge for his traveling expenses,

King v. Berry, 2 Gr. Chy. 261.

There are two charges of the nature page 187.

Fifth, He is not entitled to Commissions on the proceeds of the real estate, as nothing was received. He took the property himself, and has never received or disbursed it.

Items on page 170, Hotel,	\$6,005 00
“ “ House on Bridge st.	600 00
“ “ “ Main st.	985 00
	<hr/>
	\$7,590 00

GASTON & BERGEN,
Solicitors.

COURT OF ERRORS AND APPEALS.

In the matter of the Final Account
of
FARRINGTON BARCALOW,
Executor of
WILLIAM BARCALOW,
Deceased.

On Exceptions.

POINTS OF ACCOUNTANT.

First: The accountant is entitled to commissions. It was a very difficult estate to settle. This court will not interfere except in case of manifest error. With all the evidence before them, the Orphans' Court, the Master and the Ordinary have sustained the allowance in this cause.

Second: The accountant should not be charged with interest since 1842, because by the will the question of interest is not, and cannot be a general one, but from that time it is a question between the executor and each devisee depending on what he or she had received. For the same reason the expense of settling the estate should be deducted as of the time the balance is fixed.

Third: The evidence shows that the items in schedule No. 4 p. 187 are correct, to wit, Nos. 68, 69, 70, 72, 73, 74.

J. D. BARTINE,
Counsel of Accountant.

[Faint, illegible text visible through the paper, likely bleed-through from the reverse side.]

New Jersey Prerogative Court.

In the matter of the EXCEPTIONS to
the FINAL ACCOUNT of FARRING-
TON BARCALOW, surviving Execu-
tor of WILLIAM BARCALOW, de-
ceased.

Monday, February 28, 1874

FARRINGTON BARCALOW, a witness produced and
sworn on the part of the exceptants, says :

I cannot from my personal knowledge, say when my fath-
er died; Culver can tell, he was with him; previous to his 10
death, he had resided at St. Augustine, Florida; he had
been at St. Augustine previous to his death about two years
from 1835 to 1837; his business was, he kept a bar, or
liquor saloon connected with a small grocery; I went there
in June or July 1836, and left in March sometime, in the
year 1837; I suppose about two months after I started from
there, my father and Culver, and Emiline left there.

2 years or

Ques. According to the best of your knowledge and
judgment, what was the amount of personal and real estate,
in value, your father had in Florida, at the time you left 20
there?

(Excepted to by counsel of the executor, because the
question has no connection with the exceptions filed.)

2000
1600
3500

Ans. From my knowledge I can't tell; I will give you my judgment on it; I think real and personal property, about two thousand dollars; I would like to add debts that were worthless, probably about fifteen hundred dollars besides.

Ques. Have you not fixed the amount four thousand dollars, within a month?

Ans. I may have said so in a loose way of talking; I fix it now at thirty-five hundred dollars; I can't be precise.

10 Ques. Who of the executors proved the will in Florida?

Ans. I did.

Ques. You alone?

Ans. Yes, there was no executor there then; there was one there, he was dead.

(Answer excepted to by Mr. Gaston, except so far as it is responsive to the question.)

Ques. When and where did you prove the will in Florida?

20 Ans. On the 23d day of March, A. D., 1838, at the office which corresponds in its business with the Surrogate's Office here; at St. Augustine.

Ques. How long was you there at this time?

Ans. I was there seventeen days.

Ques. Have you letters testamentary issued to you in Florida, here?

Ans. No sir.

Ques. Where are they?

EXECUTOR

ad 23
20
April 9th

Ans. Don't know.

Ques. What did you bring with you in monies or property, or evidences of indebtedness belonging to this estate, when you left Florida?

(Objected to by counsel for accountant, because the counsel did not state to what particular exception the question applied if to any. The question was overruled by the court.)

Ques. What money or securities for the payment of money or other real and personal estate of the testator did you leave behind you in Florida, when you left? 10

Ques. What did you bring with you in monies or property, or evidences of indebtedness belonging to this estate, when you left Florida?

(Question objected to by Mr. Bartine, because it has already been overruled by the court. Both questions allowed by the court.)

Ans. I can't tell the amount I brought in money; I brought no evidences of debt: I brought a memorandum of all the debts I left behind, that were not collected; it was in a small book, but I can't find it; I think I have it yet; I have been looking for it severely. 20

Ques. How lately had you it?

Ans. I can't recollect of seeing it in twenty years.

Ques. What money or securities for the payment of money or other real and personal estate of the testator, did you leave behind you when you left Florida, after proving the will?

Ans. I have a bundle here that I left, which I got

*this is the book
now found -
out of my possession
at the time I
my first account
and is now*

within two months from then; it calls for twelve hundred and eighty-four dollars and thirty-six cents.

Question repeated.

Ans. The amount of personal estate I can't say further than I have here; there were more accounts but the amount I can't tell; there was a vacant lot there, left.

Ques. Is that all?

Ans. All I can remember.

Ques. Did you leave any money, or securities, or ac-
10 counts in the hands of any agent before leaving?

Ans. I left no money; I left all the papers in accounts or notes, in the hands of Joshua Joiner.

Ques. Did you take his receipts?

Ans. I think that this book I put them down in stated that he received them; I can't tell exactly how it was.

Ques. Do you mean to say you took his receipt or note?

Ans. I think I did in this book; the book I can't find.

Ques. What was you doing this seventeen days you were in Florida, state as fully as you can?

20 Ans. I was trying to collect money, and also trying to sell a lot.

Ques. Had your father books of account—day-book or ledger?

Ans. I am quite sure he had.

Ques. Were these the accounts as well as the notes, that you were trying to collect?

Ans. Yes.

*see papers are
exhibits +*

*he now found
how this is*

Ques. About how many accounts had he to collect?

Ans. A quite a number that stood open on the book.

Ques. How much money did you receive from the collection of accounts at this time?

Ans. I cant tell the exact amount; I have credited, at least, I have charged myself on my paper here with two hundred and ninety-one dollars and twenty cents.

Ans
this now proves
be an error

Ques. Who paid you anything on account?

Ans. I can't remember any names.

Ques. Who paid you on notes?

10

Ans. I can't remember.

Ques Did you file an inventory of the personal property of your father there at this suit, when you found this will?

Ans. I think I did before I left, not on the day I found the will.

Journal

Ques. Bring a copy of the inventory with you?

Ans. It was in this book; the book and the inventory were similar.

*# Book is
for itself*

Ques. Did you pay any debts of the testator at that visit?

20

Ans. I did.

Ques. Who, and what amounts?

(Counsel for the executors suggest that the evidence should be confined, and the items and which the exceptions have been taken.)

Ans. I can't answer the question in that shape; if you ask me with wh- in I settled, I can answer; I settled with

then was an account against them
ged myself
to much of
counts as
used for pay-
ment credit
Amount so
ed

F. Weedon, twenty-seven dollars and eighty-seven cents; Hurlburt & Allen, seven dollars; I. C. Hather, three dollars and thirty-eight cents; George Centre, eight dollars and fifty cents; L. Wallace, twenty-four dollars; Ora Howard, nine dollars and thirty-seven cents.

Ques. What do the amounts you added to the respective names mean?

10 Ans. It means this, that some of these parties, I can't remember which or who, had some claim or amount against them on my father's books, and the amount on the payment whatever it was was called cash, and included in the two hundred and ninety-one dollars and twenty cents, and therefore I could not tell the amount of cash.

Ques. When you paid the claim of any person by crediting it on the account or allowing it on the settlement, did you get the receipt for so much of his account as allowed for as cash in the settlement?

20 Ans. These accounts were inventoried against me; and therefore, I would have to charge myself with their account as money and credit them for the amount as received on the payment of the debt. I don't remember of but one or two offsets, there may have been more.

Ques. Repeated.

Answer I corrected
ge. 71

Ans. I suppose I should, I can't fix it in my mind how I arranged that.

Court adjourned until Monday morning the 2d day of March, at 10 o'clock.

10 A. M., 2d day of March, A. D. 1874, the Court met, present, Judges Williamson and Garretson.

Ques. When did you write in this lost book, the inventory of the property in Florida, did you write it there or here? }

Ans. I wrote it there.

Ques. Was it a proof copy of the inventory on file in Florida? }

Ans. I cannot tell.

Ques. Do you know what it amounted to, the inventory in Florida?

Ans. I cannot tell you now.

10

Ques. Do you know what it consisted of, if so, speak particularly?

Ans. I suppose it consisted of the evidences of debt that might have been due the estate; I don't think the real estate was inventoried.

Ques. Is this all the answer you can give to the question?

Ans. Yes.

Ques. Is it your understanding that this account if passed, shall embrace and settle all the matters included in the inventory in Florida? 20

(Question objected to by Mr. Clark, because we are here to inquire into the facts, and that the question does not apply to any of the exceptions to the account.)

(Objection overruled by the court, and the order of the court excepted to by Mr. Clark.)

Ans. It is.

Ques. When and to whom did you ever state, previous to this present examination, that you had filed an inventory in Florida, or to whom did you ever show a copy?

Ans. When I returned from the South, in 1838; I showed my co-executor, John H. Voorhees, a list of all the items that I found then, in the shape of book accounts and notes; I don't know of any other person.

Question repeated :

Ans. The same answer.

10 Ques. Do you mean me to understand that you told John H. Voorhees, your co-executor, on your return from Florida in 1838, that you had filed in the probate court of Florida, by whatever name it was called, an inventory of the personal estate of William Barcalow, deceased, at Florida.

Ans. No, sir, I don't mean you to understand any such thing.

Ques. What then do you mean us to understand?

20 Ans. What I showed him, a list of indebtedness, that I found open and uncollected; I also showed him an amount that had been collected by Seth Nickerson, as near as I could, ascertain; the inventory, if filed as I suppose it was, would contain items that would not appear in the account that I brought home.

Ques. Had you this supposed copy of the inventory when you presented your first final settlement of this estate in 1874?

Ans. I think I had.

*did to
read the
would
in items
would not
on the
story - this
number on
p 70*

Ques. Which inventory was largest, that in New Jersey or in Florida, I mean largest in amount and value?

Ans. The inventory in New Jersey.

Ques. What is the amount of the inventory in New Jersey?

Ans. Fifteen hundred and fifty-three and seventy one-hundredth dollars.

Ques. Do you know the amount of the inventory in Florida?

Ans. I don't know the amount, it wasn't larger. 10

Ques. Who were the appraisers at the taking of the Florida inventory?

Ans. I don't remember, it is a thing I haven't thought of, I suppose I could name the parties, but I can't remember.

Ques. Did you pay them as appraisers?

Ans. I can't tell, they may have done it voluntarily without fees; if I did, I should have a voucher for it; I may have lost it.

Ques. Did you pay anything to the Judge of Probate 20 for the filing or recording inventory?

Ans. If I did I have lost the voucher.

Ques. Why in this, and in previous accounts presented by you as final accounts of this estate, did you not charge yourself with the inventory of Florida, as well as of the inventory here?

Ans. Because I considered that if the receipts that I should collect from that inventory was accounted for here,

it would save the expense of going to Florida to settle the account there.

Ques. Is that all your answer?

Ans. In my previous account I always charged myself with all the monies I received.

Ques. Did you ever write for a copy of the inventory in Florida?

Ans. I don't know as I ever have; as I have said before, I am not certain that I had filed an inventory, but I
10 think so.

Ques. If you have not filed one there, do you now propose to settle this estate without any inventory of the property in Florida; amounting to several thousand dollars, is that what you propose?

Question objected to by Mr. Clark, upon the ground that the question is hypothetical and assumes propositions which are not in evidence.

Objection overruled, and exceptions taken by counsel for accountants.

20 Ans. Erase the several thousand dollars, and I will answer; there was not several thousand dollars, or anything like it; I can explain all that, if I am allowed to.

Ques. If you filed no inventory there why did you not?

Ans. If I didn't file an inventory, the reason was that I calculated to account for all the assets there received, in this court of New Jersey, to save the expense of going there to settle an account; that was my intention, whether I filed or did not file an inventory.

Ques. Where are your father's books of account, in which he kept his business, in Florida?

Ans. I don't know.

Ques. When did you last see them?

Ans. I don't remember distinctly of seeing them since March, 1838.

Ques. What did you do with them?

Ans. I left them in the hands of Joshua Joiner.

Ques. Were they posted or unposted?

Ans. I can't remember, I think they were posted, I am not sure of it.

Ques. When did you see them next?

Ans. I don't remember of seeing them since; I may have seen them in 1840, the second time I was there.

Ques. Have you taken any means to procure them.

Ans. I have and at considerable expense, and within the last few months.

Ques. When first did you take any means to procure them?

Ans. Since filing their first exceptions to my account, that I stated last fall in September I believe.

Ques. How much was due upon those books when you last saw them?

Ans. Nothing that was collectable.

Question repeated?

Ans. I can't tell the amount.

*It cost me
to procure the
that are now
ited in court
in addition to
the books*

Ques. When you passed those books to Mr. Joiner in 1838, did you take his receipt for them?

Ans. I don't think I took his receipt for the books.

Ques. How many different notes were then given to your father in his life time, that you have seen since his death in Florida?

Ans. None except what I have here.

Ques. Please produce them?

(Witness produced twenty-one papers, being memorandums of accounts and notes.)

One execution vs. Stephen Beula, for thirty-one dollars and thirty-seven and one-half cents.

Ques. How did this paper come to get in your hands?

Ans. I hold here a receipt of papers I put in the hands of Benjamin A. Putnam, attorney, after going to Florida in 1840, which was found among the effects of B. A. Putnam, since the exceptions were filed to this account.

Ques. What date precisely did you put the papers in Mr. Putnam's hands?

20 Ans. In April, 1840.

Ques. I thought you had a receipt?

Ans. I have; I wrote him I presume for a receipt or a memorandum of a receipt for those claims I left with him; (I may have, lost the receipt) I have got it here.

Ques. Was this execution paid or otherwise?

Ans. I never received nothing for it.

Ques. How did you come to get the paper?

*is a receipt
book now*

*are the papers
procured
the filing of
Oct. 18.*

10

20

*she has
receipt.*

Ans. I sent to Florida for all the papers, and that paper came up among the papers that I sent to find the books, and that paper came up among those papers from Putnam's trip; the letter I have here if you want to see it.

(Letter of Jas. Burt offered in evidence, and marked Exhibit 1.)

Ques. When you went down to prove the will in 1838, did you upon the settlement obtain notes as well as money given to you as executor or otherwise?

Ans. I can't remember, there may have been some given. 10

Ques. Can you render an account of these notes, or of this money collected when you went down to prove the will in 1838?

Ans. I can't render no account of the notes excepting what I find here, and no monies collected except what I have accounted for.

Ques. From whom was the two hundred and ninety-one dollars and twenty cents, collected in St. Augustine, in 1838 received from, and on what account state particularly?

Ans. It is impossible for me to tell who it was received from; there was some of that receipts used in payment of some claims, which I have ~~mentioned~~ attended to in answer to a question put before.

Ques. Why can't you state particularly?

Ans. In the absence of lost memorandums.

Ques. Were they lost in 1847, when you stated your first account?

Ans. I can't tell, don't remember of looking for them, I presume not.

*This is the letter to
carefully to
in request of
the books in
in 1878*

20
alluded

Ques. You can then give no account of the books and assets, nor of monies received in particular?

Ans. I cannot in regard to the particulars of the monies received, but I can say the books had been put in the hands by Joiner, before my arrival in 1840, of Phillips.

Ques. If you can't state how this item of two hundred and ninety-one dollars and twenty cents was made up, state where it came from, I mean the amount, when and how was it fixed?

10 Ans. It came from my old account that I had presented to the surrogate in 1847; I can't say it was fixed, there was no fix about it; I will state further also from a certified copy which I found of the old account.

Ques. How did you fix upon that particular amount in 1847, and upon what date, and upon what account?

Ans. I must have had a memorandum of the amounts individually received, including some accounts which I had called cash in the settlements.

Ques. Which accounts did you call cash, and include in this amount of two hundred and ninety-one dollars and twenty cents?

Ans. I can't tell which accounts, but some portion of account that I had previously given up.

Ques. Mention them?

Ans. F. Weedon, twenty-seven dollars and eighty-seven cents; Hulbert & Allen, seven dollars; John C. Huther, three dollars and thirty-eight cents; George Centre eight dollars and fifty cents; L. Wallace, twenty-four dollars; Ora Howard, nine dollars and thirty-seven cents.

*is an error
- as the
ent book journal
was lost at the
of making the
- correct - shows*

*are only
- Huther
- that were
- only accts*

Ques. Was there an account upon the books against F. Weedon, and if so, amounting to about how much?

Ans. I should judge from the memorandums I have here, there was upwards of seventy dollars.

Ques. Then there was a balance due the estate, and how much?

Ans. I suppose from this memorandum, there was forty-six dollars, for which I took a note.

Ques. Did not Ora Howard owe your father quite a considerable sum of money upon account? 10

Ans. I cannot tell; I have no remembrance of his owing him a considerable amount.

Ques. Was he not indebted to your father's estate a considerable amount, over and above the amount he had against him?

Ans. I can say, if there was he must have paid me; I have not any knowledge of any note; I can't remember anything about his account.

Ques. Doctor Wallace, was he not a debtor to your father's estate? 20

Ans. My impression is that he was.

Ques. Was it larger than the amount of his dentist bill against your father's estate?

Ans. I don't remember.

Ques. Do you remember now how that dentist bill was paid?

Ans. I have no distinct recollection about that bill; if there was an account against him, it was settled as I have

stated before; there may have been a balance due me on settlement, and if there was I think it was paid me.

Ques. Was there not a note, as well as an account against Doctor Wallace, and what was the aggregate of the two?

Ans. I don't remember.

Ques. I. M. Gould, he was an editor and surveyor, how much did he owe your father's estate?

Ans. I don't remember.

10 Ques. Did you ever pay him any money as executor of your father's estate?

Ans. I hold a voucher against him; I can't tell if I have paid him money, or credited on the account of the estate against him.

Ques. What became of Dr. Weedon's note that you spoke of a moment ago?

Ans. I left it in the hands of B. A. Putnam for collection.

Ques. When?

20 Ans. In April 1840; it was put previous in the hands of Joshua Joiner, in 1838 or 1840.

Ques. Please produce vouchers purporting to be payments of money to be due B. Legui, Hulbert & Allen, Dr. F. Weedon, J. C. Huther, L. Wallace, Ora Howard, Gould, and Centre.

Ans. Vouchers produced.

Ques. State if you can how these payments were made,

*I think by
direct payment*

whether in cash or by payments of accounts of the estate against them?

Ans. In settling of these accounts against the estate, I used the accounts of the estate in payment, as far as they went, and if any balance due or unpaid, took a note or notes, and left them for collection, and such amount as used for such payment were added as cash in the item, two hundred and ninety-one dollars and twenty cents.

Ques. If you allowed these accounts as cash, as stated by you, why did you not present these vouchers and include these credits in your account of 1847, when the account was fresh and the parties alive? 10

Ans. Because they were put in a bundle of vouchers through a mistake that belonged to my mother's accounts and were forgotten at the time, in connection with three or four other accounts.

Ques. Please name the others?

Ans. John I. Todd, the Harrison estate, Mary Jones, J. Castner's bill, also two hundred dollars sent J. H. Voorhees, there are some few small ones, that I can't put my fingers on; I believe they are not objected to; however, I have given all that are objected to that I can see. 20

Court adjourned until 2 1-2 o'clock P. M.

Ques. Do you mean us to understand that having misplaced these vouchers that you forgot in 1847, of making the payments referred to in the voucher?

Ans. I mean to say, that at the time of making out my account, I was satisfied that I hadn't all the money that I had paid in the account as stated, and a short time after the account was stated and exceptions filed thereto, I found 30

by Jones
#200

1847 ac

some of these vouchers and entered them down on the old account that I had before the Surrogate as a matter of reference, when the account should come up again; I mentioned to my co-executor, J. H. Voorhees, about those items, and also about the two hundred dollars I had sent to him from St. Augustine.

Exceptions being filed to the account in 1847, the account was not proved or settled at that time.

I had forgotten that I had made the payments at the
10 time referred to in the vouchers.

Ques. Did John H. Voorhees file his account at the time you referred to, in 1847?

Ans. He did.

Ques. Did he not charge himself in that account with a draft received from you, of \$200.

Ans. He did.

Ques. Was you not familiar with his account at that time, as well as your own?

Ans. Yes.

20 Ques. How can you then say that you forgot the two hundred dollars?

Ans. He drew my attention to it first.

Ques. When?

Ans. It was sometime after the exceptions were filed we were talking about it.

Ques. Do you think it possible that you could have read over and examined the account of your co-executor,

without its calling to your mind your forwarding to him your draft for the two hundred dollars;

Ans. I do.

Ques. Does not his account expressly state he got the two hundred dollars from you as executor?

Ans. It does.

Ques. Reading that, how could you overlook it or forget it?

Ans. I did do it; I can't tell how; my memory sometimes is not very retentive, things slip my mind; I afterwards ^{me} came to it; he really holding the voucher in his own hands, the acknowledgment of it, it misguided me. 10

Ques. Had you not this plain acknowledgment in his account filed with yours?

Ans. I had, but my attention was not drawn at the time to the fact that it ought to be charged in my own account; I did not think of it at the time.

Ques. Was not your principal business for several months after this account was presented, the matter of the account and the exceptions to it? 20

Ans. Only in one particular item of the account.

Ques. What was that?

Ans. The sales of the real estate.

Ques. Did not the exceptions cover the greater part of the account, the exceptions filed by Judge Brown?

Ans. It did.

Ques. How long were you in discovering the error about the two hundred dollars, after you presented your account?

*this shows that
mind & attention was
absorbed in the Real
Estate sales - I gave no att
to the other excep*

Ans. A short time after the exceptions were filed; I think within a month.

Ques. Was the account as presented by you in the surrogate's office sworn to?

Ans. It was.

Ques. How comes it that after having sworn to it, you altered your account without authority from any body, and when was it done?

(Question objected to.)

10 Ans. I made the alteration on my own account I have here and not on the original account in the office, so as not to forget it when the account came to be finally settled.

Ques. What particular seventeen days were you at St. Augustine after you proved the will?

Ans. I was there from about the twentieth of March, to the seventh of April, in the year 1838.

Ques. Did you sell any real estate at this time there?

Ans. I did

Ques. To whom, and what?

20 Ans. To George Bartlett, I sold a vacant lot.

Ques. At what price did you sell it?

Ans. From my memorandum I found within ten days, I find it was eleven hundred dollars.

Ques. Had you a written contract of the sale?

Ans. No.

Ques. What was the contract as to the delivery of the deed, and the payment of the money, when and how?

*an error - I
discover the
about that
until I found
be lost - the
was after the
of the acct.*

Ans. The deed was to be made out and delivered in Augustine; (no particular time specified, but as soon as practicable,) the payment was to be cash when the deed was received.

(The above question, propounded and answered above, excepted to as not being within the exceptions filed.)

Ques. Did he pay anything on the purchase while you was there in 1838?

Ans. No.

Ques. Do you know when the deed was sent down?

Ans. It was a few days before June 9th, A. D. 1838.

Ques. How do you fix that date?

Ans. By a letter I received from the party who had the power of attorney to act in the matter acknowledging the receipt of the deed, and also the power of attorney.

Ques. When did you next hear of the sale?

Ans. October 3d, A. D. 1838.

Ques. What did you hear?

Ans. I was informed by Joiner, that Mr. Putnam, the attorney for Mr. Bartlett had not been home, and Mr. Bartlett refused to pay over the money until Putnam examined the title. 20

Ques. Do you know when the deed was delivered or money paid?

Ans. I do not exact, but suppose some time in the spring of A. D. 1839.

Ques. From what do you suppose that?

*Mortgage loan
Joiner \$1080
130
2*

*1100-
66
1166 Com*

*deduct his commy
and some bills
and it won't
bear about
say about 41*

10

Ans. From a letter I hold of Joshua Joiner.

Ques. Of what date?

Ans. March 28, A. D. 1839.

Ques. Does that acknowledge the receipt of the money?

10 } Ans. It does indirectly; it seems in this letter that Bartlett made his last payment in January, A. D. 1839, and it seems farther that Joiner owed Bartlett seven hundred dollars, which money he had borrowed of Bartlett, some time in the summer or fall of A. D. 1838; he says last summer here.

Ques. Does he remit the money or give you any satisfactory excuse for not doing it?

Ans. He didn't remit the money and his reasons for so doing, was that he had spent the money, with the expectation of replacing it.

Ques. How soon did you go down to attend to it?

Ans. As soon as I discovered that there was any trouble about his not paying it, or having the ability to pay.

Ques. When did you go down?

20 } Ans. In the spring of A. D. 1840; it was eight or nine months after I discovered he had money.

Ques. Was it not fifteen months after he got the money?

Ans. I think it was.

Ques. What did he or Bartlett pay, or give you at this time you went down?

Ans. Bartlett did not give me anything; Joiner gave me a mortgage for ten hundred and thirty dollars.

D
er Jane
at face for

Ques. What became of the interest of the money?

Ans. He had paid some bills which were illegal; we didn't owe them at all, and then he charged commissions for attending to the business; I am not able to tell how much; and it reduced the account to ten hundred and thirty dollars; and then he paid a bill—it was illegal—to a man by the name of Gould for twenty dollars; he got out an attachment and he had to pay it; I don't know his first name; I don't know now what the nature of the claim was.

*bill paid
Commissions
Supposed to be
130 - 20 = 110*

Ques. How many bills did he pay?

10

Ans. I can't remember; I can't remember their names or amounts; I don't remember if I took a memorandum of them; I don't remember of receiving any receipts from him; I

Ques. Do you remember that you did not receive any receipts?

Ans. I don't; if I did they are lost.

Ques. From whom did you receive any monies belonging to the estate, on this visit to Florida?

Ans. I can't tell of but one person, and I am not sure about that; I think there was a small claim of about fifty dollars, a book account against Seth Nickerson, dec'd; I cannot tell if I received the whole or part, but I think only a part.

20 *I rec^d the 1/2 of
Nickerson deb
the books 65-12
from Geo Bartle
of account in m
a April 1844*

Ques. Did you receive other monies from other persons, belonging to the estate, at this time?

Ans. I think so; I am not sure; I may have received that whole amount of one hundred and fifty-nine dollars, from Joiner.

*did not rece.
any money -
Joiner - 1844
that I have for
out since*

Ques. On what account?

Ans. I can't tell; I don't think it was on book account.

Ques. On notes?

Ans. I am not able to tell; I had a memorandum at one time I think; I think it was at a settlement I had with Putnam.

Ques. Can you tell now, excepting from that old account of 1847, how much money you received at Florida, coming to this estate?

Ans. No, I cannot tell except by the old original account that I hold here.

Ques. From what place did you send to Judge Voorhees the draft of \$200?

Ans. I sent it to him from Augustine, but he didn't credit it until some months after.

Ques. A draft drawn on what, and by whom?

Ans. The draft I bought in St. Augustine, drawn on some house in New York; he did not credit to me when he received it, unless it was a good while coming.

Ques. What did you pay for the draft?

Ans. I don't remember.

Ques. Was not such a draft at a premium?

Ans. Sometimes they were, and sometimes not.

Ques. When did you send it?

Ans. Sometime in the month of April, 1840, I think.

Ques. For what was it required by Judge Voorhees?

*in sum that I
out*

*recons the
tas acct
c in 1847*

Ans. He had paid a special legacy to my sister Emiline of two hundred dollars.

Ques. Before you left to go South, had he paid it?

Ans. Yes sir.

Ques. Why didn't you pay him before you went South?

Ans. Because I expected to collect it there, and supposed that I could when I left.

Ques. From what did you expect to get it South?

Ans. I expected to collect it from Joshua Joiner; some of that money, but I could not.

10

Ques. How much money did you get of Seth Nickerson's estate, at this time?

Ans. I can't tell if I got any or not.

Ques. Why not?

Ans. Because I can't distinctly remember; there was a small account I left with Joiner, against Nickerson; his estate was insolvent, if I remember right; there may have been a portion of that indebtedness paid to Joiner or me, or through him to me.

*this is allude
on page 23*

Ques. Did you present a claim against Seth Nickerson's estate, and if so, when and for how much?

20

Ans. I did, at the time I went there to prove the will, and the amount I can't tell, but it was for all the monies he had had or collected on my father's books, and accounts and bills from the time of my father's leaving there, up to the time of his being drowned at sea.

1838-

Ques. Your father, as you understood, appointed him agent?

Ans. He was his agent and acted as such up at the time of his being shipwrecked and drowned.

Ques. Do you mean you recognized his agency to receive monies for your father, after his death?

Ans. I do.

Ques. What about was the amount of that claim against Seth Nickerson's estate?

10 *ooo*
 Ans. It will have to be a very wild guess; I have only one date to go by; I only give you my judgment on it; it may have been as much as \$2000; it may have been more or less; but I give it to you as I recollect; I did once know; if I could find my memorandum; I can read one date here from a letter.

Question by the Court. How long did he act as agent?

Ans. About four months.

Ques. Did not your father die in June and he in September?

Ans. I suppose thereabouts.

20 *est*
 Ques. How was your account against Seth Nickerson's estate made up, from what date and on what account?

Ans. When I went there I called upon Bartlett for the books and papers of my father's estate; he was Nickerson's executor or administrator; I took the books on which I found a number of accounts open and called on persons for the payment; I found that almost all of the good accounts had been paid to Nickerson on bills that had been made out from the books, the books not being balanced, vouchers being shown to me, an account of which I kept, and balanced the books; the bills were receipted, some swore they had

paid and their affidavits were taken, and I balanced their accounts; there were very few such; I also found a bill of eight hundred and eighty-three dollars and seventeen cents, being the contents of my father's store when he went away that he had sold to George Bartlett, which money was received by Nickerson previous to his departure for the north; there were also some other claims in notes I found he had collected through Bartlett; and I also remember of Bartlett's saying that Nickerson received from my father some Southern States bank bills to exchange or convert them into available funds at his convenience. 10

A
one item of
this is one of the
assets obtained
mentioned page
11 eleven

Ques. What was the amount of the uncurrent funds; state as near as you can, that your father left with Nickerson?

Ans. I can't tell.

Ques. Was it not five or six hundred dollars?

Ans. I think not.

Ques. Have you a copy of the final account of Bartlett as administrator of Seth Nickerson's estate?

Ans. No sir, I never saw it.

