

54

STATEMENT OF THE CASE.

*To the Honorable Oliver Spencer Halstead, Chancellor of the State of
New Jersey:*

Humbly complaining, showeth unto your Honor, your Orator, WILLIAM MORRIS COOPER, of the township of Chester, in the county of Burlington, and State of New Jersey, that on or about the third day of September, in the year of our Lord one thousand eight hundred and eighteen, one JOSEPH K. VAN MATER, of the county of Monmouth, in the State of New Jersey, and Elizabeth, his wife, being seized in fee, and possessed of All that certain Lot or piece of Land, situate in the township of Waterford, (now Delaware,) in the county of Gloucester, (now in the county of Camden,) and State of New Jersey, containing thirty acres and twenty-two hundredths of an acre of land, and premises, in and by their certain deed of 10 conveyance, bearing date the day and year aforesaid, for and in consideration of the sum of twelve hundred and eight dollars and eighty cents, did grant, bargain, sell, release, convey, and confirm, unto BENJAMIN B. COOPER, and Sarah, his wife, then of the said township of Waterford, county of Gloucester and State of New Jersey, the father and mother of your Orator; the said tract or piece of land above mentioned, together with all and singular the woods, ways, waters, improvements, rights, liberties, privileges and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversion and remainders, rents, issues and profits thereof, and every part and parcel thereof, and also all the estate, right, title, interest, proper-20 ty, possession, claim and demand whatsoever, of them, the said Joseph K. Van Mater, and Elizabeth, his wife, of, in and to the same, either at law or equity, TO HAVE AND TO HOLD the said tract or piece of land thereby granted, with the appurtenances, unto the said Benjamin B. Cooper, and Sarah, his wife, to and for the use and behoof of them and their heirs and

assigns, forever ; in trust, nevertheless, for the uses and purposes therein mentioned, that is to say, that they, the said Benjamin B. Cooper, and Sarah, his wife, or the survivors of them ; and in case of the decease of both of them, the heirs, executors, or administrators of the said Benjamin B. Cooper, shall and do receive the rents, issues and profits of the said lot of land during the minority of their children, Ralph Van Mater Cooper and Sarah Ann Cooper, and such other child or children of them, the said Benjamin B. Cooper, and Sarah, his wife, who might thereafter be born, and pay and apply the said rents, issues and profits to and for the maintainance and support of the said children then born, or thereafter to be born of them, the said Benjamin B. Cooper, and Sarah, his wife ; and from and immediately after the said children shall arrive to lawful age, then in trust, to grant, convey and assure the same, to all such of the said children as may be then living, and to the lawful issue of any such child or children as then may be deceased, in equal shares, as tenants in common, in fee ; such issue to take and receive only such part or share thereof as his, her, or their parent would have done had he, she or they been living ; and in case of the decease of all of the children of them, the said Benjamin B. Cooper and Sarah, his wife, under age and without lawful issue, there in trust, to grant, assure and convey the same to such other person or persons as they, the said Trustees, or the Heirs, Executors, or Administrators of the said Benjamin B. Cooper, may think fit and proper, upon trust that such person or persons shall permit and suffer her, the said Sarah Cooper, if she should happen to survive her husband and children, to receive the rents, issues and profits thereof during her natural life ; and from and immediately after her decease, then to grant, convey and assure the same to the right heir or heirs of the children of them, the said Benjamin B. Cooper and Sarah, his wife, in fee simple, and for no other use, intent or purpose whatever ; as in and by the said deed of conveyance, duly executed, by the said Joseph K. Van Mater, under his hand and seal, and now in the possession of your Orator, ready to be produced and proven, as this Honorable Court shall direct, reference being thereunto had, will more fully and at large appear.

And your Orator further showeth unto your Honor, that the said Benjamin B. Cooper and Sarah, his wife, the father and mother of your Orator, as aforesaid, immediately after the execution of the above receipted deed ; and under and by virtue thereof, entered into the possession of the said tract or piece of land, hereditaments and premises, and continued to be seized and possessed thereof under the said deed to, on, or about the day of February, in the year of our Lord one thousand eight hundred and twenty-four, when the said Sarah Cooper, the mother of your Orator, and wife of the said Benjamin B. Cooper, departed this life, leaving your Orator, Ralph V. M. Cooper and Sarah Ann Cooper, (now Sarah Ann

Lee,) her only children ; and her husband, the said Benjamin B. Cooper, her surviving, who, under and by virtue of the said deed, continued in possession of the said premises until on or about the day of in the year of our Lord one thousand eight hundred and thirty-five, when he departed this life, leaving your Orator a minor, the said Ralph V. M. Cooper, and Sarah Ann Cooper—now Sarah Ann Lee—his only children ; and that your Orator and the said Ralph V. M. Cooper, and the said Sarah Ann Lee, were and are the heirs-at-law of the said Benjamin B. Cooper and Sarah Cooper.

And your Orator further showeth unto your Honor, that the said tract ¹⁰ of land was not conveyed or disposed of, in any manner, by either the said Sarah Cooper or Benjamin Cooper ; and at their death, by virtue of the said deed descended to and vested in your Orator, the said Ralph V. M. Cooper, and the said Sarah Ann Lee as tenants in common in fee simple.

And your Orator further showeth unto your Honor, that on or about the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and forty-five, Mahlon Matlack, of the township of Woolwich, in the county of Gloucester, and State of New Jersey, in pursuance of a declaration of Trust made and executed by him, the said Mahlon Matlack, and bearing date the eighteenth day of May, in the year of our Lord ²⁰ one thousand eight hundred and twenty, and recorded in the Clerk's Office of Gloucester county, in liber MM of deeds, page one, made and executed a certain deed of conveyance, bearing date the said twenty-ninth day of July, in the year of our Lord one thousand eight hundred and forty-five unto your Orator, and the said Ralph V. M. Cooper, and the said Sarah Ann Lee, therein, and thereby, for and in consideration of the sum of ten dollars, did grant, bargain, sell, alien, enfeoff, release, convey, and confirm unto your Orator, and the said Ralph V. M. Cooper, and the said Sarah Ann Lee, their heirs and assigns, as tenants in common in fee simple, all that certain farm, plantation and tract of land, situate in the township of Dela-³⁰ ware, (late Waterford,) in the county of Camden, (late Gloucester,) and State of New Jersey, therein particularly described, containing one hundred and forty-eight acres, two roods, and nine perches of land ; also two certain stills on the said premises, with the tubs and apparatus thereon belonging ; together with the hereditaments and appurtenances thereunto belonging. As in and by the said deed of conveyance duly executed by said Mahlon Matlack, under his hand and seal, and duly acknowledged, and now in the possessions of your Orator, ready to be produced and proven as this Honorable Court shall direct, reference being thereunto had will more fully and at large appear.

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And your Orator further showeth unto your Honor, that the said Mahlon Matlack, in pursuance of a declaration of Trust by him, under his hand and seal

duly executed and bearing date the twelfth day of December, in the year of our Lord one thousand eight hundred and twenty-one, and recorded in the Clerk's Office of Gloucester county, in book E 3 of deeds, page one hundred and seventy-two, on or about the tenth day of March, in the year of our Lord one thousand eight hundred and forty-six, for and in consideration of the sum of five dollars to him in hand, well and truly paid by the granters therein mentioned by deed of conveyance, duly sealed and delivered under his hand and seal, and bearing date the day and year last aforesaid, did grant, bargain, sell, alien, enfeoff, release, convey, and confirm unto your
 10 Orator and the said Ralph V. M. Cooper, and the said Sarah Ann Lee, their heirs and assigns for ever in fee simple as tenants in common, all that certain lot or piece of land, situate in the township of Delaware, (late Waterford,) in the county of Camden, (late Gloucester,) and State of New Jersey, containing eight acres, one rood, and twenty perches, be the same more or less, in the said deed particularly described, and set out at length, together with the appurtenances as in and by the said deed of conveyance duly executed by the said Mahlon Matlack, under his hand and seal, duly acknowledged and now in the possession of your Orator, ready to be produced and proven as this Honorable Court shall direct, reference being thereunto had
 20 will more fully and at large appear.

And your Orator further showeth unto your Honor, that Sarah Cooper, the mother of your Orator, in her lifetime, became seized and possessed of, and to a certain tract of land, and premises in fee simple, by virtue of a deed of conveyance from Ruben Burrough and wife, dated the twenty-ninth day of April, in the year of our Lord, one thousand eight hundred and nineteen, and recorded in the clerk's office of the county of Gloucester, in liber D. D. of deeds, folio five hundred and five, containing one acre, one rood, and twenty-two perches of land and premises, situate in the township of Delaware, (late Waterford,) in the county of Camden, (late Gloucester,) and
 30 State of New Jersey, as will more sufficiently, and at large appear, in and by the said deed, duly recorded as aforesaid, reference being thereunto had, or to a certified copy thereof, now in the possession of your Orator, and ready to be produced and proven as this Honorable Court shall direct.