Ques. Was it settled in 1840 when you was there? 20

Ans. No sir, I think not; I am not able to tell you when it was settled.

Ques. Did it not greatly concern the estate of William Barcalow, dec'd, in the proper and legal settlement of Seth Nickerson's estate?

Ans. It did not.

Ques. Why not?

Ans. I took counsel of B. A. Putnam, a leading law-

yer in that country, and he informed me that I could not collect a dollar for the estate of the money he had collected and lost in this way at sea.

Ques. How then did you come to get any money of this estate?

Ans. If I got any it was a small amount on book account against him, this was for money collected by him?

Ques. You being sole executor of this estate in Florida, can't you tell us from whom this \$159 was collected?

10 Ans. No sir, it is impossible without memorandums which I have lost.

Ques. Haven't you in substance stated and sworn that this money was received from Seth Nickerson's estate in other suits—in a suit in Chancery of New Jersey between Culver Barcalow and yourself and others, and filed among other things to set aside the sale of the real estate in New Jersey?

Ans. If I did it is not true.

20 Ques. Did you get any notes or securities for the payment of money belonging to this estate at your visit to Florida in 1840, besides the mortgage?

Ans. If I got any I got them through Joiner at the time I settled with him, this real estate business, I cannot bring to my mind only one that may have been so got, but not certain, against Doctor Weeden for a small amount.

Ques. If Mr. Putnam informed you that Seth Nickerson's estate was not answerable, was it on this visit of 1840 that he informed you?

30 Ans. It was when I went to prove the will for the first time.

*him 20. a
has never
allowed for it*

*refers to
as he collected
it—*

Ques. Is your recollection of these transactions better now than it was, twenty-six years ago?

Ans. It is in some respects.

Ques. Do you remember of once having stated under oath in your answer to this Bill in Chancery referred that you got all that you could get from Seth Nickerson's estate that was stated in your account, being the balance of his estate after paying off incumbrances against his property, and that this amount you had charged yourself with in your account filed with the Surrogate in 1847?

10

Ans. That is all true, but it requires a little qualification to explain it; these amounts that Nickerson collected has nothing to do with that statement, it has reference to the book account which was open on the book against him when I was there in 1838, which amount was about fifty dollars, whatever was collected of that is included in the item of \$159.

explanatory

Ques. How long since have you seen this answer in Chancery and examined it?

Ans. About three weeks ago.

20

Ques. Did you not in that answer aver that Seth Nickerson previous to his death did collect and receive all the available debts due to the estate of William Barcalow, deceased, to a considerable amount, which amount you were unable to state as said books of account and other papers concerning the estate on the Florida business was then at St. Augustine, and that Nickerson's property was chiefly and as you believed altogether, with the exception of some incumbered real estate in his pocket and possession when he was drowned, and did you not admit that you had received some money from the administrator of said

30

Nickerson, being the balance of his estate after paying off incumbrances against and on his property which you stated was all that could be collected, which amount you had charged yourself within your account filed in the Surrogate's office of Somerset and to which you begged leave to refer?

(Question objected to because all this is a matter of record and the record should be produced).

Court rule that the record should be produced.

- 10 Court adjourned until Wednesday morning, March 4th, 1874, at 10 o'clock

Wednesday morning, March 4, 1874, 10 o'clock A. M.

Court met, present Judges Williamson, Thompson and Garretson.

Examination of F. Barcalow resumed by H. M. Gaston, counsel for exceptants,

Ques. Can you give any further account of the personal property of your father in Florida, than what you have now testified to, and if so state fully?

- 20 (Question objected to by Mr. Bartine, because the question was too indefinite to admit of an answer.)

The Court rule that the executor should give all the knowledge he has of the estate at St. Augustine, but to require him to remember all the evidence he has given is requiring too much of the witness. The Court refuses the question as propounded, and allow this question.

Ques. Can you now give any further account of your father's personal estate in Florida than you have done, if so, state fully so far as you can remember?

Ans. I cannot as far as the amounts received, as is charged against me.

Ques. Can you in any other way or in any other extent?

Ans. I can't at the present time.

Ques. Have you mentioned all the agents in Florida, to whom you intrusted notes and accounts of your father's estate for collection?

Ans. I only employed, or gave a power to in 1838 to one person Joshua Joiner, these were accounts that were supposed to be collectable if sued upon, there was only one justice of the peace, and he was entirely irresponsible; some-
 time in the year 1839, he gave some accounts to Justice Phillips, with the impression at the time if collected would never be paid over, but it was the only way that there could be an effort made to collect them; in 1840, when I called upon Joiner for settlement, he told me what he had done, in leaving the account with Phillips; I called on Phillips for settlement, he gave me the amount he collected, and gave me a draft for the amount on a man at Washington City, for about eighty dollars, it was less than a hundred; the draft was on Walker, which I knew at the time was good for nothing as he had frequently done before in all his returns as a justice; the draft was sent either by myself or Putnam, and was protested I think; I think I sent it and returned the draft and protest to Putnam to do as he pleased with it; I knew he could not collect it, the man was without any property, the justice was—

Ques. On what claims or accounts was the amount of this draft paid to Justice Phillips?

Ans. I suppose accounts that were on the books.

Ques. Can you state particularly?

Ans. The same answer.

Ques. Did you not take account at the same time of these payments?

Ans. I cannot tell, I have given an account of them to Putnam.

Ques. St. Augustine, is in the county of St. John, in the territory of Florida, was it not ?

Ans. Yes, sir.

10 Ques. Was there but one Justice of the Peace in the county?

Ans. Yes, sir; there is nothing of the county but St. Augustine.

Ques. Who is Putnam?

Ans. Attorney in St Augustine, and the only reliable man there to collect money for anybody.

Ques. How much did he collect of the estate?

Ans. I have an account of five hundred and twelve dollars and forty-one cents.

Ques. Did Putnam collect any of the personal estate, and if so, how much?

Ans. Nothing I remember of.

Ques. Did he obtain judgments of any of the estate or personal estate?

Ans. No, not as I know of.

Ques. Why not?

Ans. Because he didn't wish to put the estate to cost on

*was for rents
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aster reports
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worthless claims that my father had tried to collect in his life time and couldn't succeed.

Ques. What notes or claims were put in his hand for collection?

Ans. John C. Cleland, note \$182 49; do. pay account for malscion service, \$387; Joseph Woodruff, note \$200; Joseph Woodruff, pay account \$101 or \$157; F. Weedon, note \$46; Steph. Buloe, executor \$31 37; Thomas Hall, \$42; Samuel Kelly, \$7; some loose accounts against persons dead, absent, and good for nothing.

these claims in Court as

10

Ques. Were these all the notes of, or accounts other than those in the hands of Joiner, or Justice Phillips that belonged to the estate?

Ans. No, unless the words good for nothing in my previous answer includes the protested draft of Phillips, which I presume is the fact.

Ques. What had Thompson and Horner, of Tallahassee to do with this estate?

Ans. Woodruff moved away from Augustine some time in the year 1839, Putnam sent Woodruff's note to that firm for collection. 20

Que. What was done with the claim?

Ans. They *suad* served upon it as they said and never collected; execution was placed in the hands of Marshall; the original amount of note was \$200; if collected I never received any money.

Ques. Do you know it was not collected?

Ans. I don't know I wrote many times, I got no reply,

I suppose from the fact of getting no reply that they had collected the amount of the claim.

Ques. When was this placed in their hands?

Ans. Some time previous to the year 1842.

Ques. Where did you put it, the notes you spoke of, state particularly?

Ans. I think in April, 1840.

Ques. Why were they not put in the hands of a collecting agent in 1839, when you were there?

10 Ans. I wasn't there in 1839.

Ques. Why not in 1838 when he was there?

Ans. I have testified before that these papers were all in the hand of Joiner's.

Ques. What was Joiner's business?

Ans. Had no business I know of except settling up his business as former Marshall.

Ques. Please examine the bundle of papers you have, and state particularly when you left Florida in the spring of 1837?

20 Ans. I have no papers which I can tell the precise time.

Ques. Can you state what time you arrived here in 1837?

Ans. Some time in April.

Ques. How do you fix this date?

Ans. I fix it by vouchers or credit for monies I have paid in New York to Mulford, Martin & Company.

*in error and
d on page*

Ques. How much money did you bring with you of your father's at that time?

Ans. Cannot tell the amount, but say by his orders, I paid a bill in Charleston on my way home to George Bancroft & Co.; the amount somewhere between one and two hundred dollars; I think some other small bills there which consisted of (I mean money as regards money) South Carolina currency; I also had at that time an amount in silver coin tied up in a stout bag with the directions to pay the same to Mulford, Martin & Co., New York, which I did; 10 the amount as per credit on Mulford & Martin's bill two hundred dollars the credit is for; that was all the specie that I had, and all he gave me.

Ques. Do you mean that you can't remember how much money you brought away from Florida of your father's at this time?

Ans. I had money to pay my passage with and expenses.

Ques. How much was that?

Ans. It may probably have been about \$75 to \$100; I 20 can't tell the exact amount.

Ques. What was the fare from New York to Charleston by steamer?

Ans. I think \$25.

Ques. From there to St. Augustine per steamer?

Ans. \$15.

Ques. These charges including board on both steamers?

Ans. Yes.

Ques. From New York to Somerville how much?

This is all corrected on 67 + 68 +

Ans. I think seventy-five cents by steamboat and stage, I think, as near as I can remember.

Ques. Didn't you bring with you home a considerable amount of gold coin in the spring of 1837, some of which you parted with or exchanged to James C. Voorhees, dec'd.

Ans. No.

Ques. When did you leave Somerville in 1840 to go to St. Augustine, when is the precise date?

Ans. Can't tell, but can tell in 1838 when I went; I
10 left the sixth day of March, 1838.

Ques. How long was you on your journey to St. Augustine in 1840?

Ans. I was a good while getting there, I can't tell how long.

Ques. By what route and what conveyance?

Ans. By steamers from New York to Charleston and by steamer from there to St. Augustine.

Ques. Had you any other business or purpose in your journey than that connected with this estate?

20 Ans. Not in going to Augustine, East Florida.

Ques. Did you buy a horse and wagon on the journey?

Ans. Not to Augustine,

Ques. Did you buy a horse and wagon before you came home, and if so when and where?

(Question objected to; objection sustained by the court; that question may be a proper question at the proper time but is not a proper one at this time)

Ans. How much money did Culver Barcalow bring with him from Charleston after the death of his father belonging to this estate?

Ans. I never heard of any except about two or three dollars in copper pennies, old fashioned copper pennies, but I do know that my sister Emeline did bring home some funds which I suppose to be in specie; I never saw it, but from my mother's account was somewhere in the neighborhood of or between \$100 and \$150; if Culver had any I never knew what he done with it; besides the \$2 I mean 10 in pennies; I never received it or else I would have put it down.

Ques. Do these monies any where appear in this account?

Ans. They do a portion of them.

Ques. What portion?

Ans. Inventory.

Ques. The money of the inventory then which you are charged with in the inventory, are the residue of these monies received in the South upon the death of the testator? 20

Ans. There is no money charged in the inventory.

Ques. How then does a portion of these monies in any way appear in your account?

Ans. She bought with a portion of this money, and paid for items inventoried in crockery, carpets, stair-rods, knives and forks and some other articles.

Ques. Amounting to how much?

Ans. Can't tell the amount; I can tell the amount of

of one bill, the crockery it was, appraised in contents of sideboard; the bill for crockery was about \$20 I think.

Ques. Inventoried at how much?

Ans. Twenty dollars I think, the inventory says; sideboard and contents, all the crockery wasn't in the sideboard some of it was in the pantry.

Ques. How much of this money was used in the purchase of the property that was inventoried?

10 Ans. I suppose about forty dollars; understand it was inventoried less than it cost; I mean the money expended was forty dollars, but inventoried for less I suppose.

Ques. Was you a student at law at this time?

Ans. I was.

Ques. How long had you been?

Ans. I think about a year.

Ques. In the office of Thos. A. Hartwell, Esq.?

Ans. Yes.

Ques. When was you born?

20 Ans. March 23, 1817, I suppose, if the family record is correct.

Ques. What is the age of Emeline?

Ans. She was born, I think in 1819, the date I can't tell.

Ques. When was Culver born?

Ans. I think he is six or seven years younger than I am.

Adjourned at 12:45 for dinner—'til 2 o'clock.

is for about -
13 -
~~*papers all*~~
~~*in the office*~~

Ques. What were the ages of the other children?

Ans. I have got to guess at it; they were about eighteen months apart.

Ques. How old was the youngest?

Ans. It is all guess work, I have to guess; it was six or seven.

Ques. Had any of the children of William Barcalow, deceased, any property at his death other than their interest in his estate?

(Question objected to by Mr. Bartine as irrelevant and immaterial and included the question overruled by the court this morning). The court overrule the question as regards the minor children as being irrelevant. 10

Ques. Had you any property at your father's death other than your interest in your father's estate?

(Question objection to by Mr. Bartine because irrelevant and immaterial).

Ans. No.

Ques. How soon after your father's death had you a separate property of your own and what was it? 20

(Question objected to by Mr. Bartine as irrelevant and improper). (Question overruled by the court).

Ques. Have you the vouchers showing the two hundred dollars received by your mother of the furniture as given her in the will?

Ans. I have not; I charged her with the goods in her account which I had against her.

Ques. Has that account ever been settled.

was that there #
any amt. fixed
to settlmt. of
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Ans. No.

Ques. What became of the barouche or carriage belonging to your father's estate?

Ans. I exchanged it for a sorrel horse by the consent and approbation of John H. Voorhees, my co-executor.

Ques. Was it called the "Fox Horse"?

Ans. Yes.

Ques. How is that accounted for in this settlement?

Ans. In the inventory.

10 Ques. Don't you claim a credit for losses upon sales?

Ans. Yes.

Ques. At what price do you put the horse in your account of losses upon sales, had the horse been sold at that time?

Ans. The horse was taken by my mother at the appraisement.

Ques. As a part of her two hundred dollars?

Ans. No.

Ques. How then?

20 Ans. She took three hundred and fifty-nine dollars and fifty-one cents at the appraisement.

Ques. Did this include her \$200 worth?

Ans. The two hundred is included in the three hundred and fifty-nine, that was so done by the wish of John H. Voorhees for a reason.

Ques. What was the value of the Fox horse?

Ans. At the time of the appraisement, he wasn't worth fifty dollars.

Ques. What did you part with him for?

Ans. After keeping him two years I traded him for another horse, and got one hundred dollars to boot, to Abraham Deyoe, of Ulster County.

Ques. How did you settle the matter with your mother?

Ans. I never charged her, in her account with that property; the horse was taken for me; I was compelled to take him by John H. Voorhees.

Ques. Was there a sale of the personal property here of the estate?

Ans. There was.

Ques. When?

Ans. About June, 1838.

Ques. Was this horse sold at that sale?

Ans. He was not.

Ques. Have you the sale book of that sale here?

Ans. No, sir.

Ques. Where is it?

Ans. I don't know, it was left in the surrogate's office?

Ques. How do you now know about that sale, or of the amounts realized for the different articles? 20

Ans. I have the total amount of the sale on an old memorandum book, or a leaf of a book which I have here, I have it also in another book, in a book in which I charged when I received anything.

(Memorandum shown by witness.)

*here the court
made an error
their decree
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from ~~the~~ ^{other} part
Estate - Judge
Williamson to
10
in the presence
the surrogate
the court. tho
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been kept at the
of the Estate
It was upon the
belief - they had
that mistake*

Ques. Do you mean this was a paper that you prepared at the time of the sale?

Ans. No.

Ques. When was it prepared?

Ans. I can't tell the time when.

Ques. For what purpose was it got up?

Ans. It shows upon the face of it.

Ques. It shows what?

Ans. For what purpose it was got up.

10 Ques. Was it not got up nine years afterwards or thereabouts?

Ans. I suppose it shows for itself.

Ques. Is not this your preliminary account in 1847?

Ans. I don't see how it could be my preliminary account being a paper that is a part of it, there is an error in the paper I want to explain; the amount that my mother bought at the vendue being eighteen dollars and thirty-eight cents was included in the amount of sale of goods at vendue in the amount of \$122.77; you take the amount I have just here stated, \$134.79, and add to it the \$18.38, it makes the amount for which I claim a deficiency in the present account, being \$153.17.

Ques. Please state how your present claim of \$153.17 of loss on sales is made up?

(Question objected to because it is a matter to which no exceptions have been taken).

Ans. Statement in Exhibit D, of schedule accompanying the report.

*original
not - the
was made
18.38
34.79 - which
to be about
the amt of
statement -
etc in
last report -
+ D*

Ques. Mr. Barcalow how many different accounts of this estate have you presented to the different Surrogates since you were executor, including the present?

Ans. I think this makes the fourth.

Ques. What was your loss in sales in your first?

Ans. I think my first account was one hundred and seventeen twenty-six.

Ques. What had you in that paper you called a memorandum as giving the loss on sales in the absence of the sale books?

10

Ans. I did not have that paper on my first account; this paper here claims a loss of \$134.79, with an error of \$18.38 to be added to it.

Ques. What was your claim for loss on sale in your account filed in 1873?

Ans. It was \$117.26.

Ques. What real estate belonged this estate in New Jersey?

Ans. It is shown in the account as presented to the Surrogate in 1873.

20

Ques. When was it sold and conveyed?

Ans. It was sold in 1842.

Ques. Sale advertised in the newspapers?

Ans. I think it was.

Ques. Which one?

Ans. I think in both papers.

Ques. Have you paid any charge for advertising in 1842?

Ans. I have no voucher here; I know it was advertised in handbills and they were sent all round the country.

Ques. To whom were the different properties struck off at that sale?

Ans. To Ferdinand Van Derveer, the hotel property at \$6,000; lot in Bridge street at \$600 to Ferdinand Van Derveer; house and lot in Main street to William G. Steele for \$985.

Ques. At what time was this sale in 1842?

10 Ans. It was some time in the month I think of January or February; it was adjourned once or twice, once I know; the adjourned day of sale was some time in the latter part of March.

Ques. When were the deeds to be delivered?

Ans. On the 1st April, A. D. 1842.

Ques. What was then done on the 1st day of April, A. D. 1842?

Ans. The deeds were tendered to Vanderveer and Steele.

Ques. Did they take them?

20 Ans. They did:

Ques. How much money did they pay?

Ans. At that time no money.

Ques. How did they pay you for the properties when you gave them the deeds?

Ans. They did not pay me at all.

Ques. How long did they hold the title to these properties?

Ans. But a very short time, the records will show.

Ques. What then took place?

Ans. They deeded them to me; I handed back their notes and they let me have them for what they cost them.

Ques. Did you pay a dollar for these properties when you got the deeds?

Ans. I had paid in advance to the heirs four years expenses of keeping, of clothing and schooling, and all the bills, and also several hundred dollars in advances upon the estate's indebtedness.

Question repeated.

Ques. Do you refuse to answer my question?

Ans. I don't.

Ques. Was there a guardian appointed for the children or any of them, and if so for whom?

(Objected to because the will provides that the executor shall act for the children in the place of a guardian). The court overruled the question as improper.

Ques. How long did you continue to hold the title to this property?

Ans. The hotel property I held the title of 'till 1857, I don't know the exact date; the Main street property I held until 1853, about.

Ques. Who received the rents and profits during all that time?

Ans. I received the rents.

this shows I had adva to the heirs a part of their in the Estate to the sale of 10 and could have had an sufficient to interest for their needful wants
10
20

Ques. When you conveyed the premises who got the benefit of the money upon the sale?

Ans. The children, the great portion.

Ques. Which children, mention them?

Ans. All that were heirs under the will—some more and some less?

Ques. How much did you pay to Theodore of the proceeds of this property when you sold it?

10 Court adjourned until Thursday morning, March 5, at 9 o'clock, A. M.

Thursday morning, March 5, 1874, present Judges Williamson, Garretson and Thompson.

Examination of witnesses resumed.

Examination of F. Barcalow.

The question propounded. "How much did you pay to Theodore, of the proceeds of this property, when you sold it?"

20 (Question overruled by the Court, for the reason that the question relates to the settlement with the heirs and this is the executor's account.)

Ques. Did you not treat and use the proceeds of the sale of this real estate as your own, and for your own uses and purposes?

5 *in a page*
Ans. A part of it, and a part was previously expended in maintaining the family for four years, a portion being paid on the amount I had advanced over and above the assets in payment of the debts of the estate previous,—(All that part of the answer after the words "a part of it objec-

ted to by counsel for exceptant, as irrelevant and irresponsible to the question.”)

Ques. When, and to whom, and for what price did you sell the tavern property?

Ans. I can't tell the time when, it is easily ascertained from the records—to David C. Noe, for eight thousand dollars, no money paid.

Ques. How secured?

Ans. A bond and mortgage for the whole amount.

Ques. When paid?

10

Ans. Never paid.

Ques. What became of the mortgage?

Ans. I took the property back, and gave up the bond and mortgage.

(Counsel for accountant objected to this investigation in relation to the sale of the property by Farrington Barcalow, as an individual, and asked the Court to overrule all that part of the examination which relates thereto.)

The Court refused to overrule the questions that have been already on the subject matter last objected to.

20

Ques. To whom, and when did you ultimately sell the tavern property?

(Question objected to, and overruled by the Court; the Court refuse to go into an examination of any after sales by Farrington Barcalow as an individual; and rule that the examination is bound to account for the balance in his hands A. D. 1842, with interest unless there were proper advances made prior to that time, or he has settled with the heirs.)

*here was the
reins as to the*

(Counsel for the exceptants, excepts to the order of the Court in overruling the question, and on the supposed allowance of an investigation in the accounts of the accountant with the several heirs.

Ques. Did you not sell all the different properties purchased by you for as much, if not for more money than you have charged yourself within this account?

(Question overruled by the Court.)

Ques. Did you not, after the conveyance to you in A. 10 D. 1842, up to the time of your selling the several properties, did you not receive as much if not more rents for the same than their rents previous to A. D. 1842?

(Question overruled by the Court.)

Ques. How much money on April 1st, 1842, was by the conditions of the sale to be paid by the respective purchasers on that day?

Ans. I can't tell, not having the conditions here; I don't know what they were now.

Ques. Was it not one third cash, two thirds mortgage?

20 Ans. I can't remember—if they have the conditions of sale and will show it to me—I will look at it and then answer further; I think the original conditions of sale were filed at Trenton.

Ques. Did Judge Van Derveer and William G. Steele, prepare to comply with those conditions as far as cash was concerned?

(Question objected to upon the ground that the sale is not contested, and therefore, does not come within the scope of inquiry before this Court.) The Court ruled that the

30 question is a proper one.

accounts
pull and
sales

Ans. I don't think they did.

Ques. Did you not procure Judge Van Derveer, to purchase the tavern property for you?

(Objected to for the same reason by counsel for accountant as the last question.) By Court "we think it is a proper question?"

Ans. I did not.

Ques. Did you not previous to that sale, apply to Caleb Miller of this town to purchase the tavern property for you at that sale?

10

(Question objected by counsel for accountants for the same reason, because it does not appear that Caleb Miller, has ever had anything to do with this property, and it does not contradict anything which appeared in the case. Question allowed by the Court.)

Ans. I may have done so, if he said so, but I don't remember it.

Ques. Where did you invest the two thousand dollars, the interest of which was to be paid to the widow and when, and where is it now?

20

Ans. The two thousand dollars was as per order of the will retained in the hands of the executor; it is supposed to be in the hands of the executor.

*order acc
to the will as
instructed*

Ques. Did you loan it or has it always remained in your hands since A. D. 1842?

Ans. I never loaned it.

Ques. In what shape was it in A. D. 1847?

Ques. It was supposed to be in the hands of the executor.

Ques. Was there ever in fact a dividing and setting apart of two thousand dollars at interest for the benefit of the widow, and what was done to manifest it if so?

Ans. It was done just exactly as the will directs; it was to be held in the hands of the executor; no outside investment made.

Ques. Was it in any way separated from your other
10 property?

Ans. It was not.

Ques. The vouchers in your account of annual payments to the widow, when were they given and what was done when they were given?

(Question objected to by counsel for accountant, because those items are not excepted to. Question overruled by the court. Counsel for the exceptants excepts to the overruling of this question by the court).

Ques. Did you in fact pay your mother one hundred
20 and twenty dollars a year as interest money on this two thousand dollars?

(Question objected to by counsel for accountant for the same reason there is no exception to items. Question allowed by the court. Counsel for accountant excepts to the allowance by the court of the question).

Ans. I did.

Ques. By check or bank bills, or in what manner?

Ans. In money; that includes bank bills and money.

Ques. In how many payments in each year, state particularly as you can?

(Question objected to by counsel for accountant for same reason as above. Court allowed the question. Counsel for accountant excepts to the ruling of the court).

Ans. I can't tell distinctly.

Ques. At what season of the year did you pay it?

Ans. I paid it at various times previous to her interest being due; she could not live a whole year without anything.

10

Ques. Were those receipts signed when you filed your account in 1847, by your mother?

(Question objected to by counsel for accountant unless the exceptants propose to prove that receipts signed by Ann Barcalow are forgeries. Question overruled by the court).

Ques. Did you not procure your mother to sign those receipts after your account was filed in 1847?

(Question objected to by counsel for accountants and overruled by the court. The ruling of the court excepted to by counsel for exceptants).

20

Ques. Did you ever settle with your mother?

Question objected to by counsel for accountant unless exceptants show in what way it is connected with the estate and the account does not show there has been any settlement with his mother, nor has any exceptions been filed. The court allowed the question. Counsel for accountant excepts to the order of court?

Ans. No.

Ques. Was she an accountant or know anything about accounts?

(Question objected to and overruled by the court. Counsel for exceptant excepted to by the ruling of the court.)

Ques. Do you mean that you paid your mother the one hundred and twenty dollars a year outside of and not included in your accounts against your mother on your books?

10 Question objected to by counsel for accountant for the same reasons as above. Question allowed by the court and the ruling of this court excepted to by counsel for accountant?

Ans. No.

The court opened at 2:15.

The witness states, I wish to amend my last answer; I cannot tell correctly in the absence of my book account of account against mother's book of account, nothing here.

Ques. Did your mother ever have a book of account?

Ans. No

20 Ques. Do you mean that you have a book that contains a detached account of your mother?

Ans. I do.

Ques. What else does it contain?

Ans. Other accounts, the words detached does not apply, it isn't exclusive; I don't mean to say that I have a book of accounts in which there are no other accounts.

Ques. Do you mean this as one of your general account books?

Ans. I do.

Ques. Where is it?

Ans. Orange county.

Ques. At your father's death, where did your mother and children reside?

Ans. Somerville, New Jersey; there was some not at home at his death, had been residing South.

Ques. When did Ann Augusta die?

Ans. The 26th of February, 1844, I believe, the name Ann Eliza in the will is a mistake, it ought to be Ann Augusta.

+1

she died here

10

Ques. When was Emeline married?

Ans. I think November 6th, 1839.

+ *she was home 3 years before the sale of the Real Estate*

Ques. Did she then cease to live in your mother's family?

Ans. No.

Ques. When did she cease to live in your mother's family?

Ans. I think about March 1840, can't tell exact.

Ques. When did Theodore first quit your mother's family, and how long has he lived there since?

20

Ans. My impression is that he first quit about 1843, about and was gone a year and then came back, and was home a year, and then he went away a year; then I think he went; he was two year's at the carpenter's trade I think so; then I think he was home a year; I think he was a year before he got married, I won't be sure about that.

he was home the time up to sale of the Real Estate 1842 & after

Ques. When did Theodore first go to upon leaving your mother's house, as you know.

Ans. I can't remember unless it was to Nelson Young's.

Ques. When did Culver leave his mother's house?

Ans. I think sometime in the fall of '39 or winter of '39; he went to Fritts' I think to tend bar.

Ques. When did you leave your mother's house?

Ans. I think 1858.

Ques. When did Henrietta and Theresa leave your house?

10 Ans. In 1864 I believe.

Ques. What became of Henrietta?

Ans. I obtained a situation for her with my cousin Judge Harriot, of Illinois, as housekeeper.

Ques. What became of her?

Ans. She died west.

Ques. Give the date if you can?

Ans. I can't do it.

Ques. What became of Theresa?

Ans. I got a situation for her as teacher in a school.

20 Ques. Where?

Ans. South Carolina.

Ques. What was you doing when you lived at you mother's?

(Question excepted to by accountant's counsel, and exception sustained by the Court.)

*was home
part of the
before the sale
some time after
our home all
in 1864
in widow*

Ques. What income had you, if any, while you lived at your mother's, not derived from this estate or its property?

(Question objected to by accountant's counsel. Question overruled by the Court. Exceptant's counsel excepts to the ruling of the court.)

Ques. What is voucher 80, please produce it?

Ans. Exhibits voucher, also exhibits 105, 68, 69, 70, 72, 73, 74, 110, 111, all exhibited by witness.

Ques. Where are your father's books of account which he had in his business in New Jersey.

Ans. I dont remember of ever seeing them; I have an inventory here and have two items I think; I never saw any book account; if there is I don't remember of seeing any book or books, they may have been in the hands of Judge Taylor.

(Voucher 98 exhibited.)

Ques. Do you know where the monies were paid that are referred to in this statement?

Ans. I have found one of his vouchers recently; reads voucher; receipt for insurance \$13 90, March 3d, 1838; I also found a voucher where James Taylor paid interest to Cornelius Van Derveer, \$12; he also gave me a book and vouchers containing the account against my father; that's my impression—but I have lost it; I think so from the fact of finding this one receipt here.

Ques. When did your mother die, state as near as you can?

Ans. I think last spring sometime, or summer.

Ques. When did you last pay her any money?

ev S. B. Trimm
105 John & Todd
68 F. Keeton
69 Hulbert & Mc
70 J. C. Huther
72 Geo Center
73 S. Wallace
74 C. Howard
110 J. M. Gould
111 J. H. Rowhee
draft

(Question objected to by accountant's counsel because there are no charges of the accountant for any payments made to the widow, to which any exceptions have been filed, and because this question as stated by the counsel of the exceptants refers to other payments than those stated in the account. Question sustained by the court. Exception taken to the ruling of the court by accountant's counsel.)

10 Ans. On the same time in 1872; have the vouchers here, and up to the time of her death by my agent, John White-nack security; that was the interest on the half of the sale of the house and lot; she had a life right in the property on Main street but paid no interest on the \$2,000; since the property was sold in which she resided, except by advances to her which I had previously made, which was a considerable amount.