And, your Orator further showeth unto your Honor, that the said Sarah Cooper, the wife of the said Benjamin B. Cooper, and the mother of your Orator, departed this life on or about the day of February, in the year of our Lord one thousand eight hundred and twenty-four, as aforesaid, intestate, and without having conveyed away, or in any manner disposed of the same, leaving her husband, Benjamin B. Cooper, her surviving, who, as
 40 tenant, by the courtesy, was possessed and seized of the same, until the time of his death, hereinafter set out and mentioned, when, under and by virtue of the laws of the State of New Jersey, the same descended unto, and

vested in your Orator, and the said Ralph V. M. Cooper, and the said Sarah Ann Lee, (late Cooper,) the children and heirs-at-law of the said Sarah Cooper, as aforesaid, as tenants in common.

And your Orator further showeth unto your Honor, that the above described tracts, or pieces of land and premises, are contiguous and lie adjoining to each other, and contain in the whole about one hundred and eighty-eight acres, and sixty-two hundredths of an acre of land; with six distilleries with the apparatus and appurtenances, a dwelling house, buildings, and other improvements thereon, consisting of about one hundred and thirty-acres of arable land, and about fifty-eight acres of meadow ¹⁰ land, all in a high state of cultivation, with a valuable apple orchard thereon, in their prime of bearing, containing about one hundred acres, and of great value. And your Orator states and believes the said premises so owned, to be worth at least ten thousand dollars; one equal undivided one-third part of which, since the death of your Orator's father and mother, as aforesaid, has descended to, and by virtue of the above recited deeds, vested in your Orator, in fee simple, as tenant in common, with the said Ralph V. M. Cooper, and the said Sarah Ann Lee, (late Sarah Ann Cooper,) who, each with your Orator, took an undivided one-third part thereof.

And your Orator further showeth unto your Honor, that the said Sarah ²⁰ Ann Lee, after the decease of her husband, in and by her deed of conveyance, duly executed under her hand and seal, and dated on the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and forty-eight, for, and in consideration of the sum of two thousand three hundred dollars to her in hand, well and truly paid by your Orator, did grant, bargain, sell, alien, enfeoff release and confirm unto your Orator, his heirs and assigns forever, in fee simple, all the equal undivided one-third part of the said tract of land and premises, hereinbefore set out and referred to, containing in the whole about one hundred and eighty-eight acres, and sixty-two hundredths of an acre of land, be the same more or less, as in, and by ³⁰ the said deed of conveyance, duly executed by the said Sarah Ann Lee, under her hand and seal duly acknowledged, and now in the possession of your Orator, ready to be produced and proven as this Honorable Court shall direct, reference being thereunto had, will more fully and at large appear, by virtue of which deed your Orator became seized of one other equal undivided third parts of the said premises making his intrest two equal undivided third part of the said tract as aforesaid.

And your Orator further showeth unto your Honor, that on or about the twentieth day of March, in the year of our Lord one thousand eight hundred and forty-seven, and before the sale made by Sarah Ann Lee, (your Orator's sister,) to him of her interest in, and to the same, the said Ralph ⁴⁰ V. M. Cooper, took possession of all the said tract, or pieces of land and

premises hereinbefore set out and referred to, and so owned in common, as aforesaid, by your Orator, and the said Ralph V. M. Cooper, and the said Sarah Ann Lee, together with the distillings, buildings, orchards, and all the improvements thereon of every kind, and from that period down to the time hereinafter mentioned, received the rents, issues, and profits of the said tract of land and premises, and appropriated them to his own use, and refused to account to your Orator for the same, or for any part thereof.

And your Orator further showeth unto your Honor, that on or about the thirteenth day of October, in the year of our Lord one thousand eight
 10 hundred and forty-eight, the said Ralph V. M. Cooper, being in possession of the whole of the said premises, so owned in common, in order to effect an arrangement and get into the possession of his share or proportion of the said premises, your Orator entered into a written agreement with the said Ralph, bearing date the day and year last aforesaid, and did duly nominate, constitute and appoint Benjamin W. Cooper, Joseph A. Burrough, and Ezra Evans, commissioners, to divide the said tracts of land and premises, by metes and bounds, according to a line or division thereof agreed upon by the parties thereto, and to value and appraise the respective shares, and to settle to whom and when and how the difference in the valuation of said shares
 20 was to be paid, as in and by the said agreement, will more fully and at large appear, reference being thereunto had.

And your Orator further showeth unto your Honor, that the said Benjamin W. Cooper, Joseph A. Burrough, and Ezra Evans, under and by virtue of said agreement, on or about the first day of November, in the year of our Lord one thousand eight hundred and forty-eight, met and valued the said premises, and by their report in writing, under their hands and seals, bearing date the day and year aforesaid, among other things, did assign and set off unto the said Ralph V. M. Cooper, with metes and bounds, all the easterly part of said tract of land and premises, containing eighty-four acres
 30 of land and ninety-hundredths of an acre of land, be the same more or less. And did assign and set off unto your Orator, all the westerly part of the said premises, by metes and bounds, containing one hundred acres of land, and twenty-five hundredths of an acre of land; and did further determine, in and by their said report, that, in consideration of your Orator's releasing all his claim to the part of said premises so set off and assigned to the said Ralph Van Mater Cooper, the said Ralph should pay or secure to be paid unto your Orator, the sum of two thousand one hundred and fifty dollars, on or before the tenth day of January, then next ensuing the date thereof, and should also release all claim whatever, which he had in and to the part of
 40 said premises, set off by said commissioners unto your Orator, as in and by the said report duly executed as aforesaid, under the hands and seals of the said commissioners, reference being thereunto had, will more fully and at large appear.

And your Orator further showeth unto your Honor, that in pursuance of said agreement, and the report of the said commissioners so made as aforesaid, your Orator and the said Ralph V. M. Cooper, on or about the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-nine, exchanged deeds. Your Orator releasing all his claims to that part of said premises so assigned to the said Ralph, and the said Ralph V. M. Cooper, releasing all his claim to that part of said premises so assigned to your Orator. Yet, that, notwithstanding the said agreement and deed so as aforesaid made to your Orator, the said Ralph V. M. Cooper continued in the possession of the whole of the said premises, as well as the part so by him 10 conveyed unto your Orator, as the part conveyed by your Orator to the said Ralph, and received the rents, issues and profits thereof, up to on or about the seventh day of November last past, and refuses to account unto your Orator for the same or any part thereof.

And your Orator further showeth unto your Honor that the said premises so owned in common, as aforesaid, before the division above set forth were worth the yearly value of nine hundred dollars, and would have rented for at least that sum of money, and that the said Ralph V. M. Cooper has received the rents, issues and profits of the same since the twentieth day of March, in the year of our Lord one thousand eight hundred and forty-seven, 20 and has realised and received at least the sum of nine hundred dollars yearly, and every year since that period, out of the same one equal third part of which issues and profits from the twentieth day of March, Anno Domini eighteen hundred and forty-seven, to the twentieth day of March, in the year of our Lord one thousand eight hundred and forty-eight, and two equal third parts thereof since that period, (the rents and issues following the land) by virtue of the conveyance from the said Sarah Ann Lee to your Orator, to the said the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-nine, are due and owing unto your Orator, and that the said Ralph V. M. Cooper, wholly neglects and refuses to ac- 30 count unto your Orator for the same, or for any part thereof, or for any part of the rents, issues and profits of the said part of the premises so conveyed unto your Orator on the sixteenth day of March last past, by the said Ralph V. M. Cooper, as aforesaid, since that period, although the said Ralph V. M. Cooper, notwithstanding his said conveyance to your Orator, continued in the possession thereof up to the time aforesaid, and received all the rents, issues and profits of said tract.

And your Orator further showeth unto your Honor that in and by the will of your Orator's father, the said Benjamin B. Cooper, now deceased, which will bears date on the sixteenth day of December, in the year of our 40 Lord one thousand eight hundred and thirty-four, and was duly proved before the surrogate of Gloucester county, by the said Ralph V. M. Cooper, Samuel Nicholson and Charles C. Gaskill, three of the executors named therein (the

said Sarah Ann Cooper, the executrix therein named, having renounced and declined to take out letters,) on the seventh day of April, in the year of our Lord one thousand eight hundred and thirty-five : among other things it is provided and bequeathed as follows, to wit : " I nominate, constitute and appoint my cousin, Benjamiu Cooper, and my son, Ralph Van Mater Cooper, the guardians of the person and estate of my minor son, William Morris Cooper, until he attains the age of twenty-one years, with my especial request and instructions, to fulfil and perform the trust to the best of their ability, and especially to have him educated according to the directions
 10 herein before given, all the costs and expenses of his education and maintenance to be taken out of his own share of my estate, or the rents and profits thereof, and in case Benjamin Cooper should decline to act, or should die during the minority of my son, then I nominate his son Benjamin W. Cooper to act as guardian in his father's place and stead ; and on the day my said minor son, (meaning William Morris Cooper, your Orator,) arrives to the age of twenty-one years, then I order and direct my son, Ralph, and my daughter Sarah Ann, to pay him out of their own estate the sum of one hundred dollars a piece, together with the other bequests herein before given to him, being intended as some equivalent to what I
 20 have herein bequeathed to them." As in and by the said will, reference being thereto had, will more fully and at large appear, and to which said will your Orator prays leave to refer, if it be necessary so to do.