Ques. She was entitled to the use of this house and lot which was sold by commissioners, during her life, was she not, the house and lot on Main street referred to in the will?

20 Ans. The will shows it, refer.

Ques. She was entitled to the interest of the money the property brought as sold by commissioners?

Objected to by accountant's counsel.

Ans. Same answer.

Ques. Did you pay her one dollar in nine years before her death, and upwards?

Ans. I have answered before that question distinctly.

30 Ques. Did you pay her one dollar on the interest on the \$2,000, that was left her in the will, for nine years and upwards before her death?

Ans. My answer above answers that question; I have answered the question fully before, that covers my position.

Ques. Do you know how your mother was supported the last nine years of her life?

(Objected to by accountant's counsel and objection overruled. Objected to because it relates to nothing concerning the present inquiry before the court and is in no way embraced in the account, or exceptions, beside whether the witness does or does not know, will not discharge him from the performance of any obligation by virtue of the will or impose any further burden upon him.) 10

Ans. I suppose by the income derived from the proceeds of the sale of the house in which she resided formerly in Main street.

Ques. Did you never claim that you was discharged from any obligation to pay the interest on this \$2,000 since the sale of the property?

(Objected to by accountant's counsel because it involves a legal proposition as to the construction of the will, and whether he claimed it or not, wouldn't charge or release him unless discharged by law. Objection overruled by the court.) 20

Ans. I did.

Ques. On what ground?

(Objected to for same reason.)

Ans. On the ground of my consenting to the sale of the property.

Ques. By the commissioners?

Ans. Yes, commissioners.

Ques. Have you any such agreement?

Ans. No.

Ques. Was your claim admitted or denied by your mother?

(Objected to.)

Ans. Denied.

Ques. When did you see your mother last before her death?

10 (Objected to by accountant's counsel and objection overruled.)

Ans. I have vouchers to tell the last time I saw her; it was the last time I paid her the interest on the estate that was sold, in 1871 or 1872; I think it's about 1871.

Ques. She left this house that was sold by commissioners in the spring of 1864 did she not?

Ans. I think she did.

Ques. How many times did you see her before you moved to the state of New York, your present residence;
20 I mean from 1864?

(Objected to by accountant's counsel as irrelevant before the court. Objection overruled.)

Ans. Five, six or seven times.

Ques. When did you move to the state of New York?

Ans. I think the fall or winter of 1871 and 1872, the winter of '71 and '72.

Ques. Did not H. M. Gaston in 1868 or 1869, write

you a letter in which it was stated that she had not sufficient to support her, and requesting you to arrange the matter in a kindly way, to avoid family trouble?

(Objected to by accountant's counsel because it is irrelevant and immaterial. Objection sustained. Excepted to by counsel of exceptants.)

Ques. Where is this \$2,000 now; how secured or invested?

Ans. It's really consumed by the widow during her life time; although I have always said that I was legally bound and will pay to any of the heirs who have a share of that upon final settlement of the estate; I mean to say all my interest into it was spent; I was always told by Culver to let her have what she wanted if it took every dollar of his share of the estate.

Ques. How long; have you always admitted that you was bound to account for this \$2,000 to the children?

Ans. Please read my answer to the previous question. It's read to him; one word left out there "all who had" a right to share.

(Counsel for exceptants ask to see one voucher III, copy of John H. Voorhees' account.)

Ans. Witness says it's in John H. Voorhees' own hand writing.

Ques. Have you a certified copy of John H. Voorhees' account filed in the Surrogate's office in 1847, or the original?

Ans. I have found the original account of John H. Voorhees and my own.

here is evidence
10 that the heirs
had the bump
money - before
~~this he ne~~
~~denied in~~
~~statements~~
Widow's death
Culver in his
own denial
statement -
20 To him - as
what he got

*Faid has among the vouchers the evidence
to Voorhees, \$200 - he has*

Ques. Where are they?

Ans. I haven't them here, I will produce them in the morning; I could tell you when I found them as you want me to tell you.

Ques. Have you your letter accompanying the draught to John H. Voorhees, from Florida?

Ans. No.

Ques. Have you any receipt from John H. Voorhees of the \$200?

10 Ans. I called that a receipt, none except that, the copy of his own account in his own hand writing, voucher III.

Ques. When did John H. Voorhees die?

Ans. 1857.

Ques. When did George Bartlett die?

Ans. Don't know.

Ques. Wasn't he dead previous to your account of 1847?

Ans. Don't know.

Court adjourned.

9 o'clock, A. M. March 6, 1874. Court met.

20 Ques. Produce if you can the separate accounts of John H. Voorhees and yourself for the year 1847?

Ans. Accounts produced by witness and offered in evidence by exceptants, being the separate accounts filed in the Surrogate's office, July 28th, 1847, of Farrington Barcalow and John H. Voorhees, and marked Exhibit B. and C.

(The evidence of the accounts objected to by counsel for

the accountant, or because the accounts were excepted to and did not pass the court.)

Counsel for exceptants also offer in evidence the account of this accountant filed in the Surrogate's office, July 19, 1873. (Counsel for accountant except to the offer of the account in evidence for the same reason.)

Ques. Look at the third item in the debtor account of 1874, by John H. Voorhees, has it been altered and by whom?

(Question objected to by A. A. Clark, because the record answers for it.) 10

Ans. The addition of F. Barcalow above was written by me but I made an erasure; I done that to make it correspond with his own account from which that account was made by the Surrogate—which I have here in his own hand writing.

(Counsel for the exceptants excepts to the answer as not responsive and a volunteer.)

Ques. When did you alter this account of John H. Voorhees?

20

(Objected to by counsel for accountant because the question assumes what is not true.)

Ans. I made the addition of F. Barcalow, when these papers were brought up in Court before Dalrymple sometime in 1868 or 1869.

*I am sure that
this is the true
made addi*

Ques. Was the erasure of St. Augustine then made?

Ans. No, if you call that an erasure, it was not made.

Ques. When and by whom was that erasure made?

Ans. If it is an erasure, which it looks like it on the face of it, I must have made it unintentionally, because I intended to have it to correspond with John H. Voorhees' own account.

Ques. Where did you make the alteration, at what particular place?

Ans. I wish you to read over my questions and answers previous, two or three back; I answered the question once, I may have made an error about it; (the three or four questions were read to the witness); I can't tell the particular place; it must have been either at the time I have before spoken of, before Dalrymple, or sometime previous; it was done when I first discovered the discrepancy in the Surrogate's account, different from the original account.

Question repeated.

Ans. When it was done I cannot tell, it may have been done in the court-house or may have been done in the Surrogate's office.

Ques. Was it done after or before the account was sworn
20 to and filed?

Ans. It was done after.

Ques. Who was present when done?

Ans. I don't know; it was done in open daylight and not in the dark; I presume it was done in the Surrogate's office, if done there in business hours.

Ques. Was it not done by you in 1847, after the account was filed?

(Question objected to because it has been answered be-

*Satisfactor
was made
is time -
was probably
at time of
reason to look*

fore, and because it cannot impeach the account of John H. Voorhees.)

Ans. It may have been done.

Ques. Was it done by you previous to your rendering an account as executor in the Chancery suit of 1847?

(Question objected to by counsel for accountant.)

Ans. It was; it will appear upon his papers in that suit?

*Look for account
his account*

(Answer objected to by Mr. Gaston as evasive.)

Ques. Please answer particularly and directly?

10

Ans. Please repeat the question.

Question repeated.

Ans. Please read my answer; if it was it ought to appear in my answer.

Ques. If it was made previous to your answer in this Chancery suit, please explain if you can why in your account in that Chancery suit you made no claim to your two hundred dollars?

Ans. I have answered that question fully; he asked me in some previous question whether it was possible for me to overlook that item at the time of settling the estate or words to that effect; I said it was.

20

Ques. How was it possible if you had altered the account of John H. Voorhees in this particular, that you could overlook in your account filed afterwards in the same year your two hundred dollars?

(Question objected to by the counsel for the executor, because he has not stated that he altered the accounts.)

Ans. It is possible from the fact that I had no experience in the making of accounts or of settling estates, and found afterward that I had made many errors against myself.

Ques. Can you state now when you discovered this mistake of two hundred dollars in your account of 1847?

Ans. I think I stated before in this examination a short time after the exceptions were filed,

Ques. Where did you find these two original accounts
10 of yourself and John H. Voorhees in 1847?

Ans. Mr. Bartine in looking over the papers at his office, found them one day this week, and handed them to me.

Ques. Was you present when he found them?

Ans. I was.

Ques. Where particularly were they in the office?

Ans. I don't know, he brought up a bundle of paper in his hand from some part of the office, and in looking over his papers handed them to me, and asked me what they were, or words to that effect; I said that they were the
20 papers that I had been looking for and could not find.

Ques. How long had they been missing?

Ans. Ever since you took them out of the office; he brought them in court before Dalrymple, I think.

Ques. Were they missing while they were in my hands?

(Question objected to by counsel for accountants. The court overrule the question. Counsel for the exceptants now offer to prove, directly or indirectly, that these papers have been in the hands of accountant or his counsel, during

which time the accountant had given out that the exceptants had stolen the papers. The court allow the offer of counsel.)

Ques. How long has Mr. Bartine been your counsel?

Ans. Three or four years, I think.

Ques. Has he a bundle of papers connected with your business in his office, and has he had for years?

Ans. He has two separate bundles of papers in two separate cases; I have never seen the two bundles together.

Ques. Had you his assistance as counsel in making out 10
your account of July 19th, 1873?

Ans. No.

Ques. Was it not done; that account made in consequence of a suit brought in the name of the Ordinary of New Jersey upon a bond in A. D. 1864, required by this Orphans' Court of you to give security for the money of this estate in your hands.

(Question objected to by counsel for accountant, because it is a matter of record. The court rule that this question is inadmissible. Counsel for exceptants excepted to the 20
ruling of the court.)

Ques. Was the account rendered by you July 17, 1873, compelled by any proceedings of your mother, Ann Barcalow, or was it voluntary on your part?

(Question objected to by counsel for accountant.)

Ans. I can't say I was compelled, but I desired to have the account settled in some way, and this seemed to be the only way; I had hoped to settle my accounts without any legal proceedings, or costs or expenses.

Ques. Did you not understand that your security, John H. Whitenack, was threatened to be sold out by the sheriff, and did he not appeal to you by letter or otherwise to relieve him, and was not this account then so caused and compelled?

(Objected to for the same reasons by counsel for accountant, because the record will show that the suit brought in the name of the Ordinary, and the judgment thereon did not compel the executor to settle this account at that time, and that there having been no assessment of damages, that if an execution was issued for the collection of the penalty of the bond by the counsel for Ann Barcalow, that it was illegally issued and contrary to the settled law of cases of judgments of bonds to the Ordinary.)

(Counsel for the exceptants excepts to the exception as frivolous, untrue and unprofessional.)

(Counsel for the accountant excepts to the exception of counsel for the exceptants upon the ground that it is nothing more than an exhibition of personal feeling, and for nothing else.)

Ans. I received a letter from Whitenack, and enclosed it to J. D. Bartine, and I never knew about the settling of this account until about ten or twelve days previous to the rendering of my account; I called at Mr. Bartine's on some business about that time last mentioned; he stated to me he had advertised a settlement of the estate, and had written me; I replied I never had heard or received any information about it.

(Answer objected to by Mr. Gaston, counsel for exceptant as evasive, and question repeated.)

Ans. The letter of Whitenack stated the sheriff had

been to his house for the purpose of making a levy, I believe.

Ques. Did not Mr. Bartine tell you of his application to the Chancellor or Ordinary for a stay of execution for a certain time, and that the account must be settled in a certain time.

(Question overruled by the court.)

Ques. Was you not in some way informed that an execution threatened your security here which made it necessary for you to settle this account here in the Orphans' court? 10

Question overruled by the court as having been answered in a previous question. Counsel for the exceptants, excepts to the ruling of the court.

Direct examination of F. Barcalow's here closed.

Court adjourned the hearing of this case, until the 16th instant, at 10 o'clock.

Court then adjourned until 2 o'clock P. M.

Somerset Orphans' Court, March 16, 1874.

Examination of witnesses resumed:

Farrington Barcalow recalled and cross-examined by Mr. Clark. 20

Ques. You said you went to Florida in June or July, 1836, and left in March, 1837; have you any memorandum by which you can state more positively when you did leave in 1837?

Ans. I have, and can; I left sometime after May 9th or 10th; I suppose immediately, it may have been the 10th.

Ques. To what do you refer, by which you fix that date?

It is here where corrected the made page 3 to the last que

10 Ans. I refer to a bill that I bought for my father,
 May 15th, 1837; bill of William Zimmons & Son's—and
 marked Exhibit F; I also refer to bill paid in New York,
 May 25th, 1837, this bill showing on its face a premium on
 specie of six per cent., marked Exhibit G, paid to John
 Hitchcock & Son, for \$128 20; that I suppose to be all
 the specie I had; if I had any more, I paid it to parties
 that I cannot now remember; but I am positive that I paid
 all to the parties that I was ordered to pay it too, the item
 20 \$200, paid on Mulford & Martin's voucher No. 77, April
 3d, 1837, was paid by Judge Taylor, out of the rents which he
 had collected, as agent for my father at that time; I was led to
 doubt my statement that I made previous, after making it;
 from the fact that I did not discover in that payment any
 premium on specie; I found these papers since my examin-
 ation; I also found a bill of \$119 44, that I paid James
 Bancroft & Co., in Charleston, on my way home; the bill
 of William Zimmons & Co., was for articles that my father
 obtained for some other person; they were articles that he
 did not deal in.

Ques. This purchase of May 15th, 1837, of William
 Zimmons & Son's, where were they doing business?

Ans. In Charleston.

Ques. Did you purchase this bill of goods on your re-
 turn from St. Augustine?

Ans. I did upon my father's order.

Ques. John Hitchcock & Son, where were they doing
 business?

Ans. In New York; the bill shows upon the face of it.

30 Ques. Did you settle that account on your return from
 St. Augustine in the spring of 1837?

Ans. I did before I returned home, on my way home; I also fix the day when I arrived home by one bill I found, dated May 27th, 1837, paid Isaac Van Deventer, which was paid out of the funds that I had left out of my expense money to come home with—one dollar and fifty nine cents, dated May 27th 1837; I must have been on the trip from about May 10th to May 27th—seventeen days; of that time, I must have been in Charleston, from about May the 12th to about May the 22d—making ten days—expenses about twenty dollars; I must have been in New York about one day, 10 probable expense about one dollar and a half; I paid some other bills besides this of Van Deventer's—small in amount; I think one was Stephen H. Rowen, the balance of the money I had left; I gave a portion, not large, to my mother, and what balance I had left intended upon the arrival of my father to hand to him; it must have been small, it could not have been large; his not arriving, I may have used, and think I did some of it, for some clothing for myself; my mother using in the meantime a small portion.

Ques. In your direct examination you stated that you 20 had paid some silver coins to Mulford, Martin & Co., upon your return, did you pay other silver coin than that to Hitchcock & Son?

Ans. I have explained in my previous answer that I did not pay to Mulford, Martin & Co., any silver coin—but did pay Hitchcock & Son's; my answer above contains the whole statement; I was not in New York in the month of April, 1837.

Ques. Did the finding of the voucher, to which you 30 have referred, make discovery of the error in relation to the payment of the specie to Mulford, Martin & Co.?

Ans. In part, but was led as I said before, to make re-

search, from the fact that in the alleged payment of \$200, I could not discover any premium paid for silver; I knew I had paid the money in New York, by my father's order to some one.

Ques. The book which contains the memoranda or inventory of which you have spoken, (the witness here referred to on examining a copy of the notes of his former examination, to which the counsel for the exceptants objected—the court sustained the objection—witness offered to
10 be examined without reference to his notes, before the objection was decided and threw the notes upon the table.)

Ques. You said this book containing the memoranda or inventory of the Florida property was similar to the inventory; state what you mean?

*the affirmation
mention page 8*

Ans. In my previous answer to that question, I intended to say that the memoranda I brought home would contain items that would not appear on the inventory; the word not as used on the previous examination, in the notes, or in the evidence in its proper connection, and if the
20 court will allow me to produce the evidence, I will show them the error; I have examined my counsel's notes and I find the error of the word "not," whether made by myself or by the man who wrote it down, I don't know which.

Ques. In the question, when you paid the claim of any person by crediting it on the account or allowing it on the settlement, did you get a receipt for so much of his account as was allowed on as cash in the settlement; you said among other things, "I suppose I would take a voucher for it; I cant fix it in my mind how I arranged that,"
30 can you now state anything further by way of answer to that question?

Ans. I did not at the time properly understand the question; my answer now is that I always took or intended to do so, vouchers for any claims that were so settled; if I did not, it was an oversight.

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Ques. You said you consulted Mr. Putnam as counsel; did you retain him, and if so, receive a voucher?

Ans. I did retain him and paid him about twenty dollars; I can't find the voucher; I suppose I have mislaid it or lost it.

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10 I paid for

Ques. Is the item charged in the account?

Ans. It is not in the account; it was in the spring of 1838, when I went there to prove the will.

Ques. You said you did not remember of seeing your father's books since March, 1838, since answering that question, have you found any bills or papers which lead you to think you have seen them since that date, and if so, state fully, what and when?

Ans. That question has reference to my father's books in Augustine; after I left there in April, 1838; previous to my leaving, all the books of account, bills, notes unpaid were put in the hands of Joshua Joiner; when I went there in 1840, upon settlement with him, I found the books had been put in the hands of Esquire Phillips, a short time previous to my arrival; I have stated before in this examination I think, that I said that I had put the books in Phillip's hand, I now know to say that I did not; upon settlement with Phillips, I took the books out of his hands, all the papers and accounts that he had, and gave them to Benjamin A. Putnam; the reason for so doing, was that I was satisfied from his previous history, that if

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anything he collected, it would be impossible to get from him; this statement is at variance with the statement I had made previously, which statement is not correct as to the fact, which was at that time made; I think I said then that I knew when I had put the books in Phillip's hand, that I would not get anything; my intention then was to say, that if he had collected anything from the books, that I would not receive anything; he was a man without property, everything was in his wife's name; I did not order
 10 Joiner to put those books in the hands of Phillips when I left in 1838.

Ques. When did you put the books in the hands of Putnam?

Ans. Some time in April, 1840, with all the other papers belonging to the estate.

Ques. Why did you not take steps to get the books from Florida, previous to the last four months?

Ans. Because after 1840, I considered the books and accounts, and all notes there, of no value; those notes were
 20 against men that had no property that could be reached; a great portion of these notes were for moneys that these parties had presumed to be earned for government service, by persons who were irregularly enrolled or mustered in service under the militia laws of the territory; it was supposed that the government through its proper officers, would pay for those services, but were never paid; Woodruff, one of the debtors to this estate had slaves, but they were mortgaged; it was supposed at the time for all they were worth, and the reason that I made the attempt to
 30 get them lately was to have them here in court.

Ques. By leaving them there, would it or not, be any

protection to the estate against unjust claims, which might be presented?

Ans. That was my idea at the time of leaving them there.

Ques. Could they have been any benefit to the estate by bringing them here?

Ans. None pecuniarily, but might have been to the satisfaction of the exceptants to have seen them.

Ques. You presented an execution against Stephen Buloe, for thirty-one dollars and thirty-seven and a half cents, 10 where was Buloe when you went there in the year 1840?

Ans. I don't know.

Ques. When that execution came to your hands was it as it now appears, that is as to the endorsement?

Ans. As far as I know, I never remember to have seen it; I have forgotten about it.

Ques. Did you ever receive any money upon the judgment against Buloe, or that execution?

Ans. I never did.

Ques. Do you know how that execution came in the 20 hands of Mr. Putnam?

Ans. I think I put it in his hands; I am not certain, but I am sure that I did, and my opinion is that Phillips collected the money, and it looks to me upon reading it now more carefully as if I got a hold of it in some way from Phillips; I should judge that he received the money, and that I put this execution in the hands of Putnam to try to collect from him; the name of George S. Phillips, Justice of

the Peace, has been erased by somebody, after he had signed it; it is a curious paper anyhow.

Ques. You say that you had a receipt from Mr. Putnam, have you it here for the claims that you put in his hands?

Ans. The original receipt I lost, but I have an acknowledgement from him which is a voucher as far as it goes, dated July 5, 1841; the paper referred to offered in evidence and marked Exhibit J, offered as a statement of claims of Mr. Barcalow's estate by counsel for accountant.

10

(Objected to by the counsel for exceptants because it is a letter from a lawyer to his client, and not therefore any better than the accountant's own letter as evidence of the facts. The court refused to admit the letter in evidence. Counsel for accountants excepted to the ruling of the court because the letter is connected with acts in relation to the settlement of the estate, and shows that the executor was endeavoring to perform his duty as executor in relation to the estate; also because it is explanatory to the direct examination of the witness.)

20

Ques. Was the account of 1847, to which exceptions were filed, settled at that time?

Ans. It was not.

(Question and answer objected to by counsel for exceptants, because the records of the court are the best proof on that subject. The court rule that the question may be answered.)

Ques. You were asked if you knew when the deed for the Florida property was sent down; you said you did by a

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letter; have you that letter, and if so, who is it from and what is it's date?

Ans. It is from Joshua Joiner, and dated June 9, 1838. The letter offered in evidence and marked Exhibit K.

(Objected to by counsel for exceptants for the same reasons offered against the admission of the previous letter.)

Ques. You said that Joshua Joiner, from whom you received this letter, was the attorney in fact of your father?

Ans. No, but of the executors.

Ques. This letter relates to business of the estate transacted by him as the attorney in fact, does it not? 10

(Objected to by counsel for exceptants.)

Ques. By reason of information obtained through this letter the executors took certain steps in relation to the settlement of this estate which they would not have taken if they had not received this information, did they not?

Ans. There is nothing in the letter, June 9th, 1838, from Joshua Joiner.

Court adjourned until 2 o'clock, P. M.

2 o'clock, P. M. 20

Court met.

Cross-Examination of Farrington Barcalow continued by Mr. Clark:

Counsel for accountants offered in evidence letters of Joshua Joiner, dated Oct. 23d, 1838, and March 28th, 1839. Object stated for the offering evidence being to show due diligence on the part of the executor. Counsel for exceptants asks leave to examine the paper before it is allow-

ed in evidence. Counsel for the accountant refusing; leave is not given him unless the court shall first decide it may be offered in evidence, whereupon counsel for exceptants objects to the letters being admitted in evidence.

(Counsel for the accountant offering to read the letter to the court, counsel for the exceptant objecting to the same. Counsel for the accountant therefore refused to allow the letter to pass to the exceptants.)

10 Ques. Mr. Barcalow did you rely upon these letters, and was your action in relation to Florida matters governed by and through the advices received from them?

(Question objected to by counsel for exceptants as leading and suggestive to the witness)

Ans. My conduct was governed entirely by the information I received from Joiner and other parties, that I corresponded with at that time.

Ques. Who was Joshua Joiner, and why did you appoint him agent?

20 Ans. He was a prominent man, a prominent official in society there; and a man supposed to be worth considerable property there; a man of good habits, said to be, and was recommended to me by Americans at that time residing there who I looked upon as competent for me to advise with and all of one accord mentioned Joshua Joiner as a good and trustworthy man.

Ques. What portion did he hold or had he held just previous to his taking this appointment?

30 Ans. He had held the position of City Marshal I think; I think it was, I think I stated this before in my examination.

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position

Ques. Was that a position of responsibility and trust?

Ans. It was similar to our office of sheriff here.

Ques. When did you first ascertain there was any difficulty with Joiner in relation to settling the amount due from him?

Ans. It was but a few days before I started in 1840.

Ques. Was that the occasion of your visit in the spring of 1840?

Ans. It was the occasion of my trip; I don't like the word visiting; I wasn't visiting.

10

Ques. In your direct examination you spoke of some illegal claims which you thought unjust, paid by Joiner; do you remember any other than those you mentioned?

Ans. There was one that I have remembered since of a considerable amount; how it was settled I cannot now distinctly tell; the occasion of that claim, I can state to the court if they wish to hear.

Ques. Whose claim was it?

Ans. It was the claim of Judd Smith.

Judge Smith

Ques. Do you know the amount?

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Ans. I cannot tell the amount.

Ques. Do you know near the amount?

Ans. It was so large when I was there in 1838, that I refused to settle it; I think I referred it to Putnam for his management; I would like to state to the court, if they will hear me in regard to that claim; in the winter of 1834 and 1835, my father made his first trip to Florida for his health; there he hired a horse-back ride to the interior of

the country; while absence on the tour, an anonymous letter was received in Augustine by the postmaster, the contents of which was very injurious to the character of my father it was shown by the postmaster, during this tour of my father, to the person from whom my father had hired the horse, he accidentally came in the postoffice about this time; my father overstaying his time, the owner of the horse thought he was stolen, and would never come back; he started after him with the Marshal; got track of him, and found he had crossed St. John's river, and gone into the adjoining county; another officer was employed and pursued and found him—being a stranger and knowing no one, he was locked up in jail—the horse taken back and he left there; Judge Smith was employed, where he resided at that time: I don't know, but he afterward resided in Augustine; this claim was for that service; I saw the anonymous letter that had been sent to Augustine in 1836, and heard this statement from my father; I heard my father say that he never could get a settlement with Smith,

20 Ques. Was that claim settled by Joiner after your father's death?

Ans. That claim was settled some time I think in 1839 or 1840, probably in 1840, but cannot tell through whom or how it was done; it was in the hands of Putnam to arrange somehow, but it was closed in some way while I was there in 1840.

*c not say so
at page 28
in 12-11*

30 Ques. In your direct examination you stated that the whole amount of \$159 was received from Joiner, and you had a memorandum of what that \$159 was made up at a settlement you had with Putnam, did you mean a settlement with Putnam, or a settlement with Joiner?

Ans. It was a settlement with Joiner; I think I had no

settlement with Putnam at that time; I may have had some settlement with Bartlett at that time, together with Joiner, but can not now tell distinctly how it was.

Ques. During the time of Nickerson's agency were you an executor of your father's estate?

Ans. I was not.

Ques. How old were you at the time you were sworn in executor?

Ans. Just twenty-one; on my birth-day I was sworn in.

Ques. How soon after your father's death?

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Ans. About eight months.

Ques. You stated that affidavits were taken, that accounts had been paid, explain what you mean?

Ans. I mean when I presented an account—persons saying that they had paid it—if they made an affidavit of it there, the law would exempt them from the payment, the same as a voucher.

Ques. You stated in your direct examination, that Nickerson had collected some other claims or notes through Bartlett, explain what you mean by saying through Bartlett?

20

Ans. It means from Bartlett.

Ques. To what claim do you refer against Nickerson, as a legal claim?

Ans. The only claim received, as a claim, was a store account on my father's books against him; the amount, somewhere about fifty dollars.

*This proves to
468-112*

Ques. In your direct examination you state that Nickerson's property, was chiefly in his pocket and possession, excepting some unincumbered real estate—the notes say unincumbered?

Ans. It is not correct, it ought to be incumbered.

Ques. Why did you accept the draft of Justice Phillips which you knew to be worthless, at the time you received it?

Ans. I took it as evidence of debt.

explained
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10 Ques. Can you explain the items of \$200, and \$50, of which you have spoken in your direct examination as having with you on your return from Florida, or was the explanation of this morning with reference to that?

Ans. The explanation this morning was in reference to \$200, but I don't think I have said anything about \$50.

Ques. Why was the horse included in the \$359, and why did John H. Voorhees insist in having it done in that way?

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20 Ans. The \$359, was the appraisement of the goods that my mother took; when the horse was appraised, he was appraised at what the carriage was worth, that was exchanged for him; the appraisers knew the value of the carriage; between the time of the exchange and the appraisement, the horse became spavined, and my uncle said that the estate must not lose by the horse, if any loss, I must lose it to make the estate whole.

Ques. What was he worth at that time?

Ans. He could not have been sold for forty dollars.

Ques. What did you do to improve him?

Ans. I blistered and doctored two years, before I got him well.

Ques. What else?

Ans. I improved him; I bobbed him.

Ques. Who kept him?

Ans. I did from the time he was taken at the appraisal. #

Ques. Why did you exchange the barouche for the horse?

Ans. My mother had a great many connections and friends in this vicinity, and in the neighborhood of Bound Brook, New Market, Middlebush, and other places, also some repairing by which we had to have a horse to draw lumber, gravel and other materials; it was considered economy to have a horse; to hire one it would cost three times the keeping of a horse. 10

Ques. How was the horse accounted for?

Ans. In the inventory, indirectly against me.

Ques. How, and in what manner did you make up your account first stated in July or August, 1873. 20

Ans. I only had ten days notice, Bartine's letter which he had previously written to me as he had alleged, I never received; I came down here on other business not knowing the fact; I went to the Surrogate's office to look for the account, it could not be found; I knew it had been taken out by Mr. Gaston, by the clerk's statement, David; I knew it had been used here in court on a previous occasion and supposed it was lost; Bartine looked at the time, among a bun-

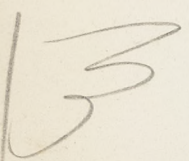
dle of papers appertaining to my business and could not find it, I went home and began to hunt among my own papers, and a day or two probably three, before I came down here, I found an old badly worn certified copy of the account, and started down here with it, having but a short time to look it over; when I found that account, I found in connection with it my old original account from which it was made; in running over the account, some items had entirely escaped my memory, how they were made up; the
 10 item five hundred and three dollars, on the old account, seemed to escape my mind how it was made up; I knew that I had within a few years sold a lot in Augustine by a quit claim deed, for \$75; that amount I gave up when I made my first account as the amount I had received for that lot; the item I could not account for at the time but knowing I would have a few days longer to hunt for papers, I took that time, and found papers, by which I arrived at a correct conclusion about that item; and the first time
 20 I then corrected the account, and also showed Mr. Gaston this certified copy of 1847; I don't mean to say that I corrected it, I mean to say that David corrected it, at my suggestion.

Ques. State how you corrected it?

Ans. David entered \$512.40 in the place of \$75; I have my copy here and presume it is the same.

Ques. It was simply charging yourself with more money?

Ans. Yes.

30  Ques. What other advances to the heirs had you made

beside estate advances and expenses for the children previous to 1842?

(Question excepted to by the counsel for the exceptants. Court overruled the question.)

Ques. Mr. Barcalow you have said in your direct examination that the benefits of the money in your sale of the real estate was received by the heirs; please to explain how?

(Question objected to by counsel for exceptants.)

Court adjourned until Tuesday morning at half-past 9 o'clock.