And your Orator further showeth unto your Honor, that he was twenty-one years old on the fourth day of December, in the year of our Lord one thousand eight hundred and forty-four, and that the whole of the said sum of one hundred dollars, so bequeathed to your Orator by his said father, in and by the said will as aforesaid, remains due and owing unto your Orator, no part thereof having been paid or satisfied unto your Orator by the said Ralph V. M. Cooper, or by any other person for him, together with lawful
 30 interest on the same, from the said fourth day of December, in the year of our Lord one thousand eight hundred and forty-four, the time when your Orator arrived at twenty-one years of age as aforesaid, and the said legacy or bequest became due and payable ; and that your Orator is greatly delayed and disappointed in not receiving his said legacy and his said profits and rents from the said premises as aforesaid.

And your Orator further showeth unto your Honor, that he hath frequently and in a friendly manner, by himself, his agents and friends, applied unto the said Ralph V. M. Cooper, and requested him to account unto your Orator for the issues and profits of the said premises as aforesaid, and to
 40 pay your Orator the amount due therefor, and the said legacy or bequest as aforesaid, with the interest due thereon. And your Orator well hoped that the said Ralph V. M. Cooper would have complied with such reasonable re-

quest of your Orator, and would have accounted and paid him the said moneys, so as aforesaid due, without suit, as in equity and good conscience he ought to have done.

But now so it is, may it please your Honor, that the said Ralph V. M. Cooper, combining and confederating to and with divers persons at present unknown to your Orator, whose names, when discovered, your Orator prays he may be at liberty to insert herein, with apt and proper words to charge them as parties defendants hereto, and contriving how to wrong and injure your Orator in the premises, he, the said Ralph V. M. Cooper, absolutely refuses to comply with such request of your Orator, and to account with 10 him for the profits of the said premises as aforesaid, and the said bequest or legacy so as aforesaid due, at times gives out and pretends that he has accounted unto your Orator for the rents, issues, profits and proceeds of the said premises, and paid your Orator his said legacy mentioned in the said will as herein before mentioned, the contrary whereof your Orator charges may be true, and expressly states that the whole of the said legacy is due, and owing unto your Orator, with the lawful interest thereon as aforesaid, and that the said Ralph V. M. Cooper has not paid on account for any part of the rents, issues and profits of the said premises, and at other times, the said Ralph V. M. Cooper gives out and pretends that your 20 Orator is not entitled to any part of the proceeds of the said premises, whereas, your Orator charges, that he, as the owner of the one-third part thereof, when the said Ralph V. M. Cooper took possession thereof, on the twentieth day of March, in the year of our Lord one thousand eight hundred and forty-seven, is entitled to have and receive the one full and equal third part of the profits thereof, for the first year that the same was occupied by the said Ralph V. M. Cooper, ending on the twentieth day of March, in the year of our Lord one thousand eight hundred and forty-eight, and that, by virtue of the said purchase, made by your Orator of the said Sarah Ann Lee, and the deed of conveyance from her for the one undivided 30 full third part of said premises to your Orator, dated the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and forty-eight, your Orator is entitled to have and receive the full and equal two-third parts of the rents, issues and profits of the said premises from the twentieth day of March, in the year of our Lord one thousand eight hundred and forty-eight, to the sixteenth day of March last past; and at other times, the said Ralph V. M. Cooper gives out and pretends that the said premises are in poor state of cultivation, the lands poor, and the issues and profits of the said tracts of land and premises inconsiderable: whereas, your Orator charges the truth to be that the said premises are in a high state of 40 cultivation, the lands being fertile and highly productive, and that the rents, issues and profits thereof, as your Orator is informed, and believes, have

amounted to nine hundred dollars and upwards a year, since they have been in the occupation of the said Ralph V. M. Cooper.

And at other times the said Ralph V. M. Cooper gives out and pretends, that although the said premises may have yielded, in issues and profits, the yearly sum of nine hundred dollars and upwards, yet, that your Orator can only claim one-third part thereof, prior to executing the said deed from the said Sarah Ann Lee to your Orator; whereas, your Orator expressly charges that the said deed, bearing date the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and forty-eight, that the issues
10 and profits, not at that time due, followed the land, and were conveyed to your Orator by the said deed as aforesaid, and that your Orator is entitled to have, on account of the two-thirds part thereof, from the twentieth day of March next preceding the date of said deed. And at other times the said Ralph V. M. Cooper and his confederates give out and pretend that your Orator, having executed a deed to him for the said premises or part thereof, set off by the said Commissioners as aforesaid, and that your Orator is estopped from claiming any part of the proceeds and profits of the said premises, prior to said conveyance: and that, since a division has been made, and the boundaries established between your Orator and the said Ralph V.
20 M. Cooper, that your Orator cannot call on the said Ralph V. M. Cooper to account in this Honorable Court, the contrary of which pretence your Orator charges to be true, and that the said deed does not in any wise conflict with your Orator's claim to the rents, issues and profits of said premises, previous thereto; and that inasmuch as the said Ralph V. M. Cooper has possessed and enjoyed, and received the issues and profits of the said premises so assigned to your Orator, as well as of the part assigned to him, and has had them during the summer season, that he can be called on to account for the same, and your Orator charges that there is at least due him from the rents, issues and profits of the said premises, fifteen hundred dollars and upwards,
30 besides the interest, and that there is due the sum of one hundred dollars on the legacy or bequest as aforesaid, with the lawful interest on the same from the time hereinbefore mentioned, when your Orator arrived at twenty-one years of age. All which actings, pretences, and doings of the said confederates are contrary to equity and good conscience, and tend to the manifest injury and oppression of your Orator.

In tender consideration whereof, and for as much, as your Orator is remediless at and by the strict rules of the common law, and is only relievable in a Court of Equity, where matters of this nature are properly recognizable and recoverable.

40 To the end thereof, that the said Ralph V. M. Cooper, and his confederates, when discovered, may upon their several and respective corporal oaths and affirmation, true, full, and perfect answers, make to all and singular

the said premises, as fully and particularly as if the same were here again repeated, and they, thereto, particularly interrogated according to the best of their respective knowledge, information, remembrance or belief; and more particularly that the said Ralph V. M. Cooper, may set forth and answer, whether your Orator, the said Ralph V. M. Cooper, and the said Sarah Ann Lee, (late Sarah Ann Cooper,) were not seized of, in and to the said lots, tracts, or pieces of land and premises, hereinbefore set out and described, or some of them, and which of them, and in the manner above stated, or in some other manner, and in what manner did they so hold and become seized of, in and to the same. 10

And whether they did not inherit a part thereof, and the remainder thereof was not conveyed unto them, in fee simple, as tenants in common; or in some other manner, and what manner. And whether the said lots, or tracts, or pieces of land and premises, do not lie adjoining and contiguous to each other, and contain in the whole amount the quantity of acres hereinbefore mentioned; and whether the same is very fertile, and in a high state of cultivation; and whether there are not six distilleries thereon, at the time he took possession thereof, and besides other, and what other buildings and improvements; and whether the said Ralph V. M. Cooper did not take possession of the whole of the said premises, on or about the twentieth day of 20 March, in the year of our Lord one thousand eight hundred and forty-seven, or at some other time, and what time, or of some part of the said premises, and what part thereof, setting out the number of acres of the said premises that he so occupied and possessed, with the kind of land, whether arable or meadow, and the quantity of each kind tilled, whether the same had an orchard thereon, and how much thereof was orchard, and the kind of orchard. And whether your Orator did not purchase the share or interest of Sarah Ann Lee, in and to said premises, about the time hereinbefore stated. And whether Benjamin W. Cooper, Joseph A. Burrough, and Ezra Evans, were not agreed upon as commissioners, to di- 30 vide and value the said premises, as heretofore set out and stated, and whether on or about the sixteenth day of March last, deeds of conveyance were not made between the said Ralph V. M. Cooper and your Orator, and whether the said Ralph, in pursuance of the said agreement, and the report of the said commissioners did not execute unto your Orator, on or about the day and year last aforesaid, a deed for the part of the said premises hereinbefore stated, and set out, and so apportioned to your Orator, by the said commissioners, or some part thereof, and what part thereof. And whether the said Ralph V. M. Cooper has not continued in the possession and occupation of the said premises, so set off by the said commissioners to your Orator, and 40 conveyed to him by the said Ralph, since the execution of the said deed and report of the said commissioners, up to, on or about the time hereinbefore stated, or some part thereof, and what part thereof, or to some other

time, and what time; and whether he has not cultivated the same, and received the rents, issues, and profits thereof, and all the fruit thereon, and whether the said premises were not worth the sum of ten thousand dollars, and of the yearly value of nine hundred dollars and upwards, and whether the said Ralph V. M. Cooper, has not, since he took possession thereof, realized at least that sum from them, or, if not that sum, what sum has he so received and realized yearly, and every year, from the same; and what has been the rents, issues, and profits thereof, during the period he has so possessed and accepted them, setting out the rents, issues, and profits, each year
 10 thereof that he has so possessed and occupied the said premises. And that he may render a full account of all the rents, issues, and profits thereof, from the time he took possession thereof, up to the time he executed the conveyance of the said part unto your Orator, and the rents, issues, and profits of the part so conveyed to your Orator, since the date of the said conveyance; and whether the said distilleries have not been productive, and how much have they produced, and whether the rents, issues, and profits of the premises so allotted unto your Orator, and received by the said Ralph V. M. Cooper, have not been very considerable, and how much, and of what value, and how much grain and produce has been raised thereon, and the
 20 quantity of grass that has been cut, and the value of each since making and executing the said deed as aforesaid. And whether the said Benjamin B. Cooper, did not depart this life on or about the time mentioned, and whether he did not make and publish the said will, above referred to, or some other, and what will, and whether he did not direct in, and by the said will, leave your Orator the said legacy of one hundred dollars, and direct that the said Ralph V. M. Cooper should pay your Orator the said legacy, upon his arriving to the age of twenty-one years, and whether your Orator was not twenty-one years of age, on, or about the time hereinbefore stated, and whether the same is not now due and owing unto your Orator, as aforesaid;
 30 and that he may answer the premises.

And that the said Ralph V. M. Cooper, may be decreed to come to a just and fair account with your Orator, for the rents, issues, and profits of the said tracts or pieces of land and premises, from the time he so took the possession thereof up to the time they were divided between him and your Orator, and a conveyance made and executed unto your Orator by the said Ralph for the part so allotted unto your Orator, and a just and fair account of the rents, issues, and profits, of that part of the said premises conveyed unto your Orator as aforesaid, by the said Ralph V. M. Cooper, since the said conveyance up to the time hereinbefore stated, when he relinquished the
 40 the possession thereof; and for the principal and interest due on account of the said legacy. And that the said Ralph V. M. Cooper, may be decreed to pay unto your Orator, the one full and equal third part of said rents, issues,

and profits, of the said premises from the twelfth day of March, in the year of our Lord one thousand eight hundred and forty-seven, to the twentieth day of March, in the year of our Lord one thousand eight hundred and forty-eight, and the full and equal two-third parts thereof from the last-mentioned date to the time of executing the conveyance unto your Orator, on the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty nine, as aforesaid. And all the rents, issues, and profits thereof, for the part of the said premises so conveyed and released unto your Orator by the said Ralph V. M. Cooper, as aforesaid, since the day and year last aforesaid, when they were so conveyed; and that the said Ralph V. M. 10 Cooper, may also be decreed to pay your Orator the said legacy of one hundred dollars, as aforesaid, and the interest due and to grow due thereon, together with all your Orator's costs and charges in this behalf sustained; and that your Orator may have such other and further relief in the premises as to your Honor may seem proper, and shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered to grant unto your Orator, the most gracious writ of subpœna of the State of New Jersey, issuing out of and under the seal of this Honorable Court, to be directed to the said Ralph V. M. Cooper, therein, and thereby, commanding him on a certain 20 day, and under a certain penalty, therein to be inserted, personally to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to and abide by such order and decree therein, as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your Orator will ever pray, &c.

THOMAS H. DUDLEY,
Solicitor and of Counsel with Complainant.

FILED DECEMBER 24, 1849.

IN CHANCERY OF NEW JERSEY.

BETWEEN
RALPH V. M. COOPER, Defendant,
and
WILLIAM MORRIS COOPER, Complainant. } *Answer, &c.*

The answer of Ralph V. M. Cooper, defendant, to the bill of complaint of William M. Cooper, complainant.

This defendant, saving and reserving to himself, all, and all manner of advantage of exception to the many errors, untruths, uncertainties, and other imperfections in the said bill of complaint contained for answer thereunto, or unto so much thereof as the defendant is advised, is material for to make answer unto, answers and says, that this defendant admits it to be true that the said Joseph K. Van Mater, in said complainant's bill named, was seized in fee and possessed of such land and premises as is stated in said complainant's said bill of complaint; and that the said Joseph K. Van Mater, did sell and convey the same to the said Benjamin B. Cooper and wife, in said bill named at the time, and in such manner, and for and upon the trusts mentioned and set forth in said bill of complaint.

And this defendant admits that the said Benjamin B. Cooper and Sarah his wife, entered into possession of the said land and premises, (but whether immediately after the execution of the said deed or not, this defendant does not know,) and continued to possess and hold the said land and premises until the time stated in said bill, when the said Sarah, wife of the said Benjamin B. Cooper, died—and that the said Benjamin, surviving his said wife, continued to hold and possess said land and premises, from the time of the death of his said wife, until the time of his, the said Benjamin's death, as set forth in said bill of complaint.

And this defendant further admits, that this defendant, the said Sarah Ann Lee, and the said complainant, were the only children of said Benjamin B. Cooper and Sarah Cooper, surviving at the time of their respective deaths, and are their only heirs-at-law, as stated in said bill—and further, that the said complainant was a minor at the time of the death of said Benjamin.

And this defendant further admits that the said land and premises were not conveyed or disposed of in any manner, by either said Benjamin B. Cooper or the said Sarah Cooper, in their life-time.

And this defendant further admits that Mahlon Matlack, in said bill named, did execute unto said complainant, Sarah Ann Lee and this defendant, such deeds of conveyance, of such dates and purport, and for such lands and premises as is set forth and stated in said bill of complaint; and that the said Mahlon Matlack, pretended and declared such deeds to have been made under and by virtue of certain declarations of trust, referred to in said bill of complaint, and in pursuance of the said declarations of trust. 10

But this defendant answering says, that the said deeds of conveyance made by the said Mahlon Matlack to the said complainant, Sarah Ann Lee, and this defendant, as set forth in said bill of complaint, were made without the knowledge or concurrence of this defendant; and this defendant further says that the said Mahlon Matlack, did, by deed of conveyance under his hand and seal, duly executed and acknowledged, on the twenty-seventh day of December, in the year of our Lord one thousand eight hundred and forty-one, grant, bargain, sell, release, convey and confirm unto this defendant and his assigns forever, all and singular, the said land and premises, mentioned and described in the said two several deeds, from said Mahlon Matlack to 20 said complainant, Sarah Ann Lee and this defendant, set forth in said bill of complaint, together with all and singular, the appurtenances thereunto belonging, to have and to hold the said land and premises, unto this defendant forever. In trust, nevertheless, that this defendant, his administrators or assigns, should do all things as he, the said Mahlon Matlack had covenanted to do in said premises, in and by the two certain declarations of trust in the said bill of complaint mentioned and referred to, and in pursuance whereof, the said two deeds from said Mahlon to said complainant, Sarah Ann Lee and this defendant, are alleged in said bill of complaint to have been made; and further, that said deed, from said Mahlon Matlack to this 30 defendant, was duly recorded in the Clerk's office of the county of Gloucester, at Woodbury, in liber B of Deeds, page twenty-five, et cetera—as will more fully and at large appear, in and by the said deed, now in the possession of this defendant, ready to be produced and proven as this Honorable Court may direct, and to which, for greater certainty, this defendant begs leave to refer. And this defendant further says, that the said deeds, in said bill of complaint set forth, made by said Mahlon Matlack, to the said complainant, said Sarah Ann Lee and this defendant, were, and are inoperative and void, and of no effect, they having been executed by the said Mahlon Matlack, after the said deeds from said Mahlon to this defendant, for the same lands and premises, had been duly executed, acknowledged, and recorded in due form of law, as aforesaid.

And this defendant further admits it to be true, that the said Sarah Cooper, did become seized and possessed of a certain tract of land and premises, in said bill of complaint mentioned, by virtue of a deed of conveyance from Ruben Burrough and wife, of such date, purport, and effect, as is stated in said bill of complaint. And, that the said Sarah Cooper died intestate, without having in any manner disposed of the same, leaving her husband surviving her, and that her husband, Benjamin B. Cooper, departed this life about the time stated in said bill of complaint, and without having in any wise disposed of said last mentioned tract of land and premises.