10

Somerset Orphan's Court, Tuesday morning, March 17, 1874.

10 o'clock, A. M., Court met; present Judges Williamson, Garretson and Thompson.

In the question last propounded yesterday the court decide: "The question is allowed for the purpose of explaining his answer on his direct examination by Mr. Gaston on this point."

The question was then waived for the present by counsel for accountant.

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Ques. Mr. Barcalow, when did your mother die?

Ans. I think it was the 4th of June last, if I have been informed right.

Ques. Did you know at the time of filing your account in 1847 that the Surrogate had added interest?

Ans. I did not know it until after the exceptions were filed; I left the papers and vouchers all with him after we had got through looking over the vouchers and when I came

to sign the account and swear to it; I asked him if he had discovered any errors; he said not, it was just like the copy; I swore to it without looking any further, my copy had no interest added to it either way.

Ques. The sale of the real estate to which you referred in your direct examination, did it take place in 1842 or in 1857; I mean the sale as to which you said the children received a great portion of the benefits of the money?

Ans. When that question was asked I supposed Mr.
10 Gaston had reference to the sales of 1842.

Question repeated:

Ans. The sale of 1842 was the executors' sale of the real estate; I may as well explain a little more fully that transaction and have done with it; after it came in my hands, I spent about two thousand dollars in repairs and buildings on the Bridge street and hotel property in new buildings; I held it until this time, 1853; there was a party in Somerville who desired to have built a large boarding hotel, and through the advice of Culver and George Brown
20 and others here, David C. Noe was selected as the man, and the arrangement was to have Noe to build a large house in order to secure the mortgage that was taken for the amount of the purchase; he failed to comply with that arrangement; I took the property back and lost the year's interest for the money and it was sold in 1864 at sheriff's sale for \$6,000 about.

Ques. Were a great portion of the benefits of this sale of 1842 to which you have just referred, received by the children, or was it some other sale to which you referred?

Ans. It was the sales of 1842 which has been previous-
30 ly referred to.

amatory

*The sale
Gaston refers to
for \$6000*

Re-Examined in Chief by Mr. Gaston.

Ques. When you was on your principal examination in which you stated that you left Florida in March, 1837, did not the counsel of the exceptants at that time claim in open court, that you had left Florida in May, 1837, and refer to the papers produced by yourself to prove it?

Ans. I never heard it if he did.

Ques. Was not a copy taken of those papers at that time by counsel of exceptants, or in his behalf as you understood?

10

Ans. There was.

Ques Does not one of those papers so copied show that you was in Florida in May, 1837?

Ans. It does, but I never looked particularly at any of those papers until I found other papers which I connected with that transaction or trip; I then followed those papers back to Florida, commencing at Somerville.

Ques. How came you to swear that you left Florida in March, 1837?

Ans. From this fact—when I rounded Cape Hatteras 20 on my way north, I was extremely cold and wore an overcoat, and when I arrived at New York I wore an overcoat there, and when I started from New York I had two mocking birds and went in the boiler room to keep warm, and also to keep the birds warm; that induced me to think it was earlier in the season than May.

Ques. Did you not swear that you part paid a bill of Mulford & Martin in New York in March, 1837, on your coming *en route* home, and that was the way you fixed the date?

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Ans. I did and thought I was correct.

Ques. Did you remember or not the payment to Mulford & Martin when you swore to it?

Ans. I supposed that I had paid it to them; I can't remember distinctly the payment to any man on that occasion, except from papers here produced.

Ques. Do you mean to say that you swore to the payment by yourself at that time to Mulford & Martin, when in fact you didn't remember it?

10 (Objected to because it is simply repetition and has been answered already. The court decided that the question is not admissible. Counsel for the exceptants excepts to the ruling of the court.)

Ques. State now as near you can remember the amount of money of your father that you brought from Florida in May, 1837?

(Question objected to because it has already been answered.)

Ans. I would like to have these vouchers; if I have
 20 them I can tell within a few dollars; I will not swear on part when I can have written evidence to assist me. (Vouchers referred to being handed witness he says :) about three hundred and thirty-five or six dollars I started with in money, specie and bank bills.

Ques. Do you state this amount from your present recollection or from adding your traveling expenses to the amounts of bills of Zimmons and Joiner, and Hitchcock & Sons?

Ans. I state this amount, including all the monies that
 30 was given me that I can now account for; if other monies

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were given to me and paid in New York and elsewhere to parties, I do not now remember, if so paid would increase the amount just the amount that was paid, traveling expenses is included in this estimate, or money for that purpose.

Ques. How do you know that the two hundred dollars in Mulford & Martin's account, April 3, 1837, was paid by James Taylor?

Ans. There is no other way that a cash payment could be made to any of my father's creditors in New York personally, except by him. 10

Ques. Then do we understand you not to know whether this payment was made by James Taylor in fact, or not?

Ans. I am satisfied it was, and I will give you another reason.

Ques. How do you know that your father did not send that money by some friend, or by check or draft?

Ans. I knew he could not send it by a friend because it was at the time of year that no one traveled or come north early in April, and I know it could not be paid by draft because the account would have said so—it says cash; if it had been check it would have said check; if it had been draft it would have said draft. 20

Ques. Do you remember independent of the papers any thing about the payments of William Zimmons & Son's bill, or of John Hitchcock & Sons' bill, and James Bancroft & Co.'s bill—if so state particularly what you remember of each payment?

(Question objected to because it has already been answered.) 30

Ans. I stated before in my previous examination that I had paid bills in Charleston; at the time could not tell who they were, and also stated that I had paid in New York this bill, or this amount of \$200, which I have since explained being an error, and that I had paid all the monies given to me by my father to persons to whom he directed me to pay them to, but in charging could fix no amount until finding these papers; I think in my previous examination I mentioned the name of Bancroft.

10 (Answer objected to by Mr. Gaston as evasive.)

Question repeated.

Ans. In addition say, I remember of making payment, but can't bring the men's faces before me now.

Ques. Paper shown witness marked exhibit H. How does that paper show you paid a dollar to James Bancroft & Co.?

Ans. This bill is dated April 4, 1837, stating amount of bill rendered; stating also some articles returned to the amount of eleven dollars, making the balance \$119.44; this bill was folded together with the bill of William Zimmons & Co., made and paid May 15, 1837; that bill I know I bought and I know I paid Bancroft something at that time, finding them together and knowing I paid Bancroft some money, I am satisfied I paid that bill.

Ques. Have you not before sworn that you could not remember names or amounts, or persons to whom payments were made in Charleston, but only the mere facts of making payments generally?

Ans. Not in that way; I have said I remembered some names and others I could not.

30

Ex H
with A

Ques. Do you remember independently of paying Hitchcock & Son's bill?

Ans. I would not unless I had found it; that paper identifies as to whom I paid specie.

Ques. Having now found the paper, do you mean your recollection is refreshed, and you remember of paying Hitchcock & Sons?

Ans. I mean just this, that I walked to the boat, when landed and carried the specie in my hand, in a shot bag; and paid it to whom my father directed me to pay it. 10

Ques. Where did you pay the bill of Isaac Van Deventer of one dollar and forty-nine cents, or whatever the amount is?

Ans. My impression is that I paid it on my way home from New York, at Bound Brook; he was a butcher.

Ques. Was your father going on in his business, or was he closing up his business when you left in May, 1837?

Ans. My opinion is that he was trying to close, if he could sell out

Ques. You spoke of having money awaiting his coming or return here; was it understood that he was coming on shortly or about to close his business there? 20

Ans. My impression is that when I arrived home, that I received a letter from him, and I think that letter conveyed to me the idea, that he either had sold out, or expected to sell out, and would shortly arrive home.

Ques. You said your father went out for his health, what was his sickness?

Ans. When he first went for his health in 1834 or 1835.

it was supposed to be the liver complaint, and it eventually run into the consumption, I think.

Ques. You say that you must have remained in Charleston from about May the 12th to about May the 22d, why?

Ans. Because, I couldn't get away; the best reason in the world; I would not stay a day if I could get away.

Ques. Do you mean that you was waiting for the steamer?

Ans. I was waiting for some vessel to sail North.

10 Ques. How did you come from Charleston north?

Ans. On the steamer "Home," that is the name of it; she made a trip about every fourteen days, when on that line.

Ques. How long had you been in Charleston, when you made the payment of the bills, you said you would have left in 2 days if you could?

Ans. I might have been there a day or two, or a day only; if I could fix the day I left Augustine, I could tell exactly the very day.

20 Ques. How long did it take at that time, for you to come from Charleston to Somerville?

Ans. A fair passage from Charleston to New York, would carry me there in 60 hours; if I started in New York any time after 2 o'clock in the day at that time, I could not leave until the next day at 2 o'clock.

Ques. Do you remember, whether in fact you staid in New York a night on your return?

Ans. I do not, but think I must have staid there at least a day.

Ques. Why?

Ans. It is not probable that I could make a connection with the Napoleon boat, and have any time to do any business in New York, and the fact that I think I staid there; if I stayed there a day it would bring me home about the 26th or 27th.

Ques. How then could you have paid Hitchcock & Sons on the 25th of May?

10

Question withdrawn.

Ques. Do you know how much the balance was, that you kept on hand, awaiting your father's return of this money?

Ans. I had some fifteen or twenty dollars on my return as I said before, and I gave some to my mother.

Ques. You testified in your principal examination that you had a memorandum or inventory of the estate in Florida in a book, are you now able to produce the book?

Ans. No, sir; I think the book went to pieces many years ago, in a safe I bought, moulded; there are some other papers that I find here that have all gone to pieces.

20

Ques. None of your receipts or vouchers have moulded, have they?

Ans. Yes, sir; I have got some here now, that I can't make out.

Ques. Was Putnam a man of property in 1838, and what was his character and position?

[Handwritten scribbles and the word "Book" written vertically in cursive.]

Ans. He was a man of property; and the most eminent lawyer in East Florida; and considered an eminent and upright man.

Ques. Having employed him for the estate, in the spring of 1838, why did you not send to him the deed?

Ans. Joshua Joiner was considered as good a man as he, at that time, and as good a man to pay, and in every respect; and besides Putnam advised his selection to me.

10 Ques. Among the papers sent you by Mr. Putnam as you have stated, is the protested draft of Phillip's among them?

Ans. No.

Ques. Were not Woodruff and Buloe, both men of property in St. Augustine?

Ans. Woodruff had slaves, and they were mortgaged for their full value; Buloe was a slave, and owned nothing in the way of property; he kept a kind of an oyster stand, a little saloon.

20 Ques. Are you accurate in saying that you heard of the difficulty with Joiner, a few days before your starting in 1840?

Ans. My impression is, in his delay in not forwarding, I wrote to two or three persons, and the information I received from them were conflicting; I think that Mr. Howard wrote me that he was good and all right; Mr. Putnam wrote me that I had probably better come on soon and look after him, and I think it was a short time before I went; it may have been a month; I could not go right away.

30 Ques. Do you remember your story about this in your principal examination?

Ans. I do not remember what I said about that examination now.

Ques. Have you any new light since your principal examination about this matter?

Ans. I have.

Ques. What?

Ans. These questions were put to me at a time when I had not thought about them; and I gave my statements then according to my impression at that time.

Ques. Why did you desire to state to the court the troubles of your father, arising from his troubles of having hired a horse and overstaid the time? 10

Ans. It was for the purpose of showing the foundation for that extra claim that I called large.

Court adjourned until 2 o'clock P. M.

Ques. Do you know whether this claim of Judge Smith cost the estate anything, and if so how much?

Ans. It is impossible for me to tell at the present time, how it was adjusted; I think it did, but can't tell; I have not got it fixed in my mind at present; I think it did. 20

Ques. In what sense or in what way was this carriage taken by your mother?

Ans. It was not taken at all by her, the carriage was not; it was the horse that had been exchanged for the carriage; it was taken by the direction of John H. Voorhees, I think.

Ques. In what sense or in what way was the horse taken by your mother?

(Question objected to because already answered.)

Ans. Repeat the same answer, I don't know what he means.

Ques. What was that answer?

Ans. Do you mean the answer previous to that question; read the answer for him.

Ques. I ask you in what way or in what sense your mother took this horse; do you refuse to answer?

Ans. I do not.

10 Ques. Please then answer the question?

Ans. I have as far as I am able to understand him.

Ques. Was not this horse taken care of by you, fed by you, used by you, and at length disposed of by you as your own property?

(Question objected to because it is a mere repetition.)

Ans. It was.

Ques. What was the amount in value that you received for the horse when you disposed of him?

20 (Question objected to because it is immaterial and irrelevant, and because it has already been answered.)

Ans. I traded three or four times before I got out of the horse; the first trade I made in the winter of 1840, as near as I can get to it; I got another horse and \$100 to boot.

Ques. The last question repeated.

Ans. I got another horse and a hundred dollars to boot; the horse worth about fifty dollars that I got.

Ques. If I understand you in making your account in

*the same
in court
about*

1873, your first account of that year you struck out the item of \$503, received from St. Augustine which you had charged yourself with in the account of 1847 upon the ground that you could not remember how it was made up; why didn't you strike out the other items relating to Florida for the same reason?

Ans. I knew that item of \$503 was connected with the sale of a lot, and at the time I made my account out I could only recollect of a lot sold for \$75, sometime in the year 1868, and supposed that that was all that I ought to be charged with at the time, and as I have stated before after finding my papers I got the facts in connection with it and made it to correspond with the facts, and made it more than I did in 1847. 10

Ques. When you struck out the \$503 and put in the \$75, the account of 1847 was missing, was it not?

Ans. The account filed in the office was missing, but I had a certified copy of the account.

Ques. Was not exceptions filed to this first account of 1873, among other things upon the ground of this discrepancy, and stated to the court openly, and did not you then state in open court that you could explain the discrepancy between these accounts of 1847 and 1873? 20

Ans. I made that alteration with David, or he for me as soon as I came in the office, not knowing that exceptions were filed at the time, and told him to notify Mr. Gaston; if explanations were to be made it had reference to the account as first presented and as amended by David, and about the time of getting through he told me exceptions were filed, or the Surrogate told me. 30

(Answer objected to by Mr. Gaston, and the question repeated.)

Ans. I did not know of the exceptions to the account until after the alteration was made.

Ques. Witness is requested directly to answer the question?

Ans. I have made all the answer that I can make to that question.

10 Ques. Did you ever tell these exceptants or their counsel, or mention in the court until yesterday that you had altered the first account of 1873 in this particular?

Ans. I never told the court, but Culver knew it and saw it in the Surrogate's office, and talked about it, about a month ago; it was the beginning of making out the Master's report.

Ques. Being shown the first account of 1873, witness is asked when was the charge of \$75 received from St. Augustine written therein?

20 Ans. My impression is that David copied, and I cannot explain it—this account purports to be sworn to and subscribed August 18, 1873.

Ques. As it was sworn to, how much did that item amount to?

Ans. Five hundred and seven dollars and sixteen cents, which was about four dollars more than originally.

Ques. Was that the original amount when you swore to this account, or has the account been altered?

Ans. I can't swear against written evidence; but it is a mystery to me about it.

Ques. Did not your original account of 1873, contain this charge, "August, 1867, Received from St. Augustine seventy-five dollars," and don't you know it is true that it was so charged?

Ans. I think it did.

Ques. Was it not erased from the bottom of the first page of the account, scratched out, erased with a knife after it was filed and sworn to?

Ans. I think I can explain it now; right down below the lower leaf of this account, there has been a scratching 10
out of some item, the account posted up and carried forward over leaf and under the amount so carried, is entered the amount of \$507 16.

Ques. Who did that?

Ans. I think that the clerk done it, David; I know he did; and I reported it to the Surrogate at the time.

Ques. Done at your instance, or otherwise?

Ans. I presume done at my request; I wanted to have it right.

Ques. Had the account before it was so altered been 20
sworn to and filed?

Ans. It had.

Ques. When was this done, this alteration made, state as near as you can?

Ans. It was on the day, I think it was advertised for the final settlement of this account; the date I can't tell, it can easily be ascertained from the notice; I suppose that date to be the 9th of September.

Ques. How is the charge of \$512 in the present account made?

(Objected to by Mr. Clark, because the account shows and because it is not on any matter upon which the witness has been examined.)

Ques. You received \$512 41, as shown by your own account in 1843, June 12th, why should you not be charged with interest upon this amount if you received the principal?

Ans. It is added in with the gross receipts making \$12,-
10 194 10; deductions as per account, filed leaves a balance of \$4,520 09, and of this amount about \$3,500 was advanced and paid to the heirs, previous to the year 1842 and the balance was drawn upon the principal of which went towards supplying the heirs with their necessary supplies; there could be no amount put to interest, the interest of which would supply their needs.

Ques. Did I understand you correctly, that the charge of interest in the Surrogate's account of 1847 was sworn to by you under a misapprehension, not knowing that it was
20 contained in the account?

Ans. You did understand me so.

Ques. What did you do in discovering this large charge of interest, of upwards of two thousand dollars was contained in the account?

Ans. I had a talk with Sutphen, the Surrogate, about it; I told him of the error; and he said when the account came up, or before it came up to be settled, he would rectify it.

Ques. How long after it was sworn to, before you discovered this large error?
30

*the evidence
amount of
advances made
as to the sale
Real Estate
42*

Ans. I think it was at the time the proceedings were commenced in the court of chancery, or sometime previous; or it may have been when the exceptions were filed, I discovered it; but the account went off to the court of chancery without being altered.

Ques. How was that?

Ans. I suppose we did not consider it of any importance in that suit as the question there involved real estate principally.

Ques. Do you remember whether you was not called upon in that chancery suit to render account of the estate as an executor and whether in that account then rendered by you to the Court of Chancery five or six months after the original account was filed that you charged yourself with upwards of \$2,000 of interest upon the monies in your hands, and then swore to your answer, including that account, as true? 10

(Objected to because it is a matter of record, by Mr. Clark.)

Question admitted as being a question on cross-examination; to which exception is taken by counsel for accountant because there is no question, as the cross-examination of the witness which relates to or in any way connected with these Chancery proceedings, and because the examination of the witness at this time is not a cross-examination but a re-direct examination on the part of the exceptants. 20

Ans. I suppose in making out those papers at that time, that I complied or would comply with the record as I found it, although not having been altered according to my view, and considering it as much a matter of form—or more so—as a matter of fact. 30

Ques. Do you mean that you supposed that the account of this estate rendered by you to the Court of Chancery was a matter of form?

(Objected to as immaterial. Question overruled as inadmissible.)

Counsel for exceptant here offers in evidence :

u s n? }
10 [1st. Certified copy of a deed from Farrington Barcalow and John H. Voorhees, Ex'rs of William Barcalow, to Ferdinand Van Derveer, dated April 12, 1842. Consideration \$6,605.]

u s n? }
[2d. Record of deed from Ferdinand Van Derveer to Farrington Barcalow, deed dated April 4th, 1842. Consideration \$6,605.]

u s n? }
[3d. Certified copy of deed, William G. Steele to Farrington Barcalow, dated April 4th, 1842. Consideration \$985.]

u s n? }
[4th. John H. Voorhees and Farrington Barcalow, surviving executors of William Barcalow, to David C. Noe, deed dated Dec. 19th, 1853. Consideration \$5 00.]

u s n? }
20 [5th. Farrington Barcalow and wife to David C. Noe, deed dated Feb. 1st, 1854.]

[6th. Farrington Barcalow to David Sanderson, Lease dated Dec. 22d, 1846.]

[Also, records of the appointment of Ann Barcalow as guardian of the minor children of William Barcalow, deceased, in Book A. of Guardianships, page 443, dated June 11th, 1838.]

(Counsel for accountant objects now the reception of

these papers. Whether they are to be received or not being still undetermined by the court.

Adjourned to to-morrow morning 9 1-2 o'clock.

Somerset Orphans' Court, March 18, 1874.

Court met at 9 1-2 o'clock; present Judges Williamson, Thompson and Garretson.

Examination of witnesses on the part of exceptants continued.

The account of F. Barcalow, surviving executor of William Barcalow, deceased, of July 19, 1873, was offered in evidence. 10

Ques. Have you the vouchers for taxes paid from 1838 to 1841 inclusive; if you have produce them?

Ans. I have not.

Ques. When did you first make the claim since 1838 in any account in this court of having paid these taxes?

Ans. I made a claim before Judge Dalrymple at the time; I can't tell, it is so many years ago; within five years.

Ques. Was that the first time of the claim, if not state what other time? 20

Ans. It was the first time.

Ques. Have you not certain duplicates obtained from John H. Voorhees's estate within the last three months, if so please produce them; I mean assessor's duplicates?

Ans. I have two of them for the two years that he was collector; I can't produce them now.

Ques. Why not?

This question was not seen by the court in its present shape how does it stand

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Ans. I haven't them here.

Ques. Where are they?

Ans. My opinion is I have left them in Orange county; I thought I had them with me but I find I haven't.

Ques. Did you produce them to the Master who stated the present account?

Ans. I did not; I did not know they were in existence at that time.

Ques. Where did you first see the will of your father
10 after his death, and who had it?

Ans. I first saw it in the house where mother resided, and it was produced, or handed over from among his effects by my sister Eveline.

Ques. On her return in June or July, 1837, from Charleston?

Ans. Yes.

Ques. What next became of it?

Ans. It was opened and read in the presence of James Taylor and Frederick Cox, John H. Voorhees and others;
20 I can't tell who?

Ques. I ask what became of the paper?

Ans. I don't know whether I kept it or Voorhees; one of us held it for preservation; I don't know which now.

Ques. Don't you know that you had it until you took it to Florida to prove it?

Ans. My opinion is that I had control of it, but have a faint idea that I took it somewhere for preservation; I can't remember.

Ques. Was there any difficulty in Seth Nickerson's proving this will in Florida after your father's death, and acting as executor there, but the fact that he hadn't the will in his hands to prove?

Ans. There was.

Ques. State it fully?

(Objected to upon the ground that Mr. Barcalow was not then executor, &c.)

Ans. The difficulty was this, it was understood when my father left, that Nickerson was to be here in the course of a month or six weeks, north, I mean at Somerville, and it was thought best to hold the will until he came so that he could take it himself personally and there would be no danger of its being lost by mail; his death at sea on this trip to the north, shaped the matter differently. 10

Ques. What was he coming for to Somerville, according to the first understanding?

Ans. I presume at the time that my father left, to meet my father here, and pay over such monies as he collected.

Ques. Why did not John H Voorhees prove the will in the year 1837? 20

Ans. He wouldn't leave his business, and wouldn't go South; wouldn't take the risk to his health; the witnesses to the will being in Augustine.

Ques. Could not the thing that was done in 1838, have been in 1837, if you had allowed your father's other executor to prove the will?

Ans. I had no control, or desired any control over John H. Voorhees, but did desire him to take charge of the whole

matter, and relieve me of the whole burthen; he peremptorily refused to do so, and said that if I didn't act, he wouldn't.

Ques. Have you all the papers here that concern this estate, or its accounts, that you have in your possession?

Ans. I think I have; I have left one book behind but I don't apprehend at present that it is immediately connected with the estate.

And being further Cross-Examined says:

10 Ques. How do you know that you had \$335 or \$336 in money—specie or bank bills—when you started from Florida in 1837?

Ans. I don't remember anything at all about the amount; all I do know is that I had a very small amount of funds when I came home, \$10 to \$15; I judge the amount from the bills that I think I settled on my way home at Charleston, New York and New Jersey.

20 Ques. You were about to give a reason, why you knew the payment to Mulford & Martin was made by James Taylor; state, if you have any other reason than already stated, what it is?

Ans. I remember sometime in the spring of '37, my father requested me to write to Jas. Taylor, to pay some money somewhere in New York, but can't remember to whom it was.

Ques. Have you made search for the book containing memoranda, or inventory as it has been called, of Florida property, since this examination has been in progress?

Ans. I have severely and thoroughly,

book

Ques. With what result?

Ans. I can't find it.

Ques. You have spoken of the alteration of the account of July or August, 1873, of the item of \$507—was that alteration made at or about the close of the 20 days prior to the time fixed for the passage of the account according to the notice, or before?

(Objected to as leading and because the witness has already stated when. The court think the question a little too leading but admit it.)

10

Ans. The alteration was made on the day and before the account was sworn to; the first filing of my account it was not sworn to at that time, but it was left open for corrections if any I might find between that time and the day of closing or hearing; a copy had been obtained by Mr. Gaston before the alteration was made, as I understood, and at that time—the time that I made the alteration I mean to say—I requested the clerk in the Surrogate's office to notify Mr. Gaston.

*Alteration
before a
sworn to*

Ques. Did the account of 1847 ever come before the 20 court for settlement?

Ans. It did not.

Ques. I offer the notice of settlement of the account for August 9th, 1873.

In Chief by Mr. Gaston:

Ques. Mr. Barcalow, why and how can you say that this account was altered before it was sworn to, and how do you fix the date?

Ans. I cannot distinctly fix the date, neither can I dis-

tinctly swear that the account was altered after sworn to, but will give you my impression how it was; I know the alteration was made positively; the first time of my coming down after the time the account was filed, that far I am positive about, otherwise I judge from memory; the paper will show for itself, I mean the account.

Ques. How long before the 15th of this month had you entertained the belief that you had paid Mulford & Martin that \$200; when did you begin to believe it?

10 Ans. I think a very short time; I knew that I had paid some one in New York on my return and couldn't find any paper that indicated cash being paid in New York on my return home; I can't tell when I began to believe it; I said a short time before.

Cross-Examined by Mr. Clark:

Ques. Which was the greatest in amount the estate in Florida, or the estate here, and which was the greatest in value?

20 Ans. The estate here was greatest in amount and greatest in value,

By counsel for exceptant:

Ques. Who collected the rents of real estate here in the years from 1836 to 1838, inclusive?

30 Ans. Judge Taylor collected the rents in 1836, and collected some of the rents in 1837, but none in 1838; the inventory shows, as I before stated, that the rents on two properties in 1837 was not paid at all—a part of the rents for the hotel property were collected by Taylor and about half unpaid; this amount of \$166 mentioned in the inventory was due April 1st, 1838.

By Mr. Clark:

Ques. What was the date of your coming here after the account was filed, of July or August, 1873?

Ans. I suppose August 19th, 1873.

Ques. Were you not here Aug. 9th, the day fixed for the settlement before the court; and was not that the day when this alteration spoken of was made?

Ans. That is the day.

The further examination of F. Barcalow is postponed by consent.

10

GEORGE L. BELL, a witness produced and sworn on the part of exceptants, says:

Ques. I am a student at law formerly in the office of Gaston & Bergen, now with A. A. Clark. Witness being shown a certain paper is asked in whose hand-writing it is, says, all but a very small portion is my own; all that is written with pen and ink is mine excepting the recapitulation of debtor and credit after the foot of the paper; I drew the paper in behalf of Gaston & Bergen; I think I wrote it at the Surrogate's office; I only know the paper 20 from what it says at the top; it is a copy of the final account of Farrington Barcalow, surviving executor of William Barcalow, deceased; when I copied it the last item of the last charge of the debtor side of the account, "August, 1867, received from St. Augustine, \$75, must then have been in the account if I copied it.

Ques. Look at the latter part of the account and say if the account as copied was then sworn to?

Ans. I have written here on this copy "affidavit at-

tached, dated July 19, 1873;" what that affidavit was I can't now say; I suppose it was the usual affidavit.

Ques. Witness being shown the account as marked Filed July 19, 1873, is asked if this paper now shown you is as it was when you copied it, as to the affidavits and the charge of seventy-five dollars?

10 Ans. I can't tell now exactly whether this is the paper that I originally copied from but believe it is, from the fact that I made a memorandum of the footing up of each page of the original account in my copy, which corresponds exactly with the original that is on the credit side; the debit side could not have been as it is now, if this is the original paper as I believe, or I would so have copied it; what I mean to say is just this, I can't swear this is the paper that I copied from because I made no mark or memorandum to identify it, but I believe it is.

Ques. Who furnished you the paper which you copied, and what did you call for?

20 Ans. I don't exactly remember now; I must have called for the final account of Farrington Barcalow, and whether the Surrogate or his clerk gave it to me, I can't positively swear to.

Ques. Have you any doubt, looking at those papers, that the original affidavits were taken from the account to new ones supplied after you copied?

30 Ans. I can only say that my memorandum at the bottom of my copy says that the affidavits were attached, dated July 19, 1873; the affidavits to the original, as it now is, are dated; the affidavit of F. Barcalow is dated August 19, 1873; it must have been July 19th, when I made my copy.

Cross-Examined by Mr. Clark, says:

I can't tell what date I made my copy; it was the latter part of summer or fall; I remember Mr. Culver Barcalow mentioning in the office of Gaston & Bergen, that the notices of settlement were up somewhere about this time I made this copy.

Ques. The affidavit with your copy refers to, was it the affidavit of David Flomerfelt, or of F. Barcalow?

Ans. I can't tell.

Ques. Would you be willing to swear that Mr. Barcalow's affidavit was attached to the account, which you saw on the 19th of July, 1873? 10

Ans. I don't know that I saw it on the 19th of July, 1873; I did not look at the affidavit or affidavits; I don't know which it was particularly enough to remember now who they were made by; my chief business was to get the items of the account, and I would not be willing to swear either way with regard to the affidavits because I don't know.

Re-direct examination by Mr. Gaston.

Ques. This original account marked, filed July 19, 1873, 20 has no affidavit of July 19th attached to it, has it?

Ans. No, sir.

Re-Cross Examination by Mr. Clark.

Ques. You say your business at that time was to get a copy of the items of account—did you pay any such attention to the affidavits attached, as that you might not be mistaken in your memoranda which says, dated July 19, 1873?

Ans. Why I might have made a mistake.

Ques. Was not July 19, 1873, the day when you made the copy?

Ans. I can't tell when I made this copy; I have no way to fix it in my mind at all.

Ques. Re-direct Examination by Mr. Gaston.

Ans. That copy was marked "Filed July 19, 1873," in the upper left hand corner the same as the original marked in pencil.

10

GEO. L. BELL.

Sworn and subscribed before me, March 18th, 1873.

FRED. J. FRELINGHUYSEN, Surrogate

Court met at 2 o'clock, P. M.

The evidence of F. Barcalow was then read to witness, and occupied all the afternoon session of the court.

Court then adjourned until Thursday morning, at 7 1-2 o'clock, the 19th inst.

Thursday morning, 19th inst.

20 Court met; present Judges Williamson, Thompson and Garretson, at 9 1-2 o'clock.

Court adjourned until Friday morning, the 20th inst., at 10 o'clock, A. M.

Somerset Orphans' Court, Friday morning, March 20th, 1874.

Court met; present Judges Thompson, Williamson and Garretson.

Examination of Farrington Barcalow resumed.

Cross-Examined by Mr. Clark.

Ques. You have said the inventory in New Jersey was the largest, both in amount and in value?

Ans. I mean to say the amount in value in New Jersey was the largest.

Ques. If there was an inventory in Florida, would or not those claims held by the estate known to be worthless have been inventoried?

Ans. I don't think they would.

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Ques. Have you any thing further to say in relation to that matter, if so state?

Ans. No.

Ques. You have said in your direct examination you were at St. Augustine seventeen days from 20th March to the 7th of April, in the year 1838, since examining your papers what do you say about that?

Ans. I was there but could not get away any sooner for the want of conveyance.

Ques. You were asked if you had a written contract of the sale of the Florida real estate and answered no; upon consideration has any fact been brought to your mind by which you think otherwise, and if so state? 20

Ans. I think there was a written contract, and I also state further that the money was not payable until the first of April, A. D. 1839.

Ques. You sent a draft to Judge Voorhees from St. Augustine, and said it was not credited until some months

after; do you know whether or not that draft was a time draft?

Ans. I do not, it may have been.

Ques. If you had paid any premium would you or not have had an account of it?

Ans. I may have had and lost it, if I did pay a premium.

Ques. Would a draft on time command a premium?

Ans. No sir.

10 Ques. In your direct examination when speaking of money received from the Nickerson estate, you said If I got any it was a small amount against him; this was for money collected by him; what do you mean by this; to what money do you refer when you say him?

Ans. This means money he collected belonging to my father's estates, or collected of his debtors on accounts and notes previous to Nickerson's leaving St. Augustine; I suppose that at the time he collected it he didn't know of my father's decease; it means the money lost at sea when
20 Nickerson was drowned.

Ques. When and how was the Joshua Joiner mortgage upon the Florida property executed?

Ans. The amount was fixed upon the settlement with Joiner and a mortgage prepared by Putnam and executed by Joiner; the manner in which it was prepared or in whose name I did not at the time know; I don't remember of ever seeing it.

Ques. Do you know if it was recorded or not, and if so who got it recorded?

Ans. I suppose it was recorded of course, it was left in the hands of Putnam to take charge of.

Ques. Do you mean to say that the will of your father was read in the presence of the family and Judge Voorhees, and others, immediately upon the return of your sister after your father's death?

Ans. No, I don't think it was, neither can I distinctly remember who was present when it was read.

Ques. Have you any thing further to state in relation to the reading of the will or any legal advice upon it, or any action in relation to the settlement of the estate at the time of the reading of the will? 10

Ans. I refer to the report of the Master on that subject.

Accountant says there was a question asked me somewhere, I can't find it now, about finding vouchers; I mentioned Harrison, Castner, I added two hundred dollars; the two hundred dollars I want excluded from that answer; also, the question was asked me by Mr. Gaston, "how many executors accounts I had filed;" I said four, but I have only filed *two*; if the Master's report was considered an account it would make three. 20

*# look at
Master's Report
on the two cases
pages*

Question by Mr. Clark:

In your account you say your voucher for taxes for years 1838, 1839, 1840 and 1841, are lost, when did you last see those vouchers and where?

Ans. The last time I saw them I had them here in court before Dalrymple, and they were handed to him with some papers that my attorney handed him; I afterwards went looking for the parties who had been collecting; I could find but two duplicates and those were of John H. 30

Voorhees; one of the duplicates was mutilated or damaged by time in the back part of the book; I haven't them here; I want to tell the whole fact about that; the other duplicate as far as I could judge was complete, and I could not find in it any amount indicating that the estate had been taxed, but found some papers in connection with it that was mutilated or worn by time, having on it the estates taxed, but could not find this estate among them; part of the paper was gone; the other tax receipt; one was in the name
 10 of Dennis Hall; that is all I can remember.

Question by Mr. Gaston:

Why do you change your testimony as to contract with Bartlett having been in writing; what new light have you on that point?

Ans. I have none, but thinking the matter over more thoroughly, the question was asked without any previous meditation.

Ques. Then you were in error also, as to the payments
 20 up to January 1839, on this sale, particularly stated by you on this lot?

Ans. I was; I stated what was then my impression.

Ques. When you went down in 1840, did you not settle with Joiner?

Ans. I did.

Ques. Was not the mortgage then given?

Ans. It was made at that time, as I stated before, in the way and manner.

Ques. Do you mean us to so understand that you made

a settlement, procured a mortgage to be made and got it in 1840, yourself?

Ans. I mean to say that the dates by which the mortgage was made out, was delivered to Putnam to be made out either by myself or Joiner; I suppose both together went to Putnam to make the mortgage, but don't know it was executed at the time we went to the office, but do know from some source that it was executed by Joiner.

Ques. You said that the rents you received from this property of Joiner, bought on foreclosure, was hardly as much as the interest of the money you charged yourself with. I ask you whether Putnam did not receive \$483, rents from this property from 1843 to 1847, which he sent to you?

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*This is ac-
crued*

Ans. If I look at the Master's report, I can tell; I don't want to see the Master's report, I have got a copy myself; I think that is about the amount.

Ques. What did you receive from 1847 to 1851, as rents from this property?

20

Ans. Nothing.

Ques. How much rents since 1847, until you sold it?

Ans. I have no record of anything received, but I have a record of thirty-five dollars and thirty-five cents being due which I can find no record of ever receiving.

Ques. This was a house and lot was it not?

Ans. It was.

Ques. Why did you not receive the rents from 1847 until the sale, state particularly?

10 Ans. The person who had possession after or about 1847, was John Forari; the property was in a very dilapidated condition; the frame buildings in that county are very poor, mere summer houses; he was put there by Putnam to keep it in repair for its use; how long he remained I can't tell; Putnam never sent me any rent, and stated the reason why, and after some time, can't tell how long, wrote me that the house stood vacant, with a great many others in Augustine at that time; the result was that it went to pieces from the effects of the climate; and I never heard anything about the property until 1868, and had forgotten the history of it, until I found Putnam's letters last August; those letters show me the substance of the facts which I have stated.

Ques. When did Putnam write you last?

Ans. I can't tell.

Ques. About what time?

Ans. I can state the last letter I have here I have found of his letters, if you want that; I can't tell the last.

20 Ques. To whom and for what price did you convey the property, and when; state fully?

Ans. To Fatio Dunham by Quit Claim Deed sometime in January, 1868; I think for \$75.

Ques. Had not the property been sold previously for taxes?

Ans. It had been sold by the government of the United States during the rebellion.

Ques. Bought by this man at that government sale that you quit claimed to?

*Observe
to letters*

Ans. I don't know.

Ques. Have you told all about this property that you know, from 1847 to 1861?

Ans. All that I now know or can remember.

Ques. You stated that the hotel property after you sold it to Noe, was bought in by you for \$5,500, or like sum.

Ans. I did not say so; I said I took it back—delivered the mortgages—but it was sold for \$6,000 in 1864, at sheriff's sale.

Mr. Gaston offered to prove the property. The tavern property was sold after he bought it for at least \$8,000, and the court overruled the question.

Question by Mr. Bartine.

Why can't you tell about what time Putnam last wrote you?

Ans. Because I can't find letters after 1849 or 1850.

Question by Mr. Gaston:

Did you ever ask Judge Dalrymple for the tax receipts?

Ans. I did not; I supposed to find the papers returned to Mr. Bartine, but they were not among his papers.

Ques. Were not those receipts, receipts for taxes paid upon your mother's life estate property, in the proceeding taken by her before Judge Dalrymple?

Ans. No, sir; it was there where I found them mixed with her receipts for every year.

Ques. Had Judge Dalrymple in that proceeding, anything to do with your accounts or vouchers, as executor,

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*this was the
to Noe - I
I admitted*

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and was not the inquiry on that suit whether you had paid your mother interest on the \$2,000?

(Question objected to.)

(Court allow the question is proper)

Ans. Those papers by some means of my executors transaction was brought in that case.

10 Ques. How could you have had tax receipts for taxes paid for the estate of William Barcalow, from 1838 to 1842, when the duplicates of two of those years show no taxes assessed against the estate as you have yourself stated?

Ans. It is impossible for me to explain it; it remains a question and a delicate one to me as to the carelessness of the collector, for I know I had those receipts; he may have put them down in some book or memorandum outside of it which the collectors very often do; I have found such memorandums.

FARRINGTON BARCALOW.

Sworn and subscribed before me, March 20th 1874.

FRED. J. FRELINGHUYSEN, Surrogate.

20 Friday P. M. The Court met at 2:15, and all present.

CALEB MILLER, called as a witness by counsel of exceptants.

Ques. You reside in Somerville, and did reside here in 1842, did you not?

Ans. Yes, sir.

Ques. Did Farrington Barcalow, previous to the sale of the tavern property formerly of Wm. Barcalow, dec'd, when the same was struck off to Judge Van Derveer, apply

to you and request you to bid off the property, this tavern property for him, or words to that effect, state fully all you remember on this point?

(Question objected to by counsel for accountants.)

Objection overruled.

Ques. Farrington Barcalow called on me and he asked me if I would buy the property for him, it was just before the sale; I don't know but it was the very day, but I don't recollect that it was so.

Ques. What did you answer?

Ans. Well I told him on account of my own matters I couldn't buy it.

Ques. Judge Van Derveer has been dead a number of years, has he not.

Ans. Yes.

CALEB MILLER.

CULVER BARCALOW, a witness called by the exceptants and one of the exceptants.

Ques. When and where did your father die?

Ans. He died at Charleston, S. C., 26th day of June, 20 1837.

Ques. Where had he come from previous to his being at Charleston?

Ans. St. Augustine, Florida.

Ques. How long had you been with him there?

Ans. I left Somerville the latter part of October or the

10 what kind
matters to do
the purchase
bought - if

first of November, 1835, and returned home July 6, 1837, with my sister Eveline.

Ques. Did you know anything about his business in Florida, and what had you to do with it yourself?

Ans. My father kept a grocery and liquor store, and I was in the store from the time that he commenced until he sold out, as assistant.

Ques. Did his business require books of account?

Ans. Yes, sir.

10 Ques. Had he any such books?

Ans. He had a day book and ledger.

Ques. What can you say about the amount that was due him on his books, and the amount of his accounts and notes at the time of your father's leaving; state what you know about it?

Ans. The exact amount of the accounts or notes I am not able to tell; my father had a book and a book of notes that he had taken of persons who owed him accounts on book; he also had a large number of unsettled accounts.

20 Ques. Have you seen any of the notes that were in that book during this investigation?

Ans. I have seen some notes here which I recognized as notes that were in the possession of my father, left with Seth Nickerson at St. Augustine, on the 16th of June, 1837; I have seen some other notes that look if they had been in the book; whether they were or not I cannot tell, would like to have papers.

Ques. Do you remember any of the persons who were

one year &

*was about
years old
all station &
dull &
in all*

*Ed
S. Frank*

owing your father on note or account, or who had open accounts on the books?

Ans. I do.

Ques. Mention them.

Ans. My father had accounts against Dr. Simmons, Dr. Weden, Dr. Wallace, or a Howard, J. M. Gould, Hulburt & Allen, a Major Kennedy, George Phillips, a man by the name of Mr. Livingston, Lieutenant Dancey, John C. Hunter, Lieutenant Williams, John C. Clelland on a note, man by the name of Woodruff, Michael Minci, Stephen Bulow, not Stephen Buloe, he was a colored man; there were a great many other accounts that I can't recollect, some of them Spaniards or Mexicans; there are two notes that look as though they came out of that book; one by B. A. Reynolds \$13 81; one by John Croak for \$45.

*crop all these w
above the no
had no ac
or notes ag
them*

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Ques. Can you state how many notes about, there were in that book, whether they were few or many?

Ans. I see here there is an account on my father's books against Thomas C. Martin for \$32 93.

Ques. What amount of estate real and personal did your father have in Florida, to the best of your information and belief; state as near as you can?

Ans. In money, books, notes and the accounts that he sold to George Bartlett, and stock, between \$5,000 and \$6,000.

Ques. In what shape did he leave his business and property then, when he left?

Ans. He left \$600 in money or thereabouts, in bills—bank bills I mean; he left his account of stock in the store of \$800, and some odd dollars, books of account and notes

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30

in the hands of the same man, Seth Nickerson, who was a dry goods merchant doing business in St. Augustine, considered a man of property, not to a large amount, a very safe business man; he was the agent of my father, and was to come north in about two months after goods in the city of New York; my father was very unwell at the time and expected to reach home; Mr. Nickerson was to get the money exchanged for silver or gold, or some other marketable money of New York; the reason my father left the money
 10 with him was they wanted to charge him five per cent, for a draft on New York and he wouldn't pay it; the amount of property sold to Bartlett being \$800; \$400 of that account was to be paid to Seth Nickerson and the balance was to be in a promissory note payable the next Spring; all the books and papers were left with Seth Nickerson; the stock of the store was sold to George Bartlett.

Ques. When did Farrington leave St. Augustine that Spring?

20 } Ans. About the middle of May; I find a paper here, one produced by him dated May 9th, 1837, an account against Thomas C. Martin with an order on the bottom of it, "Pay the above account to Farrington Barcalow, and this shall be your receipt in full," signed W. M. Barcalow, my own father's hand writing.

Ques. Do you know whether Farrington took any money of his father with him when he left in May 1837?

(Objected to by counsel for accountant.)

Ans. I do.

Ques Tell all you know about it?

30 } Ans. I saw in his possession in gold coin, in a buckskin,
 (sewed so that a \$5 piece would just go in it,) between

\$500 and \$600; I saw that same bag in his possession after I returned home in July, with part of the gold coin in it; any other money he had which he speaks of himself, I don't know anything about.

Ques. When he left what was your father doing, as respects his business?

Ans. My father was closing his business and trying to sell it out, urging this man Bartlett to purchase it; Bartlett declined to purchase it first because he hadn't the money; he said that Ira Howard owed him \$2,000, and he could not get the money before the next Spring. It was arranged afterwards, for part of the money to be paid to Seth Nickerson before he came on North, and the balance to be by note payable in the Spring. 10

Ques. How much money had your father in his purse at his death at Charleston; state as near as you can?

Ans. My father had after giving Seth Nickerson \$600, about \$800 in money besides, when he left St. Augustine; he died at Charleston; his physician's bill and funeral expenses, my sister and myself and his passage from St. Augustine to Charleston with our board and expenses in Charleston, with myself and sister's passage from Charleston to New York and from New York to New Brunswick, I think he had about \$500 left, or in that neighborhood. 20

The 3 &

Ques. What was done with the money on your return?

Ans. My sister had that money in possession; she gave it to Farrington and my mother.

3rd Except

Ques. How long did you live, at Somerville on your return?

Ans. I lived home from July until the next summer, it 30

Summer 17

lived home 1839
th

1842 8 mths

43 1 year

1 year Steels stn

Home 9 mths

might have been September, 1838; I then slept home, but did not board there till the fall of 1839, had my washing and mending home; I then went to Mr. Fritts' and slept there too, tended bar till February, 1841; then I was home about a week, went to Charley Wyckoff's in New York, 41 Courtlandt street, and lived with him till the middle of June, then came home, and was home till the next Feb, '42; then I was out west two months, perhaps it might have been two and one-half months; then I was home off and on till the spring of '43, wasn't there all the time but regarded that as my home; I was clerk for Mr. Steele from April, '43 to February, 1844; three months of that time I was at Jersey City sick, at my sister's; from February, 1844, to May 15th, 1845, I was home; I haven't been home since to stay; I mean at my mother's.

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Ques. Can you state what moneys your mother had to live upon the first year after your father's death, besides what you have mentioned?

shows that
the personal property
subsd in pay²⁰
rents included

Ans. I suppose that she lived upon this money that we brought home, and the rents of the real estate from April 1837 to April 1838.

Ques. The accountant states that the horse was required for the use of the family, what have you to say as to that?

Ans. I recollect distiactly, at the time the carriage was exchanged for the horse; I also recollect that John H. Voorhees found fault with that exchange; he said that my brother Farrington had no right to do it; the family didn't want a horse and couldn't afford to keep it upon expense; the family didn't want a horse, and the family never used
30 the horse.

Ques. What kind of a horse was he, and how was he used?

Ans. He was a sorrel horse, called a trotting horse, used by my brother in his own way and for his own use, except he might have taken his mother out visiting occasionally.

Ques. Do you remember of his being used as a trotter, in trots along the turnpike, or anything of that kind?

Ans. I do; I remember on one occasion I think of his having a trot on the turnpike, with a man by the name of Wm. G. Schultz.

Ques. Who controlled the household, your brother or your mother, as to the general conduct of affairs? 10

Ans. My mother was governed almost entirely by Frank.

Ques. She was appointed your guardian I suppose you know?

Ans. Yes, sir.

Ques. Did she ever keep any accounts of any kind?

Ans. My mother never kept any accounts.

Ques. Did you ever hear from your brother, before this investigation that he had filed an inventory of the property in Florida? 20

Ans. No, sir; on the contrary he said he had not.

Ques. When did you first hear of a claim of his having advanced the \$200, to John H. Voorhees?

(Objected to by counsel for accountants. Overruled by court. Exception taken very emphatically to the ruling of the court by counsel for exceptants.)

Ques. Where did you first hear of the charge for paying taxes against this estate, from 1838 to 1842?

(Objected to and withdrawn.)

Ques. Did you file exceptions to the account of 1847?

Ans. I did.

Ques. How long was the matter of that account in agitation, at that time, and matter of conversation, between yourself and your brother Farrington?

Ans. About a year, perhaps a little over.

Ques. He says that a short time after he filed his account in 1847, he discovered the error in not being credited with this \$200; did he ever in his controversies with you at that time, and talks in that year, claim to have been entitled to that credit?

Ans. He never did.

Ques. How was your mother supported after 1864?

(Objected to because not a matter in controversy. Question allowed by the court, Exceptions by accountant.)

Ans. She was supported in the year 1864 by the sale of her furniture mainly.

(This answer excepted to.)

20 Counsel for exceptants propose to show that from 1864 to 1873, the accountant did not directly or indirectly pay one dollar to his mother of the interest of the \$2,000, given her by the will; that she was in great need of the money, and the attention of the executor was called to it from time to time; that a suit upon the bond had at length to be resorted to, but that he still never paid his mother until her death, and hasn't paid anything since. All which they claim is pertinent evidence upon the question of the commissions to which the executor claims he is entitled.

is an error
not discovered
until. I
the book lost
and about 1852
Then I made
memorandum
having lost the
the second time
unable to fully
in - said book
found -

Counsel for accountant here says, if the counsel will divide his offer into questions, they will be met as they arise, that to part of it he has no objection under the present ruling of the court.

Ques. What was the age of your mother, at her death?

Ans. Seventy-five years.

Ques. What was the condition of her health for years before she died?

(Objected to as immaterial, received and exception taken.)

Ans. She had a stroke of the palsy on one side, and was 10
scarcely able to walk, and was in a very feeble condition.

Ques. How long was she confined to the house and her room before her death; do you know?

Ans. She was confined to her room, I think about three months; some time longer they had to carry her food upstairs to her before she was; she hadn't been able to walk to church in six years; she walked in the yard, garden, by the aid of a broom-handle with part of the broom on the bottom so it would hold and not slip.

Ques. From 1864 to the time of her death, did this 20
accountant, ever to your knowledge, pay her anything of the interest of the \$2000 that was due to her under the will; what do you know on the subject?

Ans. He never did to my knowledge.

Ques. Did she need the money, [Objected to], and was the attention of the accountant called to her need?

(Whole question objected to.)

Ans. She did need the money, and his attention was called to it.

Ques. How did he conduct himself towards his mother during these nine years; attentively and kindly, or otherwise, as executor?

(Objected to by counsel for accountant.) Allowed.

Ans. His first visit to my mother was when he was notified to give security on the bond for the \$2,000; I don't know that he has ever been to see her since as executor?

Ques. On what other occasions did he visit her?

(Objected to.) Overruled.

10 Ques. How was Farrington Barcalow supported from 1838 to 1854; tell us all you know on the subject?

(Objected to, because Mr. Barcalow may have supported himself by various kinds of business, &c.) Question overruled.

Adjourned to to-morrow. 9 1-2 A. M.

Court met March 21, 1874, at 9 1-2 o'clock. Present Judges Williamson, Garretson and Thompson.

Direct Examination of C. Barcalow continued:

20 Ques. How long did Farrington Barcalow continue to live with his mother?

(Question objected to by Mr. Clark.) Court admit the question.

Ans. He lived with his mother from 1837 until 1851, as a single man, and from 1851 until 1858 as a married man with his wife—they all lived together.

Ques. How was Farrington Barcalow off as to funds when he left for St. Augustine in 1840; what do you know about it?

Ans. I loaned him thirty dollars; the reason he gave to me was he was short of money.

Saturday, March 21, 1874.

Ques. When did you first know that the account rendered in July, 1873, had been altered, as to the charge of \$75.

Ans. The first I recollect of seeing the alteration was the day that Mr. Frelinghuysen was appointed the Master and Examiner to restate the account; it was not altered on the day that I examined the vouchers and the account together at my revenue office, with Mr. Farrington Barcalow and H. M. Gaston present, which I think was after the time fixed for the first day of hearing. 10

Ques. On that day do you remember of being present in the Surrogate's office with the Judges of the Orphans' Court, and it being then suggested by the counsel or the court, or both, that it would be well for the accountant and yourself to examine the vouchers, and was that examination held in the afternoon of the same day in consequence of that suggestion? 20

Ans. Yes, sir.

Ques. How long were you together, yourself and your brother, in your office?

Ans. About two hours.

Ques. Was there a memorandum taken of the vouchers; (shown memorandum taken at the time of the vouchers;) this is a memorandum taken by Mr. Gaston in my behalf at that time.

Ques. Did he then inform you that he had altered the account? 30

(Question objected to.)

Ans. No sir.

Ques. Where was the original account of 1847; did you then know where it was?

Ans. I did not.

Ques. What did Farrington Barcalow say in open court as to where it was?

(Question objected to by counsel for accountant.) Question overruled by the court.

10 Ques. Was not Farrington Barcalow absent from home on a journey in 1840, and if so, how long was he gone?

Ans. About eight months; he started for St. Augustine in March, and returned in November, I think; this is the second time he went to St. Augustine after my father's death.

Ques. Did he claim to have been at St. Augustine, or didn't he say he had not been there all that time?

(Objected to because it is not claimed he had been there that length of time;) on the contrary the counsel for the
20 accountant say he was not there on the business of the estate all that time.

Ans. I don't know only what my brother said about it; he said he was there a short time; he went from St. Augustine through the Southern States, traveling with horse and wagon, and from there west to Illinois and from the west home.

Ques. Do you know anything further bearing upon the

question as to where this \$200 came from sent from St. Augustine to Judge Voorhees?

Ans. I heard Judge Voorhees say in the presence of my mother that he had received two hundred dollars from St. Augustine, sent by Farrington, and the money belonged to the estate.

Cross Examined by Mr. Clark:

Ques. When was you born, Mr. Barcalow?

Ans. Twenty third day of October, A. D. 1833. #

Ques. Were all those notes, accounts and papers being the twenty-one papers left in St. Augustine when you started for home in June, 1837?

Ans. I don't know whether those same papers were, some of them were.

Ques. Which ones were there when you left in 1837?

Ans. The notes were there; I can't speak as to the accounts and I can only speak of the notes as to their dates; (notes shown to witness.)

Ques. Had you ever seen those notes before this examination?

Ans. The only note that I recollect of by name that I ever seen was a note of Woodruff & Clelland.

Ques. Were they in a book of notes?

Ans. I should think not from the looks of Clelland's note.

Ques. Where did Doctor Simmons, Doctor Weden, Doctor Wallace, Ora Howard and the other parties you

Judge Voorhees possibly has seen knowing that I went to in 1840. that expected to the money - but don't know that such a conversation

Book says he Born 1833 - he was only 9 age when Florida

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20

have named, against whom your father had accounts in Florida, reside?

Ans. In St. Augustine, as far as I know; Doctor Simmons might have been a man that did not live in St. Augustine permanently.

Ques. Who was Stephen Buloe?

Ans. Stephen Buloe was a man who owned a plantation in East Florida, a sugar plantation, and was driven in from it to St. Augustine by the Indians during the Seminole war.

10 Ques. Was he living in St. Augustine in 1837, at the time you left?

Ans. Well now, since he has called my attention to it, I think he was dead, but I am not certain.

Ques. Did he not die a year or more prior to your leaving St. Augustine in 1837?

Ans. I think not.

Ques. Do you know?

Ans. I am not certain.

20 Ques. You say your father's estate consisting of money, books of account, I suppose, notes, stock and accounts sold George Bartlett, was between five and six thousand dollars, the Florida personal estate I mean; please to state how it was made up?

Ans. I can't give specific items; I know my drug store is worth ten thousand dollars, the stock in it, from the general knowledge of the business, yet I can't state how in specific items the amount is made up; my father's idea if I am allowed to state what he said about it—his idea was

TR 800
1000

that he had five or six thousand dollars at St. Augustine, perhaps that may have included the lot.

Ques. Is that the way you form your conclusion that your father had between five and six thousand dollars of estate in Florida?

Ans. Yes, sir.

Ques. Can you state any more specifically than you have stated as to how that valuation was arrived at?

Ans. I think I can.

Ques. State?

10

Ans. I don't think that George Bartlett got all my father's stock; I think part of the stock was sold to other merchants so as to reduce it as low as possible; I think part of it was sold to Ora Howard, the liquor, part of it I think to a man by the name of Allen, who kept a kind of boarding house or hotel; I think those amounts whatever they were, was owing to the estate, besides what I have stated specifically.

Ques. Is that all?

Ans. All I recollect of specifically.

20

Ques. Do you know what amount of business your father did there per year?

Ans. Not exactly; his business varied very much.

Ques. Do you know what proportion was cash?

Ans. When the army was there the large proportion was cash.

Ques. In the year 1836 and 1837, were there not troops there?

Ans. Very few.

Ques. Do you know how much money your father collected in cash, from April 1, 1837, until the time you left or anywhere near the amount?

Ans. I know my father had fourteen hundred dollars; six hundred he left with Seth Nickerson, as I said before; I know he said he sent home money with Farrington, but whether that money was collected from April 1, 1837, until June, 1837; I don't know, he collected all he could.

Ques. Is fifteen hundred dollars all that you can remember of?

Ans. I think there was more money collected, but I can't recollect the amount; it is a good many years ago.

Ques. Do you know what he did with the excess?

Ans. He may have paid bills that he owed; he may have sent money to New York; he used to send money by draft; I have known him to send money and orders for goods by Captain Houston, that run a schooner between New York and St. Augustine.

20 Ques. How do you know that your father had eight hundred dollars when your father left St. Augustine in 1837?

Ans. The day my father left, in the presence of my sister, myself and Seth Nickerson, was aboard of the boat, my father then gave Seth Nickerson, the money was counted that he had; and of the bills six hundred dollars he gave to Nickerson; and I think he had about two hundred dollars in Southern currency that he kept, and about six hundred dollars in gold and silver; he was going to bring it all with him in the first place but afterwards concluded to leave this
30 six hundred dollars with Seth Nickerson to get exchanged,

*is the money
in that I
in a good
skin bag*

10

*round out it
good many
ago*

I recollect very clearly why he did not bring the money with him; it was bills issued by the Southern Life Insurance and Trust Company, and the bills were not current outside St. Augustine; they wanted to charge him such a high rate of discount or tariff or rate upon a draft that he left the bills.

Ques. What premium did they charge upon a draft upon New York?

Ans. Well, I said five per cent yesterday, but it might have been more.

Ques. How much below par was the currency?

10

Ans. I don't recollect.

Ques. Was not the currency 15 per cent. below par at that time?

Ans. I know it was at a discount but the amount I don't recollect.

Ques. How do you know anything about the premium which it would cost your father to have made the exchange?

Ans. Only from what I heard him say; it was so much he would not pay it.

Ques. Did you take any obligation from Nickerson for the bills passed to him from your father on the boat?

Ans. I think not; I was by on the boat with my sister; and the books and papers had all been disposed of before, and I think there was a man by the name of John C. Huther by, I am not certain; he went to the boat with us, I recollect that.

Ques. When did you first know the amount of the sale of stock in store to George Bartlett?

*It is strange
the money he
so unceremonious
of below par
that he would
give 5 per cent
draft on*

*20 Is it not strange
that he would
amount of money
the hands of
and not take
voucher for it*

Ans. I thought I knew at the time.

Ques. Is that your only answer?

Ans. No, sir; I was waiting for you to write down what I said when he asked the question; I thought the stock amounted to a great deal more than \$800, but my brother showed me on an inventory some weeks ago; which amounted to eight hundred and odd dollars.

Ques. Didn't you before you sent that inventory claim, and say that the amount of the sale to Bartlett was only 10 six hundred dollars.

Ans. No, sir.

Ques. You filed exceptions to the first account of 1873?

Ans. I did.

Ques. Didn't you claim that in those exceptions?

Ans. No, sir.

Ques. Didn't you state in the Surrogate's office, before you saw this inventory of Bartlett's purchase and before Farrington and the Surrogate, that six hundred dollars or thereabouts was the amount of the Bartlett sale.

20 Ans. No, sir; I will tell you what he said.

Ques. From 1837, until the commencement of this examination when and to whom did you ever before state that the sale to George Bartlett, was for \$400 cash, and \$400 note, payable in the spring of 1838?

Ans. I haven't said so now.

Ques. When did you ever state and to whom, before this examination that any part of it was by note?

*the first
he ever knew
of the stock
Bartlett
-- his
good views
the amount
deduced when
the actual
this shows
his ideas were
larged as to
personal property
kind*

Ans. I stated so in 1847, and filed exceptions and stated it so in the exceptions; I don't know I said it was part of the sale; I said there was a note due from George Bartlett.

Ques. When and to whom did you state, that four hundred dollars of the sale to Bartlett was to be paid to Seth Nickerson, prior to this examination?

Ans. I don't know that I ever said it was \$400, was to be paid to Seth Nickerson, prior to yesterday; but I have always said that the money that Bartlett was to pay my father, was to be paid to Seth Nickerson, and there was to be a note for four hundred dollars on the sale. 10

Ques. Did you know the amount of the sale to Bartlett, until Farrington told you a short time since?