10 And this defendant further admits that the said several tracts or pieces of land in the said bill of complaint mentioned, are contiguous, and lie adjoining to each other, and contain in the whole about one hundred and eighty-eight acres of land, or thereabouts; and that upon the same, at the time of the death of the said Benjamin B. Cooper, there were six distilleries, with the apparatus; a dwelling house, and other improvements: that of said land there is about one hundred acres of arable land, and not one hundred and thirty acres, as stated in said bill of complaint; that there is about eighty acres of meadow and low land, about twenty acres of which is swampy, and unfit for use; that about seventy acres of said arable land are
20 occupied with an apple orchard; and this defendant says, that in the judgment of this defendant, the whole of the said land and premises, with the appurtenances, is worth at the present time, eight thousand dollars, and no more: but that the same are now of much greater value than when the said land and premises came to the possession of this defendant, as will be shown in a subsequent part of this answer.

And this defendant further admits, that the said Sarah Ann Lee, did sell and convey to the said complainant, her one-third part of the said land and premises, but when, or for what consideration, this defendant does not of his own knowledge know.

30 And this defendant says, that it is not true that this defendant ever took possession of all the said tract, or pieces of land and premises, as is charged in said bill of complaint; or that this defendant has ever received the rents, issues, and profits thereof, as charged in said bill. But this defendant answering says, that about the twentieth day of March, in the year of our Lord, one thousand eight hundred and forty-seven, this defendant entered upon and took possession of a part of the said land and premises, with the appurtenances, being about eighty acres of arable land, sixty acres of which were occupied as an apple orchard, with the dwelling house and distilleries; that in addition thereto, this defendant partially occupied in common with
40 the said complainant, about sixty acres of meadow land; that this defendant made no use whatever of said meadow, except occasionally pasturing a few head of cattle thereon: and that at the same time, the said complain-

ant mowed a portion of said meadow land, and used the said meadow land for the pasturing of the cattle and sheep of said complainant; that the said complainant kept upon said meadow, a much greater number of cattle and sheep than defendant did, and so occupied and used said meadow for a greater length of time than defendant; and that the said complainant derived greater benefit and took more than two thirds of the issues and profits arising from the said meadow land, from the said twentieth day of March, eighteen hundred and forty-seven, until the seventh day of November, in the year of our Lord one thousand eight hundred and forty-nine; that during the same period the said complainant had possession of twelve acres of 10 arable land, parcel of said premises, and ploughed and farmed the same, and took the issues and profits thereof.

And this defendant further answering, says, that it is not true, that the said land and premises were in a high state of cultivation when this defendant entered into the possession thereof, as above admitted, but says, that at that time, all the stills belonging to the said distilleries had been used for a great number of years, and had become so worn out and burnt, as to render them all totally unfit for use, some of them were without worms, some without heads, and they were altogether of very little value; that this defendant went to great expense in having the said distilleries repaired and fitted for 20 use, and was unable out of all the stills to fit up and complete any more than two of them for use. That at that time, the said dwelling house upon said land was so out of repair as to be untenable, that the porch or shed extending across the whole of the front of said house had no roof upon it, the shingles being all gone off of the same leaving nothing but bare rafters and decayed laths, had no floor upon it, and was also otherwise greatly dilapidated; that the roof of the dwelling house itself was old, and leaked so badly that the water beat through during every rain, and during heavy rains to such an extent as to seriously damage the ceilings and plastering of the walls of the rooms of said house; that the garret of the kitchen part of said 30 house had been used for some eight years next previous to the said time of defendant's taking possession thereof, as a pigeon house, and was in a very filthy condition; that the roof of the said kitchen was out of repair, open and leaked, and whenever it rained the water ran through the roof and stained and injured the plastering of said kitchen walls and ceiling, and made the same so filthy as to render the kitchen totally unfit for use; and this defendant was compelled to have said dwelling house, kitchen and porch, roofed anew, and other repairs done to said dwelling house, at great expense and outlay of money and time, and personal care and labor, in order to render the same tenable; that a considerable part of the roof was off of one of 40 the barns on said premises, and the said barns were greatly out of repair in other respects, and this defendant caused the same to be repaired, and put

in suitable condition to be used, at a great expense and outlay of time, labor and money.

And this defendant further answering, says, that from about the twentieth day of March, in the year of our Lord one thousand eight hundred and thirty-eight, to the twentieth day of March, in the year of our Lord one thousand eight hundred and forty six, the said complainant and the said Sarah Ann Lee, had possession of and rented the whole of the said tract or pieces of land and premises, and took, received and enjoyed the rents, issues and profits thereof, and as this defendant is informed and believes, appropriated the whole thereof, to their own use and benefit; that during the whole of said period of nine years, this defendant received no portion of the rents, issues and profits of said premises, nor has he at any time since received any portion of the rents, issues and profits that accrued and arose from and out of said premises, during said period of nine years; that one Joseph Fifield, as this defendant has been informed, during a portion of said period, claimed to be entitled to a part of said rents, issues, and profits; but whether the said Joseph Fifield ever received any part thereof, this defendant does not know, and this defendant expressly says, that he, this defendant, is entitled to be allowed the one-third part of the said rents, issues, and profits that accrued during said nine years. And this defendant further says, that when the said complainant and Sarah Ann Lee, had possession of said premises, in the year eighteen hundred and thirty-eight, aforesaid, they leased and rented the same for the yearly rent, as this defendant is informed and believes, of one thousand one hundred dollars—that they took everything off the place, and put nothing on in repairs or by way of improvement, and rented said premises in such manner, that the said premises were farmed too hard, and the land became therefrom gradually exhausted and poor, and the improvements and buildings thereon out of repair, by reason whereof, they were compelled to lessen the rent thereof, from time to time; that for the year one thousand eight hundred and forty-six, the year next preceding that in which this defendant entered upon said premises as aforesaid, the said land and premises were so reduced in value, that they were rented and leased to one Robert Howey, for the yearly rent of two hundred and eighty dollars. That at the expiration of his year's tenancy, on or about the twentieth day of March, in the year of our Lord, one thousand eight hundred and forty-seven, the said Robert Howey abandoned the said land and premises, and refused to continue any longer thereon, notwithstanding the said complainant, as this defendant is informed and believes, offered to the said Robert Howey, that if he would continue on the said premises, he might remain there rent free. And this defendant further says, that he received his share of the said rent, from said Harvey, for the year last aforesaid.

And this defendant further answering says, that after the said Harvey

abandoned said premises, this defendant, about the twentieth day of March, eighteen hundred and forty-seven, aforesaid, moved into and took possession of a portion thereof as above admitted, that this defendant found said premises almost entirely without fences, and mostly out, as a common, that this defendant caused to be put up more than three hundred panels of post and rail fence around the outside lines of said land, and expended a large amount of money, care, time, and labor, in purchasing and procuring the necessary material for the same, and in having necessary fences erected upon said

land : and this defendant further says, that he found the arable land, which he took possession of, as aforesaid, so very poor and so much exhausted, that it would not produce crops sufficient to pay for the planting and cultivation thereof; and this defendant expended large sums of money in purchasing manure, lime, and ashes, which he put upon the said lands and premises to improve the same, and this defendant expressly says, that he expended at least two thousand dollars in necessary repairs and improvements, and in cultivating said land, buildings, and premises, as aforesaid, between the twentieth day of March, eighteen hundred and forty-seven, aforesaid, and the seventh day of November, in the year of our Lord one thousand eight hundred and forty-nine, more than this defendant has ever received or derived from the rents, issues, and profits arising from and out of said land and premises during that period of time. 10

And this defendant further answering says, that the said complainants and this defendant did enter into an agreement to divide the said land and premises, of such date, purport and effect, as is set forth in the said bill of complaint : and this defendant expressly says, that this defendant was the first to propose to said complainant the division of said property, between them : and this defendant further admits the commissioners named in said bill were agreed upon by said agreement, and that they met and valued the said premises as is stated in said bill of complaint, and this defendant says, that at the time of such valuation, the said premises had been greatly improved and increased in value, as above herein stated by this defendant, at his own expense : and this defendant further admits, that the said commissioners made their report or award in writing of like date, purport and effect, as is stated in said bill of complaint : and this defendant further answering, admits, that in pursuance of said agreement, and report of the said commissioners, the said complainant and this defendant, on or about the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-nine, did execute deeds to each other, the said complainant releasing all his claim and interest in that part of said premises, assigned to this defendant, and this defendant releasing all his claim and interest in that part of the said premises assigned to said complainant, and the said deeds were duly acknowledged before Richard W. Howell, one of the Masters of this 30

Honorable Court, on or about the day last aforesaid : but this defendant expressly denies that the said deeds were exchanged or delivered by the said complainant, or this defendant, at that time, as is stated in said bill of complaint, and this defendant says, that he, this defendant, was then and was, at all times after the making of said deeds, ready and willing to exchange the same, and comply fully with the said agreement and report of said commissioners ; yet the said complainant, after the execution of the said deeds refused to exchange them, and refused to deliver up unto this defendant the deed of said complainant to this defendant aforesaid, and the
 10 said deeds, were left in the custody of the said Richard W. Howell, where they remained until the seventh day of November, in the year of our Lord one thousand eight hundred and forty-nine, that during the whole of that time the said complainant refused to exchange said deeds, and to comply with said report of said commissioners until the day last aforesaid, when the said complainant consented to a delivery of the deeds, and they were then exchanged.