Ans. I did not; the inventory is here in my father's hand writing. } *Inventory*

Ques. To whom did you ever tell prior to this examination the conditions of this sale.

Ans. To Judge Brown, my counsel, and to Mr. Gaston, and I have no doubt I have told others, but I don't recollect to whom; I have no doubt I have told you. 20

Ques. You spoke of Judge Brown as your counsel, in 1847, were the exceptions prepared by him to which you have referred?

Ans. Yes, sir.

Ques. How do you know that there was in Farrington's possession five or six hundred dollars in gold coin when he left St. Augustine, in 1837.

Ans. I saw the money.

Ques. Did you count it?

Ans. I did not.

Ques. In what denomination were the different coin?

Ans. They were five dollar gold pieces.

Ques. Where did you see the money?

Ans. In his possession.

Ques. Whereabouts?

Ans. On the bed in the room at St. Augustine, just before he left.

Ques. How long before he left?

10 Ans. Only a day or two.

Ques. Was your father present at the time?

Ans. He was not.

Ques. Whose money was it?

Ans. My father's, I suppose.

Ques. Do you know?

Ans. I heard my father say he had sent money home with Frank, and I suppose that was part of it.

20 Ques. Do you know that the money of which Farrington speaks of having been sent with him by your father for the purpose of paying bills for your father in Charleston and New York, and paid out by him, was not the only money which your father sent with him at that time; I mean in the Spring of 1837?

Ans. My father only spoke to me about the money which he sent with Farrington home; I saw that money that I

speak of, or part of it after I came home, part of it he lent to Cul Voorhees.

Ques. Did you remember that in 1847?

Ans. I did; I so charged in the Bill in Chancery.

Ques. In your bill of exceptions of 1847, did you so charge?

Ans. I think Judge Brown excepted to every item in the account, if I recollect right.

Question repeated.

Ans. I don't recollect.

10

Ques. What became of this buck-skin bag, Mr. Barcalow, in which the money was carried?

Ans. I don't know.

Ques. How much of this money was left on your and your sister's return was given to Farrington?

Ans. I did not see the money handed over, my sister had the money, and she handed it over to Farrington and my mother.

did not see the money handed over

Ques. Was your sister Evaline living in 1847?

Ans. Yes, sir.

20

Ques. You then knew that your sister claimed to have paid part of this money to Farrington, did you not?

Ans. Yes, we have talked about it often.

Ques. To whom did you last go to school, Mr. Barcalow?

(Question objected to by Mr. Gaston.)

Ans. To Gilbert Combs, in 1838.

Ques. Did you complete your schooling before you left home?

Ans. While I went to school I slept home and ate at Fritts'; I was at Fritts' at night and morning, and went to school in the day time.

Ques. How long did you tend bar for Mr. Fritts?

Ans. I tended bar nights and mornings until breakfast time, part of 1838 and part of 1839, and from the sale of 1839 to January 1841, steady; I lived then at Fritts' all
10 the time.

Ques. Where did you board when with Steele?

Ans. I boarded at home except three months, when I was at Jersey City; I then boarded at home until the 15th day of May, 1845.

Ques. What business were you engaged in from the time you left Steele until you left home?

Ans. I left Mr. Steele on the 15th day of February, 1844, bought out the drug store which I now own, and took possession April 1, 1844, and was engaged in that
20 business until the 15th day of May, 1845, and still continued ever since and boarded home until May 15, 1845.

Ques. Were you not sick at home when you were troubled with your eye?

Ans. Yes, I was home a'll the year of 1843, except three months; then I was at Jersey City sick with my eye at my sister's.

Ques. Were you not engaged in business of a hennery previous to 1845, and if so how long?

Ans. After I left Charley Wyckoff, in June, 1841, I

*was not sick
at time*

year + 6 months

built a hennery and was engaged into it probably six months and boarded home.

Paul Smith

Ques. How much money did your mother and family have to live upon the first year after your father's death?

Ans. Well I say the money we brought home with us and the rents I suppose.

Ques. How much money?

Ans. I suppose the rents from April 1st 1837, and to April 1st, 1838, the money we brought home with us.

There were no rents by the way for 10 months after 1839

Ques. Is that your only answer?

Ans. That is my answer.

Ques. Can you tell who collected the rents from 1837 to 1838?

Ans. I suppose Judge Taylor did.

Ques. Do you know what disposition Judge Taylor made of those rents?

Ans. I do not.

Ques. When and where did Farrington tell you that Farrington had not filed an inventory of the Florida property?

20

Ans. He has told me within four weeks, and he has told me so before.

Ques. When before?

Ans. I can't recollect the time?

Ques. Can you tell where?

Ans. In Somerville.

Ques. How soon before or after the month of August did the conference of which you have spoken take place in the Revenue office?

Ans. I think it was the 9th of August, in the afternoon of that day.

Ques. The alteration of \$75 to which you have referred had not at that time been made?

Ans. No, sir.

10 Ques. Had you the original account with you at the Revenue office?

Ans. No, not the original, a copy we had.

Ques. When was that copy made?

Ans. Between July 19th and August the 9th; I mean the copy made by Bell.

Question by Mr. Gaston:

In whose hand writing was your father's will?

Ans. I think he drew it himself.

Court adjourned until 2 1-4 o'clock.

Two o'clock, P. M. Court met at 2 1-4 o'clock.

20 C. Barcalow's examination continued:

Question by Mr. Gaston:

Did you except to this account as to \$400 due from Bartlett specifically in your exceptions to the Orphan's Court, or was it in the bill in Chancery in 1847?

Ans. It was in the bill in Chancery.

CULVER BARCALOW.

Sworn and subscribed in open court, before me, March 21, 1874.

FRED. J. FRELINGHUYSEN, Surrogate.

Mr. Gaston on behalf of exceptants then offered in evidence the bill in Chancery, between Culver Barcalow and Theodore Barcalow, *Complainants*, against Farrington Barcalow, *Defendant*.

Bill filed December 24, 1847.

Answer filed June 21, 1848.

THERESA BARCALOW, a witness produced and sworn on the part of the exceptants:

Ques. You are a daughter of William Barcalow, dec'd?

Ans. I am.

Ques. Did Farrington Barcalow ever render you an account of your share of the estate?

(Objected to by Mr. Clark, because there is no balance on any final account, that is a matter to be settled between the heirs and the executor. Overruled.)

Counsel for the exceptants offers to prove by the witness, that Farrington Barcalow, the accountant in 1851, procured his sister Theresa Barcalow and Henrietta, now deceased, to release to him their interest in their mother's homestead property; that no account was rendered and no money paid, and that it was done under pretence by Farrington Barcalow, that these papers were required to settle a difficulty between Culver Barcalow and himself. That in fact

John's
10

the deeds were never read to the parties, that after signing them they became greatly concerned, applied to their brother Farrington, to know what they had signed, that he refused to let them know what they had signed, and pretended that the papers they had signed were in the hands of F. T. Frelinghuysen, of Newark; that these deeds were withheld from the records for over three years afterwards, and that they at that time consulted counsel as to their chance of having their deeds set aside as fraudulent; also offer to show that Farrington Barcalow procured his sisters to execute a release to their mother, as their former guardian without any settlement on any account. The court overruled the question.

10 Ques. Farrington Barcalow states that he procured a situation for you in the south, was that so?

(Question objected to. Court allowed the question.)

Ans. He did not, sir.

THERESA BARCALOW.

Sworn and subscribed in open court before me, March 21, 1874,

20 FRED. J. FRELINGHUYSEN, Surrogate.

THEODORE BARCALOW, a witness:

Ques.— Witness shown a paper is asked, “what paper is that”?

Ans. A letter I received from my brother Farrington, dated Somerville, November 23, 1853.

Ques. Is it in his hand writing?

Ans. It is.

Ques. Have you previous to that letter and if so how

many times, have you applied to him for your share of the estate?

(Objected to by counsel for accountant. Court allow the question.)

Ans. I can't tell the number of times; we have talked about the matter very often; I have asked him for a settlement.

Counsel for exceptants then offered in evidence the letter shown witness, dated November 23, 1853, from Farrington Barcalow to Theodore Barcalow, and the letter was marked Exhibit L. } 10

*Orphans
E L,*

The account of Farrington Barcalow, surviving executor of William Barcalow, filed in the Surrogate's office, July 19, 1873, was also offered in evidence by counsel for exceptants.

Court adjourned until Monday, March 23d, 1874, at 10 o'clock.

Somerset Orphans' Court, Monday morning, March 23, 1874. at 9 1-2 o'clock.

Present Judges Williamson, Thompson and Garretson.

Examination of F. Barcalow resumed.

20

Cross Examined by Mr. Clark:

Ques. Your brother Culver says you had between five and six hundred dollars in a buck-skin belt in your room a day or two before you left St. Augustine in May, 1837, consisting of five dollar gold pieces; what have you to say about that?

The gold

Ans. As to the amount that my father gave me, I cannot alter from my previous statement, but say that upon

reflection from what Culver said upon his examination, I remember at the time previous to my going away, say two or three days, of my father and myself after closing the store at night, together making up the amount of money that he had on hand at that time, consisting of bills and specie, the specie being in a shot bag which we always used around the store for that purpose; I remember also of having made out at the time a memorandum of the monies that I was to pay, the debts in Charleston were to be paid,

10 I think with the Carolina currency, and the debts in New York were to be paid in specie on account of the premium there; I don't remember of seeing or having anything in the shape of a pocket-book; I know I had none; but at the time the money was put up in some shape which I supposed at the time I testified before was in a shot bag, that being the thing we had on the table at the time; it may be possible that that money was packed at the time in a belt made of buckskin or something else at the time, and

20 after being so packed it may be possible that it lay on the bed in preparing while dressing to come home, but have no idea that it lay there exposed any length of time; the circulation at that time in Augustine, let it be gold, paper or silver, it may have been specie—I paid out as before stated in my examination; I may have carried home the balance I had left if put in a belt of this kind—the balance I had left was a small amount; if I had bills it must have been old United States bank bills.

30 Ques. Did you borrow any money here upon your return home in July, 1837, and if so from whom and how much?

(Objected to by Mr. Gaston, because it opens up new matter and not rebutting evidence.) Question overruled by the court. The accountant proposes to prove in

answer to this question that the statement of Culver Barcalow in relation to this accountant having a quantity of gold coin on hand upon his return home in May, 1837, is incurred. Counsel for the exceptants makes no objections to the offer if made by direct evidence, but objects to evidence of collateral facts at this stage of the examination.

Ques. Is there any reason by which you know that you did not have any quantity of gold coin on your return home in May, 1837?

Ans. There is.

10

Ques. State what it is?

Ans. You will find charged against me on the 19th day of August, 1837, on Cornelius G. Tunison's books of account twenty-five dollars and twelve and a half cents; the twenty-five dollars was borrowed money; I returned Sept. 18, 1837; the twelve cents was for a small item of store account in the day book.

*Reason
he knows
had no
when he*

Ques. When did you first hear the stock in store at St. Augustine was not sold to Bartlett alone, but to others, and what do you know about it?

20

Ans. I never heard of any other party buying that stock until Culver mentioned it in his examination; in looking over the schedule of the property it appears to me to fully contain all the items of stock he had.

*Where is
I had
Stock
I have*

Ques. What do you know about your father's having \$800, when he left Augustine in June, 1837?

Ans. Judging from the amount that he had paid out previous to my departure of \$1130, about, by draft to Mulford & Martin, and the amount that he gave me when I left, and the amount that Culver says was left with Nick-

*paid in
testation,
1st 11
3*

30

erson, he could not have had eight hundred dollars legitimately from his business, or anything like it.

to some kind
money }
10 }
Ques. Did your sister Evaline ever give or claim to have given any money to you upon your return from St. Augustine in May, 1837?

Ans. No.

10 }
Ques. Culver says that he and Evaline had several talks about your receiving the money; were you ever present at any of these conversations, and do you know what was said about it?

Bill & Tes-
my }
Ans. I was; she denied of my ever having any of that money; she denied also the amount, both of which he alleged in his bill of complaint in Chancery, in 1847; she saying to him that he had lied about it, and a quarrel ensued.

Ques. What have you to say about exchanging gold with James Culver Voorhees?

(Counsel for exceptants says the question has already been answered.)

- Mrs Gold }
20 }
(Counsel for the accountant says that if it relates to this gold, and if it was answered No, he does not insist upon the question.)

Ques. Were you short of funds in 1840, when you went to St. Augustine, and did you borrow any money of Culver?

Ans. I was short in the amount that I wanted to take with me, and I borrowed all the money I could borrow; if he had any to loan I borrowed it; I had between eight hundred and one thousand dollars when I left.

Ques. What kind of currency was in circulation in the the years 1836 and 1837, at St. Augustin:?

Ans. The principal currency was specie, which was paid by the government, to their officers and troops; the Southern Life Insurance and Trust Company, which Culver speaks of in 1837, was not worth over fifty cents to the dollar, the institution had partly failed in 1836; it was looked upon as a wild cat bank; the other money we had there in circulation in 1837, I mean Georgia and Carolina paper, was at a discount in New York about 25 per cent., and almost all Southern banks in the same way; the silver circulation was small. 10

Ques. Did you ever tell Culver that you had not filed an inventory of the Florida estate?

Ans. He asked me the ques ion during this investigation, and I told him I thought I had; and he replied that they could not find it upon record; I replied that it was not strange from the fact that we could not find papers in this suit left in this office; they don't do business in the same manner with regard to proceedings as they do here; they are extremely loose in all their business relations. 20

Ques. Is William G. Steele living, and where does he reside?

Ans. He is living, and resides in Somerville.

Ques. Witness being shown letter, marked Exhibit L. State what it relates to?

Ans. This letter relates to the sale of real estate—the hotel property that I made to David C. Noe in 1853; the title had been questioned and proceedings commenced against the executors in 1847; George H. Brown being 30

*About the
Estate in
Court of
Quits,*

the office
is it?

afraid of intentions or disposition of the complaints in that bill of Culver, was afraid to have Noe to take it without a full release from all the heirs; that letter states particularly by so doing he was not cutting off any claim or demand that he might have in the estate in the hands of the executors.

Ques. Did Theodore ask you for a settlement in the letter and which this is an answer; or did he ever ask for a settlement?

10 Ans. He never did; he never has; I always aided him in money matters at any time to the best of my ability without any regard to what he had in the estate.

Ques. Where did he reside at the time that this letter was written?

Ans. I don't know whether it was at Port Jervis or Corning.

Ques. Have you any correspondence of his previous to or within a short time of the date of that letter?

Ans. I have.

20 Ques. Does he anywhere in that correspondence or in any way refer to a settlement?

(Question objected to because the counsel for accountant has not produced the papers referred to in evidence.) The paper produced and read aloud by witness, dated April 5, 1838, signed Michael Usina.

Ques. Will you state what that paper was given for?

after shows
when I arrived
in August
I had \$15.00
of
at Usina

Ans. When I arrived in Augustine in 1838, I borrowed sixteen dollars of Usina and paid it before I left; the re-

ceipt being paper above referred to offered in evidence, marked.

Ques. Was there any money due on note to your father's estate from George Bartlett, upon your arrival in St. Augustine in 1838?

Ans. I never heard of any, nor ever saw any; but Bartlett alleged that he had paid that whole bill without giving any note, and showed me a voucher for it which I have spoken of before.

Cross Examined by Mr. Gaston:

10

(Counsel for exceptants asks to be produced one of the twenty-one papers that came from Florida before referred to.)

Ques. Have you not told Theodore Barcalow that you could not settle with him until your mother's bill as guardian against him had been settled?

Ans. All I have ever said to him about that question is in that letter.

Ques. Have you the letter of November 22, 1853, to which this Exhibit is a reply, if so please produce it?

20

Ans. I can't tell; I have not found any more than I have here; everything I have found I have here; I have more to look over yet.

Ques. Have you found any of his letters to you dated in the year 1853?

Ans. Those are all I have found; I answer no if they are not there.

(Objected to by Mr. Gaston as evasive.)

30

Question repeated.

Ans. No.

FARRINGTON BARCALOW.

Sworn in open court and subscribed before me, March 23, 1873.

FRED. J. FRELINGHUYSEN, Surrogate.

Cross Examined by Mr. Clark:

10 Ques. Do those letters received from Theodore to which you have referred in any way relate to the matter of settlement between you and Theodore?

(Objected to because the letters are not in evidence and their contents can't be proved in that way, and are written at other times and upon other occasions.) Counsel for the accountant has produced the letters and they have been read by the counsel for the exceptants, and the counsel on both sides agree that the letters do not refer to any matter in relation to the settlement.

Ques. Why do you claim \$200 extra commissions?

20 (Objected to because it is not in answer to any question put by counsel for exceptants, and opens up a wide field for investigation after the witnesses have been examined and left the court; and also because it is for the witness to state facts and for the court to settle commissions.)

(Counsel for the accountant only intends to prove facts, and there is no rule by which this evidence can be excluded.)

The court overrule the question.

(The counsel for the accountant excepts to ruling of the court, and states that the failure to ask this question

that has not been asked was a mere oversight, and that he will offer to show in answer to that question, that the accountant performed extra labor and service in and about the real estate of the testator, and kept the same in repair which would otherwise have cost the estate a large amount of money, which he was not bound to do by the will. The counsel for the accountant also excepts to the ruling of the court upon the ground that there is no rule of evidence by which this testimony can be excluded, and nothing in the previous examination of any of the witnesses, which should prevent its being received.— 10

—Counsel for accountant offers in evidence the testimony of Ann Barcalow, Henrietta Barcalow and Theodore Barcalow, taken upon the cause in Chancery of New Jersey, between Culver Barcalow, and others complainants, and Farrington Barcalow and others, defendants, before William Thompson, Esq., Master in Chancery.—

Testimony offered

—Also offered in evidence the answer of Ann Barcalow; also the answer of Ferdinand Van Derveer; also the answer of John H. Voorhees, in the same cause—being the same cause in which counsel for exceptants have offered the bill and answer in Chancery.— 20

—Also the exceptions filed to the account of Farrington Barcalow and John H. Voorhees, by Culver Barcalow, in 1847.—

—Also offered in evidence the vouchers, as to the disputed items, of the accounts of F. Barcalow, surviving executor of William Barcalow, deceased.

Where are the

—The affidavits are objected to because they are made by persons not parties to this cause, excepting Theodore Barcalow, and as to his affidavit, if they have one, if it is

How is the testimony of the exceptants Bill in Chancery taken by the court?

30

offered to impeach anything he has said here, as a witness, no objection is made to it by the counsel for the exceptants.—

—Counsel for the accountant offers the affidavits, subscribed by the parties themselves before a Master in Chancery for the purpose of disproving the allegation that the executor mismanaged the estate:—

—The court overrule the affidavits as not evidence and inadmissible.—

10 —The evidence in the case here closed, excepting the admission of documentary evidence of the bill in Chancery, and answers there and above referred, which it left open for the decision of the court as to their reception upon the general argument in the cause.

Question not settled does it or are the us in evidence
 FREDERICK J. FRELINGHUYSEN, sworn on the part of the accountant, says:

I am the Surrogate of Somerset, and was so A. D. eighteen hundred and seventy-three; the first account of 1873 of Farrington Barcalow was filed July 19th, 1873.

20 Ques. When was the alteration of the account made which has been spoken of?

Ans. It was made on the morning of the second coming of Mr. Barcalow (Farrington Barcalow), after filing his account, which I believe to be on the ninth day of August.

Ques. Was that alteration made before or after it was sworn to?

30 Ans. To the best of my memory and belief it was made before being sworn to by F. Barcalow; the affidavit of David Flomerfelt was most probably on the account, from the time it was filed and stated; the affidavit as to putting up notices.

Ques. Was that account sworn to by Farrington Barcalow on the 19th of July, 1873?

Ans. It was not sworn to by him on that day; my custom has been to take the affidavits on the day it was presented to the court, or near that day, as soon as the account is complete, sometimes parties may omit to bring vouchers, and the account is left open to add them when they produce them; I mean in cases where no objections are made or likely to be, or exceptions filed to the account, or likely to be.

10

Ques. Is that the account which was filed on the 19th of July, 1873?

Ans. I have no doubt on my mind but that it is the same account with the exception of the alteration made on the ninth day of August, the day of settlement; the reason why I believe it to be so is, the accounts before they are finally acted upon, are placed in my drawer subject to my examination.

Ques. Did you ever take the affidavit of Farrington Barcalow to any other account than that one filed July 19th, 1873, excepting the account to which you attached your Master's report?

20

Ans. I have never taken his affidavit except to the two accounts named that I recollect of.

And being cross-examined by counsel of exceptants saith:

Ques. When was the accountant first in your office with reference to this account, and how long was he here at different times; and how long was he here at the first time?

Ans. The first time I believe to be the nineteenth of July; the reason of my belief is from the date of the ac-

30

count; as to how long he stayed here I have no personal knowledge after he transacted the business with me.

Ques. Was he in your office at that time from day to day, or was he only here one day?

Ans. He was not in my office from day to day; how long he stayed I can only answer as in my former answer.

Ques. Was the account then forfeited, or understood to be forfeited?

Ans. The account as stated and drawn by my clerk,
10 and the executor, was a copy of an original account filed by the executor, A. D. eighteen hundred and forty-seven; he had with him a certified copy prepared by Col. Sutphen, a former Surrogate; the executor in reading off the items from that account and my clerk copying them so far as this account is a transcript of it.

Ques. Was the account then perfected or not?

Ans. It was not considered perfected by the executor; my recollection is he said he had forgotten some vouchers,
20 and wanted the account left open; that is my recollection of the matter.

Ques. What was left open; where did he finish?

Ans. I recollect the executor stating he had forgotten some vouchers that he would bring with him when he came again.

Ques. Do you remember what they were?

Ans. My belief is that it was left open as to court and Surrogate fees; I am not certain; I have not seen a copy; if that is so I may be mistaken.

Being shown copy referred to, is asked if he is not mistaken?

Ans. If that copy was made on the 19th day of July, then I believe it was in; I think the executor spoke about a receipt he had of T. A. Hartwell. (I see it is here interlined), there was something said about it.

Ques. When was that put in the accounts, amount of credit paid T. A. Hartwell, \$47 82; when was it put in the account?

Ans. My impression is that change was made the same 10
time the charge was made of \$507 06; I may be wrong about it; I only speak from memory.

Ques. In whose hand writing is the words T. A. Hartwell?

Ans. In the hand-writing of David, my clerk, and also the item of C. Bartles, \$1 37; the rest I believe is in Mr. Barcalow's hand-writing; except charge of Court and Surrogate's fees, on that page of the account.

Ques. Can you tell when these alterations of \$1 37 and \$47 82 were interlined in the account? 20

Ans. I can't tell positively; I think it was made on the same morning, the executor stating he had forgotten it before.

Ques. Were you present when the account was altered as to the \$75?

Ans. In answer to that question, I will state particularly what happened; on the morning of the ninth of August about nine o'clock, the executor came to my office with his books and satchel he has here, and asked for the account filed; he asked the clerk for it, where it was; I was sitting 30

at my desk preparing some business for the court which was to meet on that day; and I overheard him say to the clerk, he wanted to make some alteration of the account and charge himself with more money on the debtor side of the account; I turned to them and said they must not make any alterations to that account, as exceptions had been filed to it; Mr. Barcalow replied, they couldn't find any fault to it he was charging himself with more money than he had; I then told the clerk and the executor, if they
 10 made any alterations in the account they must notify Mr. Gaston, and I went on with my work; I heard Mr. Barcalow tell the clerk, either before he left the clerk, or later in the day, sometime during that day, to tell Mr. Gastor about it; and I supposed it was done.

Ques. I call the attention of the witness to the part that he has not answered my question?

Ans. I have never seen the \$75 in the amount of any account that was made; it may have been there; I never
 20 examined the account minutely until I compared the credit side of the account with the vouchers, and that was done before Mr. Barcalow, the accountant left for home, on the ninth day of August as I think; he refusing to leave the vouchers with me.

Ques. I meant to ask you, if you heard or saw your clerk make the alterations or the erasures, at the bottom of the first page in the account?

Ans. I did not see him do it; I was present but did not see it done.

Ques. Is it customary to file exceptions to an account
 30 before it was sworn to?

Ans. I have never known it to be done before as Surrogate.

Ques. The exceptions were filed on the 8th day of August, the day before the 9th?

Ans. The exceptions came to my office, mailed, filed August 8th ; and I signed my name to it.

Ques. Did you tell any one that the account had not been sworn to then?

Ans. I did not.

Ques. Could the copy have referred to the affidavit of Flomerfelt? when as you see by the paper itself that the affidavit of Flomerfelt was not made in July at all? 10

Ans. I have no doubt it did rise from the fact, that it is customary for the clerk, who puts up the notices to write out the affidavit of putting up notices, and sign it before it is sworn to; and when sworn to I add the date, and sign my name officially.

Ques. How many different days was Farrington Barcalow here, before the first of November, 1873, that you remember of? 20

Ans. I can only remember his being here July 19th, August 9th, and after that I have no recollection.

Ques. What was his business and what took place when he was here after the ninth of August?

Ans. I can't tell what his business was here, or what took place after that.

Ques. Examine the minutes of the court and refer to the times and occasions of this account?

Ans. The minutes are August 9th, the court set the

time for hearing the exceptions, Sept. 8th; August 16th, the court extended the time for filing exceptions for five days.

Ques. From reflection do you think it likely that you would file exceptions to an account not sworn to, and would you enter a rule to extend the time to file exceptions to an account if you knew it was not sworn to?

Ans. If the clerk in my office should make a copy of the account and report that it was sworn to, I might file
10 exceptions, otherwise not; as to the rules, I always make a minute of the action of the court; this rule was the 16th of August.

Ques. Then did you not understand and suppose at the time the exceptions were filed and the rule extended, that this account was sworn to?

Ans. At the time the exceptions were filed, I suppose I didn't give it a thought; when the rule was entered my convictions are that the account was sworn to.

Ques. How do you explain the dates, the rule being the
20 16th and the affidavit of Mr. Barcalow being the 19th of August?

Ans. I think after I swore Mr. Barcalow on this account I neglected to sign my name to the oath as Surrogate, and doing so afterwards made a mistake in the date. It often occurs that in hurry of business, I neglect to sign my name at the time.

Ques. In looking at the account, say, has not the last half sheet of the account been posted on the account?

Ans. I believe it has, but I will add to, that I am pos-
30 itive there has never been any other affidavit than this of

the posting and advertising notices of settlement of the account, filed July 19, 1873; I am positive and certain; at the time of the copy made by Mr. Bell, the affidavit made by D. J. Flomerfelt may have been signed by him but not sworn to at the time of the copy made by Mr. Bell, if made prior to August 9th, 1873.

FRED. J. FRELINGHUYSEN, Surrogate.

Sworn and subscribed in open court, March 27, 1874.

JOSEPH THOMPSON, Judge.

William Barcalow was born on the 10th of February, A. D., 1794.

Ann Voorhees was born on the 16th of January, A. D., 1798.

Farrington Barcalow was born on the 23d of March, A. D., 1817.

Eveline Barcalow was born on the 10th of February, A. D., 1819.

James C. Barcalow was born on the 23d of October, A. D., 1823.

Henrietta Barcalow was born on the 9th of October, A. D., 1825.

Theodore Barcalow was born on the 15th of October, A. D., 1827.

Theresa Barcalow was born on the 14th of December, A. D., 1829.

Charles C. Barcalow was born on the 14th of December, A. D., 1832.

Ann Augusta Barcalow was born on the 3d of September, A. D., 1834.

Charles C. Barcalow died July 24th, A. D., 1833.

William Barcalow died on the 26th of June, A. D., 1838.

Henrietta Barcalow died March 9th, A. D., 1866.

Ann Augusta Barcalow died February 28th, A. D., 1844.

Eveline Cassedy died August 10th, A. D., 1848.

EXHIBIT of Deeds and other papers offered in evidence.

10 Certified copy of deed from F. Barcalow and John H. Voorhees, Ex'rs of William Barcalow, to Ferdinand Van Derveer, dated April 12, 1842. Consideration \$6,605.

Record of deed from Ferdinand Van Derveer to Farrington Barcalow, deed dated April 4, 1842 Consideration \$6,605.

William G. Steele to Farrington Barcalow, dated April 4, 1842. Consideration \$985.

John H. Voorhees and F. Barcalow to David C. Noe, deed dated Dec. 19, 1853. Consideration \$5.

20 Farrington Barcalow and wife, to David C. Noe, deed dated Feb'y 1, 1854.

Farrington Barcalow, to David Sanderson. Lease dated Dec. 22, 1846.

Appointment of Ann Barcalow, guardian of the minor children of William Barcalow, in Book A. of Guardianship.

Bill in Chancery, between Culver Barcalow and Theodore Barcalow, complainants, vs. Farrington Barcalow, defendant. Bill filed December 24, 1847.

Somerset Orphans' Court, March 27, 1874.

Court met; present Judges Williamson, Garretson and Thompson.

Counsel for exceptants offer in evidence the Bill in Chancery of Culver Barcalow and Theodore Barcalow, complainants, and Farrington Barcalow and others, defendants, filed Dec. 24, 1847. Also, the answer of Farrington Barcalow thereto. 10

Witnesses sworn, viz:

FARRINGTON BARCALOW,
 GEORGE L. BELL,
 FRED. J. FRELINGHUYSEN,
 CALEB MILLER,
 THERESA BARCALOW,
 CULVER BARCALOW.

- pg 119

Sup Court N. S. Dineen
1867.

Comilla in N York
since 1872.

Admission in New Jersey
Feb term 1875

Law Appellate 186
pg 750

Court dont meet until
April

To the Honorable the Court of Errors and Appeals

IN THE LAST RESORT IN ALL CASES.

THEODORE BARCALOW, ET ALS.,

Appellants,

AND

FARRINGTON BARCALOW,

Respondent.

*On Appeal from
Decree of the Or-
dinary.*

The humble petition of Theodore Barcalow and Culver Barcalow, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the New Jersey Prerogative Court by his Honor, Theodore Runyon, Ordinary of New Jersey, bearing date the twenty-¹⁰ fourth day of May eighteen hundred and seventy-eight, wherein your petitioners were appellants and the said Farrington Barcalow was respondent, in this respect, to wit, that the said decree adjudges that the decree of the Orphans' Court of the county of Somerset made in the above cause should be affirmed in all things with costs.

And your petitioners humbly appeal from that part of the decree which decrees as aforesaid, upon the ground that the same is erroneous, for that the said decree affirms the judgment and decree of the Orphans' Court of the county of Somerset, made in ²⁰ the above cause, and decrees that your petitioners should pay the costs of the respondent in the Prerogative Court, whereas the decree should have reversed the order and decree of the said Orphans' Court, and should have adjudged and decreed that the respondent pay the costs of said appeal.

Your petitioners therefore pray that the decree of the said Ordinary may be reversed and 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.

GASTON & BERGEN,
Proctors, and of Counsel with Appellants.

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

H. M. GASTON,
Of Counsel with Appellants.

COURT OF ERRORS AND APPEALS OF NEW JERSEY.

BETWEEN THEODORE BARCALOW, ET ALS., <i>Appellants,</i> AND FARRINGTON BARCALOW, <i>Respondent.</i>	}	<i>On Appeal, &c.</i>
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The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters 10 which in the said petition of appeal are contained to be true for answer thereto, nevertheless says and admits that a decree was on the twenty-fourth day of May eighteen hundred and seventy-eight, made and entered in the New Jersey Prerogative Court, by his honor, Théodore Runyon, Ordinary of New Jersey, in this cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced.

And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be 20 affirmed with costs to be adjudged to this respondent.

J. D. BARTINE,
Proctor and of Counsel with Respondent.

Schedule, No. 1.

The final account of Farrington Barcalow, surviving executor of William Barcalow, late of the county of Somerset, deceased, as well of and for the estate which hath come into his hands to

be administered as for his payments and disbursements out of the same, as restated from an account reported by Frederick J. Frelinghuysen, Master in Chancery, to the Orphans' Court of said county under the direction and appointment of said court, with such additions, alterations and subtractions as were ordered to be made by them by their decree, dated Mar. 31, A.D. 1874.

Dr. This accountant chargeth himself—

1838.

10	May 2.	To amount of inventory and appraisement as proved Aug. 29, 1839, and recorded in surrogate's office.....	\$1,553 70
	Oct. 2.	To interest collected on Veghte & Van Doren note.....	13 29
	March	To collection on account due estate in St. Augustine.....	291 20
		To rents received on property in Somerville from April 1, 1838 until April 1, 1839, as follows, viz:	
		From Jacob A. Fritts, hotel property.....	\$400 00
20		From Ellen Vroom, Bridge-st. house.....	30 00
		From R. Provost, Main street house.....	50 00
		From Abby Horton, shop.....	30 00—
			510 00
			<hr/>
			\$2,368 19

1839.

30		To rents received from April 1, 1839 until April 1, 1840, as follows, viz:	
		From Jacob A. Fritts, hotel property.....	\$200 00

From Hiram Strong, Bridge st. house.....	25 00	
From S. B. Tunison, slaughter house.....	15 00	
From Jacob Hughs, Main street	50 00	
From Ellen Vroom and L. Ste- vens, shop.....	30 00—	320 00

To amount of rents from April
1, 1840, until April 1, 1841,
as follows, viz: 10

From Jacob A. Fritts, hotel property.....	\$400 00	
From Marsh & Tunison, Bridge street house.....	70 00	
From James Q. Auten, chair shop.....	25 00	
From Sam'l P. Tunison, slaugh- ter shop.....	15 00	
John Bailey, Main street house	50 00	
N. Vroom and L. Stevens, shop	32 50—	592 50 20

To amount of rents received
from April 1, 1841, until April
1, 1842, as follows, viz:

From Jacob A. Fritts, hotel property.....	\$450 00	
From Tunison & Tunison, Bridge street.....	72 50	
From J. H. Garnsey, Main street	50 00	
From N. Vroom & L. Stevens, shop.....	38 00—	610 00 30

1840.

To amount of collection on accounts in St. Augustine..... 159 00

1842.

To proceeds of sale of real estate as directed by will, as follows:

	Received from sale of hotel property to F. Vanderveer.....	6,005 00
10	Received from sale of house and lot in Bridge street to F. Vanderveer.....	600 00
	Received from sale of house and lot in Main street to W. G. Steele.....	985 00
		<hr/>
		\$11,639 69

1842.

20	To dividend received from Plainfield Insurance Co.....	42 00
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1840.

	To amount of mortgage claim against Joshua Joiner on real estate in St. Augustine, taken by executor to secure money due the estate of Wm. Barcalow, deceased, which had been collected by said Joiner as agent.....	\$1,030 00
30	To interest due thereon May 1, 1843, including costs allowed on foreclosure, as per	

statement of B. A. Putnam, attorney.....	297 07	
	<u> </u>	
	\$1,309 07	
Deduct therefrom loss on sale under decree.....	689 07	
	<u> </u>	
	\$620 00	
Deduct cash paid B. Putnam, attorney.....	107 59	10
	<u> </u>	
Amount received by executor.	\$512 41	\$512 41

To amount of profits received
on sale of horse, not ac-
counted for in former ac-
count, and ordered by the
Court to be charged against
executor by their order of
Mar. 31, 1874.....

	90 00	
	<u> </u>	20
Total.....	\$12,284 10	

Schedule, No. 2.

This accountant prays allowance for family expenses, including supplies for food, mourning apparel, fuel, feed for stock, tuition fees for children, and other necessaries for family paid for by him, and incurred prior to his assuming his duties as executor :

1837. Nov. 16. By cash paid E. M. Randolph, hat. 1	\$2 00	✓
" 20. " " P. C. Peterson, pork. 2	10 67	✓
1838. Jan. 3. " " Wm. Hedges, pork		
barrel..... 3	1 12 30	✓

	Jan. 10.	By cash paid F. Cook, groceries..	4	1 98 ✓
	" 11.	" " I. W. Southard, meat account.....	5	5 94 ✓
	" 24.	By cash paid John P. Staats, stalk	6	3 90 ✓
	Feb. 26.	" " J. A. Fritts, veal....	7	1 50 ✓
	" 8.	" " J. G. Van Nest, B flour	8	2 25 ✓
	Mar. 7.	" " Mulford, Martin & Co., groceries.....	9	50 00 ✓
10	Apl. 16.	By cash paid C. G. Tunison, store account.....	10	72 31 ✓
	" 17.	By cash paid O. S. Bartles, tuition, 6 and 9.....	11	5 02 ✓
	" "	By cash paid J. B. Cox, freight... 12		41 ✓
	" 18.	" " R. Van Nest, salary .13		3 00 ✓
	" 19.	" " A. Suydam, clothing .14		36 15 ✓
	" "	" " R. McDonald & Co., per J. Pyatt.....	15	21 50 ✓
	" "	By cash paid Job Ogden, wash ba- sins.....	16	87 ✓
20	" "	By cash paid H. Vroom, pork acc.. 17		2 10 ✓
	" 21.	" " Philip Myers, Cand. Co.....	18	5 60 ✓
	" 26.	By cash paid Walton & Herbert, feed.....	19	1 56 ✓
	" "	By cash paid F. Cook, groceries... 20		91 ✓
	" "	" " M. Shaw, do. ... 21		1 15 ✓
	" 27.	" " G. Combs, tuition of C. 22		5 91 ✓
	May 7.	" " Walton & Herbert.. 23		3 00 ✓
	" 26.	" " R. Toms, shoe bill.. 24		11 79 ✓
30				<hr/> \$250 64
	1838. July 4.	" " H. Cook, cut oats... 25		1 25 ✓
	Aug. 31.	" " Wm. B. Gaston, gro- ceries.....	26	1 12 ✓

v-34

98 ✓	Oct. 2.	By cash paid J. C. Garretson, horse keeping.....	27	5 00	✓
94 ✓	" 5.	By cash paid Andrew Thompson, wood.....	28	19 00	v 50
90 ✓	May 8.	By cash paid A. Thompson, wood.....	29	20 00	v 50
50 ✓	Oct. 6.	" " G. V. Manley, store.....	30	27 00	✓
25 ✓	" 19.	" " S.B. Tunison, butcher.....	31	34 00	v 30
00 ✓	Mar. 18.	" " J. C. Garretson, hay account.....	32	5 41	✓
31 ✓	1840. Jan. 22.	By cash paid E. W. Voorhees, dress maker.....	33	22 25	10 v 74
02 ✓	Nov. 23.	By cash paid Mary Toms, milliner.....	34	21 75	new
41 ✓					
00 ✓				<u>\$407 42</u>	

Schedule, No. 3.

This accountant further prays allowance for materials furnished and labor done in repairing buildings and fences belonging to estate for five years—from June 1, 1837 until April 1, 1842, and paid for by accountant :

0 J	1838. June 12.	By cash paid J. A. Fritts, repair pump.....	35	\$7 29 20	✓
6 J	Aug. 17.	By cash paid J. T. Grant, lumber account.....	36	15 31	✓
1 ✓	" 23.	By cash paid J. T. Grant, lumber.....	37	5 95	✓
5 ✓	1839. Jan. 28.	" " J. Castner, labor.....	38	16 97	✓
1 ✓	Apl. 4.	" " J. Herbert, posts.....	39	1 45	✓
0 ✓	May 10.	" " J. Barley, labor.....	40	4 50	✓
0 ✓	1840. Jan. 7.	" " H. Amerman.....	41	7 50	✓
4 ✓	" 18.	" " Jas. B. Staats, glass.....	42	58	✓
5 ✓	Apl. 19.	" " J. C. Ackerman, glass.....	43	2 93	new
✓	Feb. 5.	" " J. A. Fritts, repairs.....	44	3 50 30	new
				<u>\$65 98</u>	

March 28	By cash paid F. Wedon, medical bill.....	68	27 87
			\$48 49
1838. March 28	By cash paid Herbert & Allen.....	69	7 00
" "	" " John C. Hutter, ac- count.....	70	3 38
April	By cash paid Fare board.....	71	146 90
" 6	" " Geo. Centre, account... ..	72	8 50
" 4	" " S. Wallace, dentist... ..	73	24 00
" 4	" " Ora Howard, account... ..	74	9 37 10
" 17	" " P. Vredenburgh, Sur- gate.....	75	6 68
" 17	By cash paid Henry C. Brokaw, har- ness.....	76	68 00
" 21	By cash paid Mulford, Martin & Co... ..	77	121 92
" 24	" " O. S. Bartles, on note... ..	78	21 11
" 26	" " C. Vanderveer, on do... ..	79	208 00
May 3	" " S. B. Tunison, meat... ..	80	6 82
" 16	" " Jos. Brokaw, crier.....	81	3 50
June 14	" " F. A. Hartwell, interest mortgage.....	82	48 00
" 25	By cash paid P. Vredenburgh, rule to limit.....	83	5 00
" 30	By cash paid L. Bunn, oil account... ..	84	50
Aug. 16	" " Dr. A. Taylor, phy- sician.....	85	15 00
Sept. 20	By cash paid Ab'm Hartwell.....	86	93
Oct. 2	" " P. Z. Elmendorf, note... ..	87	106 38
" 2	" " P. Z. Elmendorf, do... ..	88	53 19
" 2	" " F. Vanderveer.....	89	19 57 30
" 15	" " P. D. Vroom, note... ..	90	236 50
" 15	" " P. Vandeventer.....	91	3 25

	Oct.	17	By cash paid S.L.B. Baldwin, paint...	92	\$15 86
	"	19	" " P. P. Anten.....	93	6 95
	"	19	" " B. B. Hoff.....	94	16 84
	1839	Jan.	30 " " W. Thompson.....	95	4 21
	1838	Oct.	19 " " P. Vandeventer.....	96	4 36
	"	19	" " J. Doughty.....	97	1 17

					\$1,221 38
	1838	Jan.	24 By cash paid James Taylor, settle- ment.....	98	76 54
10	"	24	By cash paid James Taylor, ap- praiser.....	99	1 50
	1839	April	1 By cash paid Ann Barcalow, inter- est.....	100	120 00
		Sept.	By cash paid T. A. Hartwell.....	101	90 00
		March	18 " " T. A. Hartwell, Ogden note.....	102	34 30
		Dec.	9 By cash paid Cor' Boice, costs.....	103	78 98
		Dec.	13 " " F. Cook, appraiser...	104	1 00
20		"	13 " " J. I. Todd, administra- tor of L. Harrison.....	105	22 00
	1840	Jan.	7 By cash paid Wm. Thompson, note...	106	38 37
	"	7	" " Henry Amerman, Wood account.....	107	36 54
	"	7	By cash paid fare and expenses to St. Augustine.....	108	146 50
	April	1	By cash paid Ann Barcalow, inter- est.....	109	120 00
	"	4	By cash paid J. M. Gould, adminis- trator, etc.....	110	10 00
30	1841	April	1 By cash paid Ann Barcalow, inter- est.....	112	120 00
		Dec.	7 By cash paid Jos. Brokaw, crier...	113	2 00

Dec.	15	By cash paid T. S. Allison, paint...	114	\$1	50
"	18	" " Jos. Brokaw, crier...	115	4	00
April	1	" " Ann Barcalow, inter- est.....	116	120	00
"	1	By cash paid C. Morton, acknowl- edgement of deed.....	117	50	
"	1	By cash paid T. A. Hartwell, on mortgage.....	118	892	00
1844	March 25	By cash paid Wm.B.Gaston, costs...	119	91	
1847	Dec	" " A. V. P. Sutphen, Sur- rogate.....	120	10	00
August		By cash paid J. H. Voorhees, on set- tlement.....	121	41	14
1838	May 26	By cash paid R. B. Tours' account, see voucher 24.....	122	35	11
This accountant prays allowance for goods left to Ann Barcalow, widow, by will.....				200	00
For amount due on notes not collectable appraised as follows, Theodore R. Davis.....				8	12
				<hr/>	
				\$3,432	30 20
This accountant prays allowance for David Thom- as' note not collectable.....				13	00
Jesse Thomas' note not collectable.....				18	75
E. Cambell.....				47	
W. Wilson.....				47	
For loss on John J. Hall, rent appraised.....				74	00
For sales less than appraisalment.....				153	17
Court and Surrogate fees on former account.			\$15	80	
Copy and recording.....			3	00	
Advertising and Posting notices.....			4	20	3)
				<hr/>	
				23	00
Commission \$12,015 72.....			\$841	10	

Extra allowance.....	100 00	
		941 10
		\$4,656 35

Recapitulation.

Dr. From Schedule No 1.....		\$12,284 10
Cr. From Schedule No. 2.....	\$ 407 42	
“ “ “ “ 3.....	221 96	
“ “ “ “ 4.....	4,656 35	
		\$5,285 73

10 1842. Balance in hands of Executor to be distributed agreeable to the will of Wm. Barcalow, deceased, April 1, 1842, among the legatees of said deceased, and now to be accounted for with lawful interest due on each share until settlement with the said legatees respectively.....\$6,998 37

To be deducted from the above by order of Court, fees allowed Master in Chancery.....\$ 50 00

Costs on exceptions to Master, report taxed by the Court at..... 108 90

20 Surrogate re-statement of account, decree of Court..... 10 80

169 70

Balance to be distributed agreeably to will of William Barcalow, deceased.....\$6,828 67

The Surrogate having restated the account of the estate of William Barcalow, deceased, as reported by the Master in Chancery to whom the same was referred, and as directed by us, the Orphans' Court of the county of Somerset, after several days hearing of testimony and counsel on the part of the exceptants

and accountant, for and against the account as reported by the Master in Chancery, do, therefore, order and decree that the within restated account be in all things allowed, and that the sum of six thousand eight hundred and twenty-eight $\frac{67}{100}$ dollars be accounted for, with interest from August 1, 1842, to the legatees of said estate agreeably to the will of William Barcalow, deceased.

Done in open Court, August 28, 1874.

JOSEPH THOMPSON, }
JOHN C. GARRETSON. } Judges. 10

Somerset Orphans' Court.

CULVER BARCALOW and THEODORE BARCALOW,

Exceptants.

against

FARRINGTON BARCALOW, surviving Executor of William Barcalow,
10 deceased.

On the account of said Executor as restated and reported by Fredk J. Frelinghuysen, Master in Chancery to whom the same was referred.

The said Culver Barcalow and Theodore Barcalow excepts to the allowance of said account as restated and reported, for the reasons following :

I. Because the said executor hath not charged himself, or been charged in said account as restated, with all the estate of the said William Barcalow which hath come to the hands of said surviving executor to be administered, namely : 1st. That said executor has not charged himself or been charged with interest moneys grown due and chargeable on said estate since the ap-
20 praisement, amounting to at least eleven thousand nine hundred and twenty dollars and seventy-three cents. 2d. That he has not charged himself with a sum of money between \$500 and \$600, brought from Florida by Culver Barcalow in July, 1837, and which was used as part of said estate by said executor and his mother. 3d. That he has not charged himself with \$600 in gold coin, received by him from the testator a short time previous to the testator's death, and intrusted to him by said testator and not accounted for. 4th. That he has not charged himself with all the rents received by him from the real estate of
30 the testator.

II. Because the said executor ought not to be allowed credit in said account for any or all of the items contained in Schedule No. 2, annexed to said Master's report, the same being for payment of debts contracted after the death of said testator. 2d. The following items in Schedule No. 4, annexed to said Master's report, are objected to, being the items supposed to be sustained by vouchers therein, numbered 68, 69, 70, 71, 72, 73, 74, 80, 89, 94, 95, 98, 105, 108, 110, 111. That 68, 69, 70, 72, 73 and 74 items were not paid by said executor in cash, but by offsets of accounts of testator against them. That 71 is excessive, also 10 108, being for expenses in going to St. Augustine. That item voucher 80 is for payment of meat bill contracted after death of testator. That voucher No. 98 is no legal evidence of the indebtedness of the estate, and is a naked receipt for money without showing on what account the sum was paid. Items vouchers 105, 68, 69, 70, 72, 73, 74, 105, 110, 111, and item for taxes paid from 1838—1841, and item of interest allowed for \$34.38 on disbursements, were not included in the account rendered by the executor in 1847, and are unjust, untrue, and not proper credits in favor of said accountant. 20

III. These exceptants further except to said account as so restated, for this that said accountant has not been charged with the amounts paid to him as said executor by one George Bartlett, of Florida, on account of said Bartlett's indebtedness to said testator, amounting to \$400, which was paid to said accountant sometime in the year 1839. 2d. That Seth Nickerson, of St. Augustine, being one of the executors of the testator, having received as the property of said estate \$600 in money, and having received other amounts of money upon and from the books of account and money securities of said testator, which 30 other amounts are at present unknown to these exceptants, that said Nickerson, in September, 1837, died, and these exceptants

charge that the moneys so received by said Nickerson, or some part thereof, were paid by said George Bartlett, his administrator, to the said Farrington Barcalow, or in some way came into his hands. 3d. That the testator in his life time was possessed of a number of promissory notes given him by divers persons in Florida, the contents whereof are for the most part unknown to these exceptants, which include among others a note given by one Joseph Woodruff for the payment of \$300, and one given by one Cleaveland for the payment of \$150, and these exceptants charge that the moneys due on said notes, or some part thereof, has been received by said Farrington as such executor, or in some way has been made available to him.

IV. These exceptants except to the allowance of any commissions to said executor, upon the ground that he has not administered the estate faithfully, promptly and according to law, and to the directions of said will, but on the contrary has grievously mismanaged said estate.

V. Because the said account, both in the charge and discharge thereof, is in divers particulars erroneous and untrue, and ought not to be allowed.

GASTON & BERGEN,

Proctors for Exceptants.

Prerogative Court of the State of New Jersey.

IN THE MATTER OF THE FINAL)
ACCOUNT OF FARRINGTON BAR-)
CALOW, SURVIVING EXECUTOR) *Petition of Appeal.*
OF WILLIAM BARCALOW, DE-)
CEASED.)

To the Honorable Theodore Runyon, Ordinary of the State of
New Jersey :

The petition of appeal of Theodore Barcalow and Culver Barcalow, legatees and heirs at law of William Barcalow, deceased, from the order and decree of the Orphans' Court of the county 10
of Somerset, made on the twenty-eighth day of August, eighteen hundred and seventy-four, although appearing on its face to have been made on the thirty-first day of March, eighteen hundred and seventy-four, respectfully shows that the decree appealed from is a decree of the Orphans' Court of the county of Somerset, allowing and passing the final account of Farrington Barcalow, executor of William Barcalow, deceased, as stated by the Surrogate of the said county, that such decree was actually signed and approved by Joseph Thompson and John C. Garretson, Judges of the Court of Common Pleas of said county, on 20
the twenty-eighth day of August, eighteen hundred and seventy-four, as your petitioners are informed and believe ; that exceptions were filed to the original account as filed by said executor ; that the Court then referred the whole matter to Frederick J. Frelinghuysen as a Master in Chancery, to state an account ; that objections were made to the account as stated by said Master ; that the Court after hearing and argument ordered the Sur-

rogate to restate the account upon certain principles, which order was made on the thirty-first day of March last; that the Surrogate did restate such account and presented the same to the said Court for approval on the twenty-eighth day of August last, when the decree appealed from was made and filed. That the petitioners complain of the whole decree, and allege it to be erroneous for the reason that it does not fix and ascertain the moneys in the hands of the accountant at the date of the final accounting, nor state how the account stood at such final ac-
 10 counting, but in place thereof finds the supposed amount in the accountant's hands in the year eighteen hundred and forty-two, leaving it wholly undetermined by the Court what moneys are now in the accountant's hands. They also complain of the account :

First, Because the accountant is not charged in said account with eleven hundred dollars, the proceeds of the sale of a vacant lot in St. Augustine, Florida, of which William Barcalow deceased, died seized, sold by said accountant in the year eighteen hundred and thirty-nine, and is not charged with interest on such
 20 proceeds.

Second, Because the accountant is not in said account charged with the proceeds of the personal estate of the testator in the State of Florida.

Third, Because the accountant is not charged in said account with six hundred dollars or any other sum brought by accountant from Florida in the year eighteen hundred and thirty-seven, of the testator's moneys a short time before his death.

Fourth, Because the accountant is not in said account charged with a large sum of money, between four hundred dollars and

five hundred dollars, or some other sum residue of the testator's purse.

Fifth, Because in said account he is not charged with interest upon the moneys in his hands of the estate, and particularly since eighteen hundred and forty-two, when the real estate of testator in New Jersey was sold and conveyed.

Sixth, Because the costs and expenses of the present proceedings are by said decree to be deducted from the moneys in the hands of the accountant in the year eighteen hundred and forty-two, and interest to be calculated on the residue until settlement 10 with the respective heirs.

Seventh, Because any commissions are by said decree allowed to the said accountant under the circumstances of the case, and because illegal commissions are allowed said accountant.

Eighth, Because said accountant is allowed as a credit in said account a payment of ninety dollars paid by him to Thomas A. Hartwell, being for the clerkship of the accountant as a law student in the office of said Hartwell, for the most part after the death of the testator and after said accountant was of full age.

Ninth, Because said accountant is by said account and decree 20 allowed a credit for the following items of account, viz.:

Schedule, No. 2.

1837.

Nov. 16. Receipt No. 1. Enoch M. Randolph, a receipt to Misses Barcalow.....	\$2 00
" 20. No. 2. Due bill of F. Barcalow given to P. C. Peterson.....	10 67

1838.

Jan.	3.	No. 3.	Wm. J. Hedges, pork barrel.....	1 12
"	10.	No. 4.	Fred'k Cock, groceries to Mrs. Ann Barcalow.....	1 98
"	11.	No. 5.	James W. Southard, meat bill.....	5 94
"	24.	No. 6.	John P. Staats, stalks.....	3 90
Feb.	26.	No. 7.	J. A. Fritts, veal.....	1 50
"	8.	No. 8.	John G. Van Nest, buckwheat flour.	2 25
Mar.	7.	No. 9.	Mulford, Martin & Co., a receipt...	50 00
10	Apl.	16.	No. 10. Cornelius G. Tunison, store account.	72 31
"	17.	No. 11.	O. L. Bartles, tuition—Culver and Theodore.....	5 02
"	17.	No. 12.	J. B. Cox, freight.....	41
"	18.	No. 13.	Rynear Van Nest, salary.....	3 00
"	19.	No. 14.	Abm Suydam & Co., clothing.....	36 15
"	19.	No. 15.	R. MacDonald & Co., carpets.....	21 50
"	19.	No. 16.	Job Odgen, wash basin.....	87
"	19.	No. 17.	Henry Vrecom, pork.....	2 10
"	21.	No. 18.	Phillip Myers, candles.....	5 60
20	"	26.	No. 19. Walton Herbert, feed.....	1 56
"	26.	No. 20.	F. Cock, Mrs. Ann Barcalow.....	91
"	26.	No. 21.	Mrs. Shann, Mrs. Ann Barcalow....	1 15
"	27.	No. 22.	Gilbert Coombs, tuition for Culver..	5 91
May	7.	No. 23.	Walter Herbert, feed.....	3 00
"	26.	No. 24.	Runyon, Tom's shoe bill.....	11 79
July	4.	No. 25.	Cash paid Henry Cook, cutting coats	1 25
Aug.	31.	No. 26.	William B. Gaston, groceries.....	1 12
Oct.	2.	No. 27.	John C. Garretson, housekeeping....	5 00
"	5.	No. 28.	Andrew Thompson, wood.....	19 00
30	May	8.	No. 29. " " ".....	20 00
Oct.	6.	No. 30.	George V. Manly, stove.....	27 00
"	19.	No. 31.	Samuel B. Tunison, butcher account.	34 00
Nov.	18.	No. 32.	John C. Garretson, on hay account..	5 41

1840.

Jan. 22. No. 33. Eliza W. Voorhees, dressmaker.....	22 25
Nov. 23. No. 34. Mersie Toms, millinery hats.....	21 75
	\$407 22

Schedule, No. 4.

1838.

Mar. 28. No. 68. F. Weeden, medical bills.....	27 87
“ 28. No. 69. Hubbard & Allen.....	7 00
“ 28. No. 70. John C. Huther's account.....	3 38
Apl. No. 71. Fare, board and expenses to St. Augustine.....	146 90 10
“ 6. No. 72. George Senter's account.....	8 50
“ 4. No. 73. S. Wallace, dentist.....	24 00
“ 4. No. 74. Oro Howard.....	9 37
May 3. No. 80. Samuel B. Tunison, meat account..	6 82
Oct 2. No. 89. F. Vanderveer's account.....	19 57
“ 19. No. 94. B. B. Huff.....	16 84

1839.

Jan. 30. No. 95. Wm. T. Thompson, tuition.....	4 31
“ 24. No. 98. James Taylor, settlement.....	74 54
Dec. 14. No. 105. John T. Todd, administrator of L. Harrison's estate.....	20 22 00

1840.

Apl. 4. No. 108. Expenses to and from St. Augustine	146 50
“ 4. No. 110. J. M. Gould.....	10 00
Except to the allowance for sales less than the appraisalment	153 17

Your petitioners therefore pray that the said decree of the said Orphans' Court 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.

Dated September, 1874.

GASTON & BERGEN,
Proctor, and of Counsel with Appellant.

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

JAMES J. BERGEN,
Of Counsel, etc.

10 The answer of F. Barcalow to the petition of appeal of Theodore Barcalow and Culver Barcalow, appellants :

The said Farrington Barcalow, surviving executor of William Barcalow, deceased, having filed his account in the Orphans' Court of the county of Somerset, and an order and decree thereon having been made from which an appeal has been taken for answer to the petition of appeal of said appellant, says that the said appellants are not, nor is either of them aggrieved from the decree appealed from, or by any part or portion thereof. That by the record the said decree appears as signed on the 31st day of March, A.D. 1874, and that in fact the said Orphans' Court did make such order and decree at that time, but whether signed
20 or not on the day it bears date this respondent is not advised. That the said decree was the finding of said Court on the 31st day of March, A.D. 1874, and at that time was approved by all the judges thereof, and, as this respondent verily believes duly signed at that time. That the exceptions were filed to the original account as filed by executor; and that the said Court referred the same to Frederick J. Frelinghuysen, Esq., a master, to state an account, and that the said master did state an account, and exceptions were taken and filed to the report of said master, and
30 that the said Court examined witnesses, heard evidence in support thereof, and against the same and argument thereon, and

after hearing the same, to wit, on the 31st day of March, aforesaid, did make their order and decree thereon as signed by the said judges, and directed the surrogate to so restate the said account as reported by the said master, to conform and comport in all things with the said order and decree of said Court. That by the record the same appears to have been done at the time aforesaid, and nothing appearing to the contrary this respondent believes the same was duly and properly according at the time aforesaid.

And this respondent further answering says that the said decree is not erroneous, and that it does fix and ascertain the amount in the hands of the accountant, and at specific and distinct time due to the said estate in the year 1842, to be divided pursuant to the will of the said William Barcalow, deceased, as it should and only as it could be done in order to ascertain and fix the amount due the heirs of said deceased according to said will; and as to the first exception or item of complaint in the petition of appeal set forth this respondent answers and says that he is charged as fully and entirely as he should be for said lot, together with all interest received from the sale thereof. 20

And as to the second charge this respondent says that he has fully accounted for the proceeds of all the estate of said William Barcalow, deceased, in the State of Florida.

As to the third charge this respondent says that he never brought six hundred dollars or any other such sum with him from Florida in the year 1837, and it nowhere so appears by the evidence.

As to the fourth charge this respondent saith he should not be charged with any such sum, nor with any other sum other than he has been charged with because he never received from the purse of the testator any such sum or any other sum than what he hath accounted for. 30

As to the fifth item or charge in said petition this respondent

says that he is charged as he should be charged, except as was charged by the Court, and that the charge of interest as alleged would be contrary to intention of the testator as by the said will expressed.

As to the sixth complaint this respondent says that the costs and expenses are properly to be deducted from the moneys in the hands of the accountant in the year 1842 and interest after that deduction. That any other course would be an injury to this respondent, the commissions being then due.

10 As to the seventh error this respondent says that he is justly entitled to commissions, and that the allowance thereof is legal and just.

As to the eighth charge, item or error this respondent says that the said charge is in all things just and right, and was not for any indebtedness contracted after the decease of the testator, but by him in his life-time.

As to the ninth error this respondent says that all the items of account were properly allowed, being properly proved before the said Court, and being proper charges against said estate. And
20 this respondent further saith that that part of the decree appealed from is legal and valid; he thereupon prays that the same may be affirmed by the decree of this honorable court, with costs against said appellants.

BARTINE & DAVIS,
Proctors for Respondent.

OPINION OF THE ORDINARY.

The petition of appeal presents nine specific grounds of objection to the account.