And this defendant further says, that immediately after the said commissioners had made their said report of the division of said land and premises, between the said complainant and this defendant, in the month of
 20 November, in the year of our Lord one thousand eight hundred and forty-eight, the said complainant entered into the possession of all that portion of said land and premises which had been by the said commissioners, assigned, allotted and set off to the said complainant, as is mentioned in said bill of complaint, and held possession of the same from that time until the present time, that this defendant has not at any time since the making of said report of and by said commissioners as aforesaid, had possession of any portion of said land and premises so assigned to said complainant as aforesaid, with the exception that about the month of September, in the year of our Lord one thousand eight hundred and forty-nine, this defendant finding that the
 30 said complainant persisted in refusing to exchange deeds of release in pursuance of the said report and award of said commissioners, did enter upon a portion of the said lands and premises so assigned to said complainant as aforesaid, and gathered therefrom some apples, which were of a very inferior quality and of very small value, that with this exception this defendant has not at any time, since the said month of November, eighteen hundred and forty-eight, had any possession of that portion of the said lands and premises, so set off and assigned to said complainant as aforesaid, nor received any of the rents, issues or profits thereof and therefrom arising and issuing. And this defendant denies that the said land and premises, of which this defend-
 40 ant took possession as aforesaid, were of the yearly value of nine hundred dollars, as is stated in said bill of complaint, and says that this defendant expended in repairing and cultivating said premises large sums of money

over and above all the issues and profits arising from the same, as is herein above stated. And this defendant denies that said land and premises would or could have been rented for nine hundred dollars a year, and says that in the judgment of this defendant the said premises could not have been rented to any responsible farmer at any rent at all.

And this defendant further answering says, that the defendant is informed and believes that the said Benjamin W. Cooper, Joseph A. Burroughs and Ezra Evans, the said commissioners aforesaid, in making a valuation or appraisement of the said lands and premises, preparatory to the dividing of the same between said complainant and defendant, as mentioned in said bill, ¹⁰ valued and appraised the various and extensive improvements made by this defendant in, to and upon said lands and premises as aforesaid, with the same, and made no allowance to this defendant therefor, and that by reason thereof the said land and premises were appraised at a much higher value than they should have been, and that such valuation inured to the benefit of said complainant in said division made as aforesaid, at the same time that it compelled this defendant to allow and pay to said complainant for the said improvements and increased value of said land and premises which had been made at the expense of this defendant as aforesaid.

And this defendant, further answering, says, that he admits it to be true ²⁰ that the last will and testament of the said Benjamin B. Cooper was proved as stated in the said bill of complaint, and that in and by the said will, among other things, it is provided and bequeathed as is stated and set forth in said bill of complaint. And this defendant further admits that the said complainant attained the age of twenty-one years on the day and time mentioned in said bill of complaint. But this defendant further says that on the twenty-third day of August, in the year of our Lord one thousand eight hundred and forty-seven, this defendant had a full and final settlement with the said complainant, as the former guardian of said complainant, by virtue of said appointment in said will of said Benjamin B. Cooper, deceased, ³⁰ and that the said complainant, on the day and year last aforesaid, in consideration of said final settlement, and of the sum of two hundred and twenty-five dollars, to the said complainant paid by this defendant, did execute under his hand and seal a full release and discharge to this defendant of and from all actions, suits, demands and claims whatsoever, which the said complainant then had, ever had, or could have against this defendant, as his (said complainant's) guardian; which said release and discharge was duly acknowledged by the said complainant, and recorded in the office of the Surrogate of the County of Gloucester, in Book C. of Receipts and Discharges, folio 25, as in and by the said deed of release, now in the possession of this defendant, and ready to be produced and proven, as this Honorable Court shall direct, will more fully and at large appear, and to which, ⁴⁰ for greater certainty, this defendant begs leave to refer. And this defend-

ant further answering, says, that this defendant took the benefit of the bankrupt law of the United States, and on the sixteenth day of August, in the year of our Lord one thousand eight hundred and forty-two, was declared a bankrupt, and discharged by the District Court of the United States, for the District of New Jersey, from all his debts, under and by virtue of the Act of the Congress of the United States of America, entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved August 19, 1841, as in and by said certificate of discharge, under the seal of said Court, now in the possession of this defendant, and ready

10 to be produced and proven, as this Honorable Court may direct, will more fully and at large appear. And this defendant further says, that by reason of said discharge under said Act of Congress aforesaid, the said complainant is barred and precluded from demanding of this defendant said one hundred dollars, in said bill of complaint demanded, or any part thereof. And this defendant, further answering, says, that he is ready and willing to come to a just and fair account with the said claimant for the rents, issues and profits of the said tract or piece of land and premises, for the time they were in the possession of this defendant, as aforesaid. And this defendant has never refused to come to such account.

20 And this defendant says that the said complainant has received from said lands, tenements and premises, a larger portion of the rents, issues, and profits, than he has been, or was entitled to receive; and further, that this defendant is not in anywise indebted to said complainant, for any part or portion of the same.

And without this, that any other matter or thing in the complainant's said bill of complaint, contained, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true; and this defendant prays to be hence dismissed, with his reasonable costs and charges, in this behalf most wrongfully sustained.

30

THOMAS W. MULFORD,

*Solicitor and of counsel with defendant.**New Jersey, ss.*

Ralph V. M. Cooper, the above-named defendant, being duly sworn, according to law, on his oath, says, that the matters and things set forth in the above answer, so far as they relate to his own acts, are true, and so far as relate to the acts of others, he believes them to be true.

RALPH V. M. COOPER.

Sworn and subscribed, this 16th day
of December, A. D. 1850.

RICHARD W. HOWELL,
Master in Chancery.

[A true copy, J. VAN ARSDALE, *Clerk.*]

FILED DECEMBER 2, 1850.

IN CHANCERY OF NEW JERSEY.

BETWEEN
WILLIAM MORRIS COOPER, Complainant, }
AND } *Bill, &c.,*
RALPH V. M. COOPER, Defendant. } *Replication.*

THIS Repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer for Replication thereunto, saith, that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto, by this Repliant, without that, that any other matter or thing whatsoever, in the said answer, contained material or effectual in the law to be replied unto, confessed and avowed, traversed or denied, is untrue; all which matters and things this Repliant is and will be ready to aver and prove as this Honorable Court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

THOMAS H. DUDLEY,
Solicitor and of Counsel with Complainant.

FILED DECEMBER 24, 1850.

TESTIMONY TAKEN BEFORE EXAMINER.

Examination of witnesses produced and sworn, or affirmed, in a cause depending in a Court of Chancery of New Jersey, wherein William Morris Cooper is complainant, and Ralph V. M. Cooper is defendant, taken at the office of William D. Cooper, in the City of Camden, State of New Jersey, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and fifty-one, before William D. Cooper, one of the Masters and Examiners of the said Court, in the presence of Thomas H. Dudley, Esq., Solicitor, and Abraham Browning, Esq., of Counsel for the
10 said complainant, and Thomas W. Mulford, Esq., Solicitor and Counsel for said defendant.

The complainant, on his part, produces and offers a deed from Joseph R. Van Mater, and Elizabeth, his wife, to Benj. B. Cooper, and Sarah, his wife, dated September 3d, A. D. 1800, recorded in the Clerk's Office of Gloucester county, in liber E. E. of Deeds, folio 409, &c., for thirty acres and twenty two hundredths of land, which deed is marked by me, Exhibit A., on the part of complainant.

Complainant also offers a deed from Mahlon Matlack to Ralph V. M. Cooper, William Morris Cooper, and Sarah Ann Lee, wife of Francis P.
20 Lee, dated July 29, A. D. 1845, recorded at Camden, in the Clerk's Office of Camden county, in liber B. of Deeds, folio 399, &c., which deed is marked by me, Exhibit B., on part of complainant.

Complainant also produces and offers a deed from Mahlon Matlack to Ralph V. M. Cooper, William Morris Cooper, and Sarah Ann Lee, wife of Francis P. Lee, dated March 10, A. D. 1846, recorded in the Clerk's Office of Camden county, at Camden, in liber C. of Deeds, folio 228, &c, marked by me, Exhibit C, on part of complainant.

Complainant also produces and offers a deed from Sarah Ann Lee to William Morris Cooper, dated July 25, A. D. 1848, recorded in the Clerk's
30 Office of Camden county, at Camden, in book I. of Deeds, page 48, &c., which said deed is marked by me, Exhibit D., on part of complainant.

Complainant also produces and offers a deed from Ralph V. M. Cooper

and Louisa F., his wife, to William Morris Cooper, dated March 16th, 1949, and recorded in the Clerk's Office of Camden county, in book J. of Deeds, page 394, &c., which deed is marked by me, Exhibit E., on part of complainant.

Complainant also produces and offers a certified copy of the last will and testament of Benjamin B. Cooper, deceased, dated December 16, A. D. 1834. Also, a codicil to said will, dated December 25, A. D. 1834, which is duly certified by Charles G. McChesey, Register of the Prerogative Office of the State of New Jersey, which said certified copy is marked by me, Exhibit F., on the part of the complainant. 10

Complainant also produces and offers an award, made by Benjamin W. Cooper, Joseph A. Burrough, and Ezra Evans, dated the eleventh month, first, A. D. 1848, with the acceptance annexed, signed by Ralph V. M. Cooper and William Morris Cooper, which said award is marked by me, exhibit G., on the part of the complainant.

SAMUEL NICHOLSON, of the township of Newton, and county of Camden, a witness produced on the part of the complainant, alleging himself conscientiously scrupulous of taking an oath, being duly affirmed, says:—Am about fifty-seven years old, am somewhat acquainted with the Matlack farm 20 in Delaware township, have not been on the farm lately. Was one of the executors of the will of Benjamin B. Cooper, deceased. I was agent of Francis F. Lee and wife, who had one-third interest of the farm. The wife's name is Sarah Ann, she is the daughter of Benjamin B. Cooper, deceased. The farm was let out on shares before I had anything to do with it, to Robert Howey. I was appointed agent of Sarah Ann Lee, about 1840, am not certain about the time; I think I was her agent six years, the farm continued to be rented on shares during that time, except the last year. The last year it was rented, Sarah Ann Lee's share was one hundred dollars. Robert Howey was the tenant all the time I had anything to do with 30 it. I can't tell exactly what her share was during the whole time; it averaged between one hundred and one hundred and twenty dollars a year. I cannot state whether Mr. Howey's lease included the Indian orchard field; one year the Indian orchard field was rented to him for fifteen dollars. I had nothing to do with either of the other shares, I can't say who took the profits of the other shares. I think my agency ceased in the year of 1846, it might perhaps have been in 1845. Benjamin W. Cooper became agent of Sarah Ann Lee, after me.

Cross-Examined by T. W. Mulford, Esq.—[Received.]

SAMUEL NICHOLSON.

Affirmed and subscribed before me January }
27, A. D. 1851.

W. D. COOPER, M. C. }

ROBERT HOWEY, of the Township of Deptford, and county of Gloucester, alleging himself scrupulous of taking an oath, being duly affirmed on the part of the complainant, says : I rented the Matlack farm one year; I disremember the exact year; I think it was the last year but one before I left; I think I left on the 25th day of March, 1847; I was on the Matlack farm eight years; I think, perhaps, it was nine years. Ralph V. M. Cooper moved on the farm the day I moved out; when I left there were five stills on the farm, but they all leaked except three; I never used but three. The year I rented the farm I paid three hundred dollars rent; it did not include
 10 the Indian orchard; I gave fifteen dollars for it—including the meadow it contained fifteen acres; I don't recollect to where I paid the fifteen dollars, whether to Samuel Nicholson or not. The rent for that year was three hundred and fifteen dollars (\$315.) The first year I was there the farm was rented to me on shares. The farm was rented to me the first year by Dr. Fifield and Ralph V. M. Cooper; I paid the rent to Dr. Fifield and Richard W. Howell that year; can't recollect whether I paid to any one else. The subsequent years I paid to Samuel Nicholson, Howell and Dr. Fifield; one third to each; by Dr. Fifield I mean Ralph V. M. Cooper's father-in-law. I paid Mr. Howell as the guardian for William Morris
 20 Cooper, and Samuel Nicholson as the agent of Sarah Ann Lee, and paid Dr. Fifield as the claimant of one-third of the property under Ralph V. M. Cooper; when I rented on shares the average profits were about three hundred dollars (\$300;) when I rented on shares I did not have the Indian orchard field. There is a small tenant house on the farm included in my lease. I do not know who had the Indian orchard field during the time I had the farm on shares. When I moved out R. V. M. Cooper moved in the house; I do not know what part of the place he took poss

Cross examined by T. W. Mulford, Solicitor of Defendant :—

I don't recollect in what year I first moved on the farm; I was to pay
 30 one-half of the produce of the farm for rent; I can't say how many years I paid a portion of the rent to Dr. Fifield; it must have been four or five years, if not longer. The farm produced more the first year than it did afterwards. That is what makes me say the average was three hundred dollars (\$300;) it decreased in value yearly during the time I had it; because there was no manure put on it, except what I made on the farm; I did not make a great deal; I made as much as I could. There was nothing of repairs put on the farm while I was there, except the fence down the lane by Dr. Fifield, and that began to tumble down and the posts to rotten before I left, and was pretty much at common; the lane fence that runs down back
 40 of the barn was all down bodily. The fencing on the farm was principally post and rail, and the posts generally rottened down. I had great difficulty

with my cattle to keep them any where on the farm, the fences were so generally down. The three stills I could make use of were very much worn and were poorish stills, one of them particularly; there was but one of them fit to run whiskey through. The dwelling house was in poor order when I left it—as for the kitenen we never made any use of it except to throw wood in occasionally, it was all it was fit for; the roof of the whole house was very bad; the shed roof was full of holes you could creep through; the whole roof was very old; when it rained, in some places in the main house, we had to move the furniture to keep it dry. The pigeons used the room over the kitchen; they could come in it through the roof or the weather 10 boarding: the floor was all gone in the kitchen. The barn was pretty good, but the hay-house and cow-house was pretty much to pieces—the frame was rotten and part of it was ready to fall down. There was none of the roof of the barn off; the hay-house roof blew off; I put it on; I can't say it blew off again; I knew it was pretty much to pieces. I do not recollect that Dr. Fifield ever told me he claimed under a sheriff's deed; I always understood that he did; I think I have some receipts for money I paid to them for rent; sometimes I did not take receipts; when I got any thing worth while I took the money around and divided it among them. The land was very much exhausted and worn out when I left it. In the 20 condition it was when I left it, with the fences down, I consider the farm worth two hundred and seventy-five dollars a year, without the Indian orchard: I mean to say I would have given two hundred and seventy-five dollars a year, if I had wanted the farm, in the condition it was then; I don't recollect how much was the largest rent I ever paid any one year; I don't think I ever paid as much as four hundred dollars (\$400) any one year.

Resumed in chief, by T. H. Dudley:—

A large proportion of the farm was and is in an apple orchard; it bore very poor whilst I was there; I had but one good crop whilst I was there; 30 a part of the orchard was quite old, and in part middle-aged; there was a part of the old, they told me to cut down some trees that were dying and decayed; about eight or ten acres of the orchard was old; I can't say how many acres were middle aged—between twenty-five and thirty, I suppose; there were young trees set in the old part of the orchard; I considered them worse than the old, they were good for nothing; the barrack field was included in the farm as I occupied it.

Again cross-examined by T. W. Mulford, Esq.:

In the part of the orchard I called middle-aged, some of the trees were pretty good; the others were poorish; by poorish I mean the trees were on 40

the decline; they did bear as others did; some of them were dying; the orchard generally suffered very much from the want of manure; I did not consider the orchard of any material advantage; I would rather have had the farm without the orchard; I should consider the farm would be worth more to me without the orchard than with it, the way it bore whilst I was there.

ROBERT HOWEY.

Sworn and subscribed before me, this }
 27th day of January, A. D. 1851. }
 10 W. D. COOPER, M. C. }

ELZIE POLK, of the township of Delaware, and county of Camden, a witness produced and sworn on the part of the complainant, says:—I am about the age of twenty-five years; I purchased a still of Ralph V. M. Cooper two years ago next February; I gave him forty dollars for it; it was one of the stills on the Matlack farm.

Cross-examined by T. W. Mulford, for defendant:—

I went to the Matlack farm to get the still; when I bargained for it, it was set up in the wall of the still-house; I can't say whether or not it had been recently set there; (Ralph V. M. Cooper was living on the farm
 20 at the time I bargained for it;) all I know about it, it was in the still-house when I bought it.

ELZIE POLK, his ✕ mark.