The first is, that the respondent, the accountant, is not charged
30 with the sum of \$1,100 and interest thereon for the proceeds of the sale by him in 1839 of a lot of land belonging to the testator

and situate in the city of St. Augustine in Florida. It appears that the testator bought the property in 1836 for \$500, and that in 1838, after the testator's death, the accountant sold it to one, George Bartlett, for \$1,100; that that money was received by the accountant's attorney; that the attorney did not account for it, and the accountant went to St. Augustine to look after the matter, and though unable to obtain the money got a mortgage for it from the attorney.

The mortgage was foreclosed, and the property at the sale under foreclosure was sold to the accountant for \$620. Though 10 the accountant took the deed and held the property for some time, and sold it for \$75, he has nevertheless charged himself under date of 1840 with \$512.41, the price at which the property was struck off to him, after deducting the expenses of the foreclosure proceedings and sale. When it is considered that that property was bought by the testator in the time of great inflation of the price of real estate and that it was sold in a time of extreme revulsion and depression, the charge which the accountant has made against himself in this matter would seem to meet all the requirements of justice. 20

This sum of \$512.41 being part of the charges of the account, what is said hereafter in regard to interest on the balance appearing to be in the hands of the accountant, applies to it.

The second objection is, that the accountant has not charged himself with all the personal estate of the testator in Florida. The proof does not sustain this objection.

The third is, that he has not charged himself with all the money belonging to the testator which the accountant brought with him from Florida for the testator in his life-time. This is not sustained by the proof. 30

The fourth is, that he has not charged himself with the amount of the testator's purse. Of this there is no proof.

The fifth is, that he is not charged with interest on the balance

in his hands from 1842. The balance of the estate in his hands (except the proceeds of the sale of a house and lot of which the use for life was given to the widow, and \$2,000 held by him in trust to pay her the interest thereof) was distributable after the sale of the real estate in New Jersey, in 1842, among the testator's children; as was also, after the widow's death, the money held for the use of the widow, and the proceeds of the sale of the house just mentioned. The accountant, in 1842, had charges against the persons entitled to distribution for advances made by
 10 him to them on account of their shares, and he alleges that he has since then settled with all of them.

The interest allowed after that date would be properly adjustable in the settlement between him and the distributees, and interest would be properly chargeable on any money in his hands at that date belonging to them.

The will directs that the executors convert into money all the real and personal estate not specifically devised or bequeathed, and divide the proceeds among the testator's children, paying to each child then of age his or her portion, and after paying for the
 20 education, clothing, and all things necessary for the other children, the executors were then to place the amount of the portion of each of those children at interest, or invest it otherwise to the best possible advantage for the benefit of those children. The Court, in settling the account, so far as interest is concerned, as of April 1, 1842, have fixed a period of liability for interest sufficiently early under the circumstances.

The sixth objection is, that the Court has decreed payment of the costs and expenses out of the estate as it stood in 1842. The principle on which the decree was made is, that the account
 30 should in fairness be considered as settled in 1842 when the real estate of the testator in New Jersey was sold. On that principle, which is correct, the costs should be charged on the estate as it then stood. Were it not for the fact that the accountant, as

well under the provision of the will which made it the duty of the executors to provide for the children as otherwise had (as is alleged) made advances to the children which were chargeable against their shares in his hands, he would have been chargeable in the account with interest on the balance of the account down to the time of settlement; but the fact that such advances were made is a sufficient reason for the action of the Court in reference to the interest and costs.

The seventh objection is, that the Court allowed the accountant commissions. The estate has been in his hands for many 10 years, and while he appears to have filed an account in 1847, it was never settled by the Court.

Thirty-six years elapsed between the filing of that account and the filing of the one under consideration. The explanation of this long delay in presenting his final account for settlement does not clearly appear. It may perhaps be found in the fact that actual settlements with, and payments in full to the parties have taken place, which, in the view of the accountant, rendered a final account unnecessary, or it may have been mere neglect.

However that may be, there does not appear to have been any 20 reason why he might not have been called to an account according to law at any time after he had settled the estate.

There was a litigation in the Court of Chancery between the appellants on the one side, and him and his mother and the persons who purchased the real estate in New Jersey from him on the other, in which the complainants sought to establish a trust in their favor in that property, on the ground that the purchasers (who subsequently conveyed it to him) bought it in trust for him, and in that suit he was required to account, and he appears to have filed his account with his answer. After answer, the suit 30 was no further proceeded in.

The testator died in 1838—nearly forty years ago—and his real estate in New Jersey was sold about thirty-five years ago.

In 1838 the widow was appointed guardian of the minor children. There appears to have been no lack of power or opportunity to call the accountant to account for his administration of the estate.

No sufficient reason appears for withholding from him compensation for his services in settling the estate. The last objection is, that the Court allowed him \$90, money paid to Thomas A. Hartwell, Esq., for his fee for the clerkship of the accountant in his office to acquire a knowledge of the profession of the law; the
10 greater part of which clerkship was after the accountant attained his majority. It is alleged that the clerkship began when the accountant was 18 years of age.

That was in 1835. His father died June 26, 1838. The date of this item is Sept. 10, 1839. The accountant appears to have been admitted as an attorney-at-law in the term of September of that year. By the will the testator directs that the accountant's share of the estate should be \$1,000 less than that of the other children on account of the superior educational advantages which the testator had afforded him. This clerkship was undoubtedly
20 part of those advantages. Besides, the contract was probably made by his father with Mr. Hartwell, and again, no exception was taken in the Orphans' Court to this item.

The decree of the Orphans' Court will be affirmed with costs.

New Jersey Prerogative Court.

BETWEEN
THEODORE BARCALOW, ET ALS.,
Appellants,
AND
FARRINGTON BARCALOW,
Respondent.

*On Appeal from
the Orphans' Court
of the County of
Somerset.
Order affirming
Decree.*

This cause coming on to be heard at a regular term of the Prerogative Court of New Jersey, held at the State House, in the city of Trenton, on the first Tuesday of February, eighteen hundred and seventy-seven, before the Ordinary, in the presence of 10 Gaston & Bergen, of counsel with the appellants, and Bartine & Davis, of counsel with the respondent, and the depositions, exhibits and proofs being read, and the arguments of the respective counsel being heard and considered, and the Ordinary having taken time to advise thereon, and it now appearing that there is no sufficient ground of appeal,

It is thereupon on this twenty-fourth day of May in the year of our Lord one thousand eight hundred and seventy-eight, ordered, adjudged and decreed that the decree of the Orphans' Court of the county of Somerset be, and it is hereby affirmed in all things 20 with costs.

THEODORE RUNYON, C.

Exhibits on the Part of Exceptants.

I. Last Will of William Barcalow.

CITY OF ST. AUGUSTINE, COUNTY
OF ST. JOHNS, TERRITORY OF
FLORIDA. } SS.

The last will and testament of William Barcalow of the city, county and *and* territory aforesaid, but formerly residing at Somerville, Somerset county, state of New Jersey. I, William Barcalow considering the uncertainty of this mortal life and being of sound mind and memory, (blessed be Almighty God), do make and publish this my last will and testament in manner and form following: First. It is my will that I be decently buried. Secondly Item, I will and desire that all my just debts be paid. Thirdly Item, I will and bequeath unto my beloved wife, Ann Barcalow, the dwelling house in which she now resides situated in the town of Somerville, Somerset county, state of New Jersey, together with the lot and all the buildings and improvements thereon, bounded on the North by the New Jersey Turnpike road, on the South by a Church lot, on the East by a lot now in possession of Frederick Cox and on the West by lands belonging to James P. Goltra, also the interest of two thousand dollars to come from my estate that my said wife Ann is to have

and enjoy the said lot and interest of two thousand dollars during the time she remains my widow. I also will bequeath to her upon the same terms about two hundred dollars' worth of household furniture such as she may choose from out of my dwelling house. But in case my said wife Ann Barcalow should again contract marriage and cease to be widow then I will and bequeath to her the two hundred dollars' worth of house-

10 hold furniture as specified above and further direct that is is my will and desire that the lot above bequeathed to her and also the interest of two thousand dollars shall recede to my estate and be equally divided amongst my children, viz: My son Farrington, my daughter Emilin, my son Culver, my daughter Henrietta, my son Theodore, my daughter Terressa, and my daughter Ann Eliza. That the said lot in case my widow shall again enter the state of matrimony, shall

20 be sold at public auction at the discretion of my executors. Fourthly Item, I will and bequeath to my daughter Emalin in consideration of her kind and affectionate attention to me the sum of two hundred dollars to be paid to her from my estate when she becomes of age or upon her marriage which ever should take place first. Fifthly. I will and bequeath that all of my estate both real and personal with the exceptions above enumerated be equally divided amongst my children, viz: My son Farrington, my daughter Emaline, my son Culver, my daughter Henrietta, my

30 son Theodore, my daughter Terressa, and my daughter Ann Eliza, with this exception, that my son Farrington do receive one thousand dollars less than either of my other children in consideration of the great expense I have been put to in giving him a superior education. And lastly. I do hereby appoint as my executors to this my last will and testament (hereby revoking all former wills, codicils, or any other instrument or instruments purporting to be any will or testament of mine,) my friend Seth Nickerson, of the city of

40 St. Augustine, East Florida, John H. Voorhees, my

brother-in-law, of Bound Brook, state of New Jersey, and my son Farrington. And it is my will and desire that my said executors do as soon as practicable and according to their judgment dispose and sell at public auction or to the best advantage all my real and personal estate not herein willed and bequeathed to be divided equally amongst my children with the exception made in the fifth item of this, my last will and testament. I also will and direct that as soon as my said property, both real and personal, is sold as above directed, that my said executors do pay over the portion of each child to such child as may be of age, and that those of my children who may not be of age at the time this sale and division takes place, that then I direct that my said executors do, after paying for their education, clothing and all *all* things needful, place the amount coming to each child out at interest or otherwise to the best possible advantage for the childrens benefit. 10

In witness whereof I have hereunto set my hand and seal this thirteenth day of June, in the year of our Lord one thousand eight hundred and thirty-seven. 20

WM. BARCALOW. [L. s.]

The above instrument consisting of three sides of a sheet of foolscap paper was nowhere subscribed by William Barcalow the testator in the presence of us who are declared at the same time that this is his last will and testament. 30

JOHN C. HUTHER,
Resident of St. Augustine, E. F.
MICHAEL USINA,
do. do. do. do.
GEO. L. PHILIPS,
Resident of St. Augustine, E. F.

I. The First Account.

The separate account of Farrington Barcalow, one of 40

the executors of William Barcalow, late of the county of Somerset, deceased, as well of and for the estate which hath come to his hands to be administered, as for his payments and disbursements out of the same.

THIS ACCOUNTANT CHARGETH HIMSELF:

1838.		DR.	
10	May 22.—To amount of inventory and appraisalment	\$1553 70 ✓	
	To amount collected at St. Augustine	291 20 ✓	
	Oct. 2.—To amount of interest on the Veghte and Van Doren note	13 29 ✓	
1839.			
	April 1.—To amount of rent received from April 1, 1838, to April 1, 1839	510 00 ✓	
1840.			
20	April 1.—To amount of rent from April 1, 1839, to April 1, 1840	320 00 ✓	
	" To amount received from St. Augustine	159 00 ✓	
1841.			
	April 1.—To amount received from April 1, 1840, to April 1, 1841	592 00 ✓	
1842.			
	April 1.—To amount of rent received from April 1, 1841, to April 1, 1842	610 00 ✓	
30	" To amount of the sale of the hotel and lot	6,005 00 ✓	
	" To amount of sale of house and lot in Bridge street	600 00 ✓	
	" To amount of sale of house and lot on Main street	985 00 ✓	
	June 2.—To amount received from the Plainfield Mutual Fire Insurance Company	42 00 ✓	
1843.			
40	April 1.—To amount received from St. Augustine	503 00 ✓	3712.41

1847.			
Aug. 20.	—	To amount of interest on assets in hands of executors over and above disbursements from April 1, 1842, to August 20, 1847, on the sum of \$7,280.81, being five years, four months and twenty days	2,354 11
			<hr/> 10
			\$14,538 30

THIS ACCOUNTANT PRAYS ALLOWANCES.

CR.

		No.			
1837.					
Nov. 16.	1.	By cash paid Enoch M. Randolph, receipt	\$2 00	✓	
" 20.	2.	" cash paid Peter C. Peterson, receipt	10 00	✓	
1838.					
Jan. 3.	3.	" cash paid William J. Hedges, receipt	1 12	✓	
" 10.	4.	" cash paid Frederick Cook, receipt	1 98	✓	
" 11.	5.	" cash paid James Southard,	5 94	✓	
" 19.	6.	" cash paid Ephriam Runyon, receipt	14 25		
" 29.	7.	" cash paid John P. Staats, receipt	3 90	30 ✓	
Feby. 26.	8.	" cash paid Jacob A. Fritz, receipt	1 50	✓	
" 8.	9.	" cash paid I. G. Van Nest, receipt	2 25	✓	
March 7.	10.	" cash paid Mulford & Martin, receipt	50 00	✓	
April 16.	11.	" cash paid Core. G. Tunison, receipt	72 31	✓	
" 17.	12.	" cash paid O. S. Bartles, receipt	5 02	40 ✓	

10.67

	<i>Apr</i>	"	17.	13.	" cash paid James B. Cox, receipt	41 ✓
		"	14.	14.	" " " Henry C. Bro- kaw, receipt	68 00
		"	18.	15.	" cash paid Rynear Van Nest, receipt	3 00 ✓
		"	19.	16.	" cash paid A. Suydam & Co., receipt	34 84 ✓
10		"	19.	17.	" cash paid to John Pyatt	21 50 ✓
		"	19.	18.	" cash paid Job Ogden	87 ✓
		"	19.	19.	" " " J. C. Ack- erman & Co	2 93 ✓
		"	19.	20.	" cash paid Henry Vroom	2 10 ✓
		"	21.	21.	" " " Mulford P. Martin, receipt	121 92 ✓
		"	21.	22.	" cash paid Philip Myers, receipt	5 66 ✓
20		"	24.	23.	" cash paid C. S. Bartles, receipt	21 11 ✓
		"	26.	24.	" cash paid Walton & Her- bert, receipt	1 56 ✓
		"	26.	25.	" cash paid Frederick Cook, receipt	91 ✓
		"	26.	26.	" cash paid Mary Shann,	1 15 ✓
		"	26.	27.	" cash paid Col. Van Doren, note and int. in full, receipt	208 80 ✓
30		"	26.	28.	" cash paid Gilbert Combs receipt	5 91 ✓
		"	26.	29.	" cash paid P. Vreden- burgh, proving will, etc., receipt	6 68 ✓
	May		3.	30.	" cash paid Samuel B. Tunison, receipt	6 82 ✓
		"	3.	31.	" cash paid Walton & Herbert, receipt	3 00 ✓
		"	8.	32.	" cash paid Andrew Thompson, receipt	20 00 ✓
40		"	16.	33.	" cash paid Joseph Bro-	

			kaw, cryer, receipt	3 50	✓
"	26.	34.	" cash paid Runyon Toms, receipt	46 90	
June	12.	35.	" cash paid Jacob A. Fritts, receipt	7 29	
"	14.	36.	" cash paid T. A. Hart- well, receipt	48 00	✓
"	25.	37.	" cash paid P. Vreden- burgh, rule of court, receipt	5 00	10 ✓
"	30.	38.	" cash paid L. Bunn, re- ceipt	50	✓
July	2.	39.	" cash paid H. Cook, re- ceipt	1 25	✓
Aug.	16.	40.	" cash paid A. R. Taylor, medical bill, receipt	15 00	✓
"	17.	41.	" cash paid I. P. Grant, receipt	15 31	✓
"	23.	42.	" cash paid I. P. Grant, receipt	5 95	20 ✓
"	31.	43.	" cash paid William B. Gaston, receipt	1 12	✓
Sept.	10.	44.	" cash paid to Abraham Hartwell, receipt	93	✓
Oct.	2.	45.	" cash paid F. Van Der- veer, receipt	19 57	✓
"	2.	46.	" cash paid P. Z. El- mandorf, note and int. receipt	53 18 30	✓
"	2.	47.	" cash paid P. Z. El- mandorf, note and int. receipt.	106 38	✓
"	2.	48.	" cash paid P. D. Vroom, note and int. receipt	236 50	✓
"	2.	49.	" cash paid J. C. Garretson receipt	5 00	✓
"	5.	50.	" cash paid Andrew Thompson, receipt	25 00	
"	6.	51.	" cash paid Garret V.	40	see 20

				Manly, receipt	27 00 ✓
		15.	52.	“ cash paid P. Van Deventer, receipt	3 25 ✓
		17.	53.	“ cash paid S. L. B. Baldwin, printing, receipt	15 86 ✓
		19.	54.	“ cash paid Joshua Doughty, receipt	1 17 ✓
		19.	55.	“ cash paid Peter Van Deventer, receipt	4 36 ✓
10		19.	56.	“ cash paid B. B. Huff, receipt	16 84 ✓
		19.	57.	“ cash paid to P. P. Auten, receipt	6 95 ✓
	Nov.	18.	58.	“ cash paid J. C. Garretson, receipt	5 41 ✓
	1839.				
	Jan.	3.	59.	“ cash paid William T. Thompson, receipt	4 21 ✓
20	“	24.	60.	“ cash paid James Taylor, receipt	76 54 ✓
	“	24.	61.	“ cash paid James Taylor, appr. etc., receipt	3 50
	“	28.	62.	“ cash paid James Castner, receipt	16 97
	March	18.	63.	“ cash paid T. A. Hartwell, receipt	34 30
	April	1.	64.	“ cash paid Widow, int. as per bill, receipt	120 00
30	“	4.	65.	“ cash paid John Herbert, receipt	1 45
	May	10.	66.	“ cash paid John Bailey, receipt	4 50
	Sept.	10.	67.	“ cash paid T. A. Hartwell, receipt	90 00
	Dec.	9.	68.	“ cash paid Col. Boice, receipt	78 98
	“	13.	69.	“ cash paid F. Cook, appr., receipt	1 00
40	1840.				

Jan.	7.	70.	" cash paid Wm. Thompson, receipt	38 37	
"	7.	71.	" cash paid Henry Ammerman, receipt	7 50	
"	7.	72.	" cash paid Henry Ammerman, receipt	36 54	
"	18.	73.	" cash paid James B. Staats, receipt	58	
"	22.	74.	" cash paid Eliza W. Voorhees, receipt	70 98	10
"	5.	75.	" cash paid Joshua Doughty, receipt	2 19	
April	1.	76.	" cash paid Widow, int. as per will, receipt	120 00	
"	10.	77.	" cash paid S. H. Marsh, receipt	8 72	
Nov.	7.	78.	" cash paid James Castner, receipt	12 20	
"	10.	79.	" cash paid Nehemiah V. Steel, receipt	13 50	20
"	19.	80.	" cash paid John Bailey, receipt	1 06	
"	23.	81.	" cash paid J. & B. Auten, receipt	3 05	
"	30.	82.	" cash paid Jacob A. Fritts, receipt	3 00	
1841.					
Mch.	30.	83.	" cash paid Col. White-nack, receipt	3 02	
"	31.	84.	" cash paid Peter T. Tunison, receipt	34	30
April	1.	85.	" cash paid Widow, int. as per will, receipt	120 00	
"	16.	86.	" cash paid William G. Steel, receipt	21	
"	16.	87.	" cash paid William J. Hedges, receipt	32	
May	15.	88.	" cash paid David Rodgers, receipt	1 25	

	June	1.	89.	" cash paid John Bailey, receipt	8 50
	July	1.	90.	" cash paid T. D. Du- mont, receipt	88
	Aug.	30.	91.	" cash paid Jno. S. White- nack, receipt	3 12
	Oct.	16.	92.	" cash paid P. T. Tunison, receipt	16
10	Nov.	27.	93.	" cash paid A. Sergeant, receipt	1 25
	Dec.	7.	94.	" cash paid Joseph Bro- kaw, receipt	2 00
	"	15.	95.	" cash paid T. S. Allison, receipt	1 50
	1842.				
	Mch.	18.	96.	" cash paid Joseph Bro- kaw, receipt	4 00
	"	31.	97.	" cash paid Jno. T. Grant, receipt	13 58
20	April	1.	98.	" cash paid Widow, int. as per will, receipt	120 00
	"	1.	99.	" cash paid C. Morton, receipt	50
	"	4.	100.	" cash paid William G. Steel, receipt	1 23
	"	4.	101.	" cash paid William J. Hedges, receipt	4 38
	"	29.	102.	" cash paid R. W. Do- nato, receipt	76 55
30	"	29.	103.	" cash paid William B. Gaston, receipt	91
	"	29.	104.	" cash paid I. A. Hart- well, bond sue, receipt	892 00
	1838-40.				
			105.	" expense of going twice to St. Augustine on business of estate	300 00
40	This accountant prays allowances for good and chattles taken by Widow as per will appraised at				200 00

Also on goods and chattles sold less than appraised, at	117 26
“ on the following notes and acts. not collected,	
viz: John J. Hall, act. appr. at	74 00
“ I. R. Davis, “ “ “	8 12
“ David Thorn, note appr. at	13 00
“ Jesse Thorn, “ “ “	18 75
“ Edward Campbell, “ “	47
“ Wm. Wilson, “ “	47 10
By amount due int. H. Voorhees & Co. Exs. as per his separate act. stated for Aug. from 1847	46 14
By amount retained for benefit of widow, legacy as per will	2,000 00
By int. on the same from Apr. 1, 1842, to Aug. 20, 1847, being 5 yrs. 4 mos. and 20 days due Widow.	646 66
Commission on \$12,184.19 at 7 per cent	852 89
Surroge. auditing & stating act.	7 00 20
Court & Cl'k. for copy, &c	2 80
Balance in hands of accountant to be distributed agreeably to will of deceased	6,873 45½
Commission	\$6,816 95½

Another Account.

Copy of account attached to answer to answer filed by Farrington Barcalow, in the Court of Chancery of New Jersey, June 21, 1848, in a cause wherein Culver Barcalow was complainant and Farrington Barcalow, et als., were defendants.

The separate account of Farrington Barcalow, one of the executors of Wm. Barcalow, deceased, as well of and for so much of the estate as hath come to his hands to be administered as for his payment and disbursements out of the same.

THIS ACCOUNTANT CHARGES HIMSELF.

DR.

	1838.			
	May 22.	To am't of inventory and appraise-		
		ment	\$1,553	70
	May 22.	To am't collected at St. Augustine	291	20
	Oct. 2.	“ Interest on the Veghte and		
		Van Doren notes	13	29
	1839.			
20	April 1.	“ Rent received from April		
		1, 1838, to April 1, '39	510	00
	1840.			
	April 1.	“ Rent received from April		
		1, 1839 to April 1, '40	320	00
	1841.			
	April 1.	“ Rent received from April		
		1, 1840 to April 1, 1841	592	00
	“	“ Rec'd from St. Augustine	159	00
30	1842.			
	April 1.	“ Rent received from April		
		1, 1841 to April 1, 1842	610	00
		“ Sale of Hotel and lot	6,005	00
		“ Sale of house and lot in		
		Bridge street	600	00
		“ Sale house on Main street	985	00
	June 2,	“ Received from the Plain-		
		field Mutual Fire Ins.		
		Company	42	00
40	1843.			

April 1,	“	Rec'd from St. Augustine	503 00
“	“	Interest on assets in hands of Executor over and above disbursements, from April 1, 1842 to August 20, 1847. Said assets amount to \$7280.- 81, for 5 years 4 months and 20 days . . .	2,354 13
Amount to be accounted for . . .			14,538 32

10

THIS ACCOUNTANT PRAYS ALLOWANCE.

OR.

1837.				No.	
Nov. 16.	For cash paid	Enock Randolph	1	\$2 00	
“ 20.	“ “	Peter C. Peterson	2	10 62	
1838.					
Jan. 3.	“ “	Wm. J. Hedges	3	1 12	
“ 10.	“ “	Frederick Cock	4	1 98	
“ 11.	“ “	James Southard	5	5 94	20
“ 19.	“ “	Ephriam Runyon	6	14 25	
“ 29.	“ “	John P. Staats	7	3 90	
Feb. 26.	“ “	Jacob A. Fritts	8	1 50	
“ 8.	“ “	J. G. Van Nest	9	2 25	
Mch. 7.	“ “	Mulford & Martin	10	50 00	
April 16.	“ “	Cors. G. Tunison	11	72 31	
“ 17.	“ “	O. S. Bartles	12	5 02	
“ 17.	“ “	James B. Cox	13	41	
“ 17.	“ “	Henry C. Brokaw	14	68 00	
“ 18.	“ “	Rynear Van Nest	15	3 00	30
“ 19.	“ “	A. Suydam & Co.	16	34 84	
“ 19.	“ “	John Pyatt	17	21 50	
“ 19.	“ “	Job Ogden	18	87	
“ 19.	“ “	I. C. Ackerman & Co	19	2 93	
“ 19.	“ “	Henry Vroom	20	2 10	
“ 21.	“ “	Mulford & Martin	21	121 92	
“ 22.	“ “	Philip Myers	22	5 66	
“ 24.	“ “	C. S. Bartles	23	21 11	
“ 26.	“ “	Walton & Herbert	24	1 56	
“ 26.	“ “	Frederick Cock	25	91	40

"	19.	"	"	P. P. Auten .	57	6	95	
Nov.	18.	"	"	John C. Garretson	58	5	41	
1839.								
Jan.	3.	"	"	Wm. T. Thompson	59	4	21	
"	24.	"	"	James Taylor	60	76	54	
"	24.	"	"	" " apps.&c	61	3	50	
"	28.	"	"	James Castner	62	16	97	
Mch.	18.	"	"	T. A. Hartwell	63	34	30	
Apr.	1.	"	"	Widow's int. as per will .	64	120	00	10
"	4.	"	"	John Herbert .	65	1	45	
May	10.	"	"	John Bayley .	66	4	50	
Sept.	10.	"	"	T. A. Hartwell .	67	90	00	
Dec.	9.	"	"	Corns. Boise .	68	78	98	
"	13.	"	"	F. Cock, aff. .	69	1	00	
1840.								
Jan.	7.	"	"	Wm. Thompson	70	38	37	
"	7.	"	"	Henry Ammerman	71	7	50	
"	7.	"	"	" " .	72	36	54	
"	18.	"	"	James B. Staats	73	58	20	
"	22.	"	"	Eliza W. Voorhees	74	70	98	
"	5.	"	"	Joshua Doughty	75	2	19	
April	1.	"	"	Widow's interest as per will .	76	120	00	
"	10.	"	"	J. H. Marsh .	77	87	$\frac{1}{2}$	
Nov.	7.	"	"	James Castner	78	12	20	
"	10.	"	"	Nehemiah V. Steele	79	13	50	
"	19.	"	"	John Bailey .	80	1	06	
"	23.	"	"	J. & B. Auten .	81	3	05	
"	30.	"	"	Jac. A. Fritts	82	3	00	30
1841.								
Mch.	30.	"	"	Cors. Whitenack	83	3	02	
"	31.	"	"	Peter T. Tunison	84	34		
April	1.	"	"	Widow's interest as per bill .	85	120	00	
"	16.	"	"	Wm. G. Steele	86	21		
"	16.	"	"	Wm J.. Hedges	87	32		
May	15.	"	"	David Rogers .	88	1	25	
June	1.	"	"	John Bailey .	89	8	50	
July	1.	"	"	T. D. Dumont .	90	88		

	Aug. 31.	“	“	John S. Whitenack	91	3 12
	Oct. 16.	“	“	Peter T. Tunison	92	16
	Nov. 27.	“	“	A. Sergeant	93	1 25
	Dec. 7.	“	“	Joseph Brokaw	94	2 00
	“ 15.	“	“	T. S. Allison	95	1 50
	1842.					
	Mch. 18.	“	“	Joseph Brokaw	96	4 00
	“ 31.	“	“	Jno. T. Grant	97	13 58
	April 1.	“	“	Widow, int. as per		
				will	98	120 00
10	“ 1.	“	“	C. Morton	99	50
	“ 4.	“	“	Wm. G. Steele	100	1 23
	“ 4.	“	“	Wm. J. Hedges	101	4 38
	“ 29.	“	“	R. McDonald	102	76 55
	“ 29.	“	“	Wm. B. Gaston	103	91
	“ 29.	“	“	T. A. Hartwell,		
				bond due	104	892 00
	1838-40.	“	“	Expenses going to		
				St. Augustine on		
				business of estate	105	300 00
20						
						<u>\$3,682 28½</u>

This accountant prays allowance for goods and chattels taken by Widow as per will, appraised at \$200 00

Also on goods and chattels, sold for less than appraisement 117 26

30 Also on the following notes and accounts not collected,

viz: John Hall, acct. app'd. at 74 00

“ T. R. Davis, “ “ 8 12

“ David Thorn, note “ “ 13 00

“ Jesse Thorn “ “ “ 18 75

“ Edward Campbell “ “ 47

“ Wm. Wilson “ “ 47

To amount due John H. Voorhes Co. Exr. as per his separate account stated for term 1847 46 14

By amount retained for benefit of Widow, (legacy as per will)	2,000 00
Interest on the same from 1842, Ap. 1, to Aug. 20th, 1847, 5 years, 4 mo. 20 d.	646 66
Commissions on \$12,184 at 7 per cent.	852 89
Surrogate am't. and sta. acct.	7 00
Court and Clerk fees, copy, &c.,	2 80
Balance in hand of accountant for dis- tribution agreeably to will of de- ceased	6,873 45½
	10

SOMERSET COUNTY, ss:

I, Caleb Morton, Surrogate of the county of Somerset, do hereby certify the foregoing to be a true copy in all essential matters of the original account of Farrington Barcalow, the Executor above named, as audited and stated by A. V. P. Sutphen, late Surrogate.

C. MORTON,
Surrogate. 20

A true copy.

H. S. LITTLE, Clerk.

By amount retained for benefit of W. Morton
 2000 00
 Interest on the same from 1842 to 1847
 616 00
 Commissions on \$2,616 at 7 per cent.
 183 20
 Total
 3499 20

Balance in hand of account for dis-
 tribution agreeably to will of de-
 ceased
 6573 44
 Total
 10072 64

C. MORTON
 Surrogate

H. S. LITTLE, Clerk

At a special session of the Court
 held at New York on the 10th day of
 August 1847
 Present
 David Ward, Judge
 John T. Brady, Clerk
 Edward Camp, Esq.
 Wm. W. Myer, Esq.
 To wit: Edward V. H. and James O.
 Executors of the last will and testament
 of the said deceased