Sworn and subscribed to before me, this }
 27th day of January, A. D. 1851, }
 W. D. COOPER, M. C. }

AARON MOORE, of the township of Delaware, and county of Camden, a witness produced on the part of the complainant, being duly affirmed, he alleging himself conscientiously scrupulous of taking oath, saith:—I know the parties, complainant and defendant, in this cause; I live adjoining the
 30 Indian orchard, which joins the farm on which the defendant, Ralph V. M. Cooper, now lives; I knew something near the lines of the farm where Ralph V. M. Cooper now lives; he moved there March, 1847; I suppose he took possession of the farm then; he has lived there ever since; he did not farm the first year as I know of; I saw him put up some fence there; I cannot say what proportion of the farm he farmed the first year; I can't say what proportion he occupied the first year; his cattle run over the fields adjoining me occasionally, in fact the fences were down, and my cattle and everybody else's in the neighborhood went there; I don't know of anybody
 40 else but Ralph V. M. Cooper having possession of any part of the farm the first year; if anybody else had had possession of the part near me, I should have been likely to have known it; if they had been on the other

part I might not have seen them—on the other part of the farm away from me; Ralph plowed and planted the first year; Ralph had corn and potatoes and truck on the part where Morris Cooper has built his new house, and between there and the road he sowed oats in part of the barrack lot the first year; the cattle got in and eat up the greater part of them; Ralph continued in the possession of the farm the next year; as far as I knew he was there in possession and enjoying the farm, except the Indian orchard field. The Indian orchard field was not farmed the first year. The next year James H. Lord put the Indian orchard in corn; there was buckwheat in the lot the same year. Ralph V. M. Cooper, has here just told me he 10 planted it there. I knew the part of the farm that has been set off by the commissioners, Benjamin W. Cooper, Joseph A. Burrough, and Ezra Evans, to William Morris Cooper and Ralph V. M. Cooper. I knew the division lines between the two parts—they both told me of them. I have no knowledge of any apples being gathered from the Indian orchard the first year. No one farmed the Indian orchard field in the summer of 1849. Morris had it plowed in the fall. There were no apples gathered from it that year that I know of.

Examination of witnesses adjourned by consent of parties to January 28th, 1851, at 9 o'clock, A. M. 20

Tuesday, January 28, 1851. Examination of Aaron Moore, being resumed, witness saith: I am one of the chosen Freeholders of Camden County. The house which Morris Cooper built is on the part of the land set off by the commissioners to him. The second year Ralph V. M. Cooper was on the farm, the Indian orchard field was planted in corn. I believe the remainder of the farm was in the occupation of Ralph, the second year he was there.

Cross examined by T. W. Mulford, for defendant.

In the year 1847 and 1848, Ralph had the whole place in his possession—the low lands or meadows, during those years, were used by Ralph for pas- 30 turing only. I never saw him mowing there, for very little grew on them. I have no knowledge of Morris Cooper's sheep or cattle pasturing there during the years 1847 or 1848; during those years these meadows were part of the time inclosed, and part of the time they were laid out in common; when Ralph moved there, the dwelling house looked as if it was in very poor condition, though I never was in it until after Ralph moved there. He moved there in March, and I was not in it till October. Ralph, during the time he had possession previous to the division thereof between him and Morris, made considerable improvements to the house and barn; particularly to the house; he new roofed the house; he repaired the kitchen so as to make it tenantable. 40

I did not know whether the house was tenantable when Ralph moved there or not; I did not examine particularly. The land I should think was poor when he moved there; prior to 1841, I was not acquainted with the place; I had heard it was a good place; for the next six years after that it was going down hill all the time. In 1847, Ralph began to improve it; in passing and re-passing, I could see Ralph's farming operations generally along the road. There were two roads, one passing along it, and the other going right through it. The land was such, the majority of it, when Ralph mowed there, that the crops produced there would be bad. Ralph had to put a
10 great deal of the fence before he could occupy the farm.

Question by Mr. Mulford :

Did the crops which you saw growing on the farm during the time Ralph had possession of it, and prior to the division of it, in your judgment yield an equivalent to the cost of cultivating it? Objected to by Mr. Dudley.

Answer. I should suppose that they did take them generally. There was one crop of rye that did not pay him anything, but such is the fate of all farmers; I have planted rye on good farms and have not got any thing in return for it. I knew that Morris Cooper, for a short time during the fall of 1849, I should suppose in September or October, had some sheep pas-
20 turing in the indian orchard field; I never observed Ralph attempting to cultivate the barrack field but the once, when he sowed oats. I don't know how much of it exactly was fit to cultivate; not over two acres; I should think the two acres are two knolls; the rest is low land; Morris has got it ditched now; I should suppose in the barrack lot there are some ten acres.

Examination in chief resumed :—

This barrack lot is part of the ground that has been set off by the commissioners to Morris Cooper; although Ralph never attempted to cultivate the barrack lot but the once, yet he had possession of it as of the other parts of the farm in 1847 and 1848; his cattle run over it. There is a variety
30 of land in that farm, there is a part naturally good, and some very poor naturally cold, wet, springy ground. When I spoke of the farm being partly out at common I meant the fence in some places down and in some up. I consider that a commons where the cattle have free ingress and regress. I suppose the house was tenantable, as Howey moved out and Ralph moved in it. The road that passed through the farm was the road I went to Mill when I went to Howey's. I suppose any house to be tenantable in which a man can live. We had no apples in the neighborhood in 1849. I saw Ralph drive Morris Cooper's sheep from the Indian orchard in September or October, 1849. That was the particular time I referred to in my cross-exa-

mination when I saw the sheep there; I saw the sheep there several times previous, but never afterwards.

AARON MOORE.

Affirmed and Subscribed before me this }
 28th day of January, 1851. }
 W. D. COOPER, M. C. }

The complainant produces and offers on his part a certified copy of a deed from Joshua P. Browning, Esq., Sheriff of Gloucester county, to Abraham Browning, dated October 6th, 1838, recorded in the Clerk's Office of Gloucester county, in book V. 3 of deeds, page 233, &c., which said deed is marked 10 by me, Exhibit H., on the part of the complainant.

The complainant also produces and offers on his part a certified copy of a deed from Abraham Browning to Dr. Joseph Fifield, dated April 19, 1839, and recorded in the Clerk's Office of Gloucester county, in book V. 3 of deeds, page 241, &c., which said deed is marked by me, Exhibit I., on the part of the complainant.

The complainant also produces and offers on his part a certified copy of a deed from Joshua P. Browning, Sheriff of Gloucester county, to Joseph Fifield, dated October 6, A. D. 1838, and recorded in the Clerk's Office of Gloucester county, in book U. 3 of deeds, page 194, &c., which said deed is 20 marked by me, Exhibit I., on the part of the complainant.

The complainant also produces and offers on his part a certified copy of a deed from Joseph Fifield, M. D., to Ralph V. M. Cooper, dated April 17th, A. D. 1845, recorded in the Clerk's Office of Camden county, in book A. of deeds, page 575, &c., which said certified copy is marked by me, Exhibit K., on part of complainant.

The certified copies of the Sheriff's deeds, marked as above Exhibits H. and I., on part of complainant, objected to on part of defendant.

ASA GASKILL, of the township of Delaware, in the county of Camden, a witness produced, and affirmed on the part of the complainant, he alleging 30 himself conscientiously scrupulous of taking an oath, saith:—Am about forty-five years of age, am a farmer; I know the Matlack farm where Ralph V. M. Cooper now lives, have known it for some years, but for the last two years have lived along side of it. I knew the parties, complainant and defendant, in this cause. I knew the fact of the farm being divided between the plaintiff and defendant; I put up the line fence of division between them; it was put up in the spring of 1850. I am acquainted with that part of the farm set off to Morris Cooper, embracing about one hundred and three acres, including the Indian orchard and barrack fields. I know the 40 part set off to Ralph V. M. Cooper, containing something like eighty acres. I lived on Morris Cooper's other farm in the year 1849. Ralph V. M. Cooper occupied the whole Matlack farm in 1849; the part that is set off to

Ralph as well as the part set off to Morris, as well as the Indian orchard field and barrack field as the rest of the farm. I saw Ralph V. M. Cooper's team in the fall of 1849, carting apples out of the Indian orchard: I suppose about the month of September, 1849. I saw barrels there in his wagon; I suppose he had them took there. I saw R. V. M. Cooper drive W. Morris Cooper's sheep out of the Indian orchard field in the fall of 1849, about October, I suppose. He said he had possession of the lot and wanted to keep it as long as he could, and that the sheep had no right there.

Morris's sheep had been there only one or two nights prior to this time.

10 Cross-examined by T. W. Mulford, Esq., for defendant:—

I live on the farm of the complainant, W. Morris Cooper, and did in the years 1849 and 1850; during part of the year 1849, I pastured my cattle on that part of the Matlack farm that has been set off to Morris Cooper; I think I had sixteen head of cattle pasturing there; I think Morris Cooper had none besides those pasturing there; he owned half of the sixteen I guess; I had no more than sixteen head there at any time; I never had them in the Indian orchard field that year; I pastured them in the barrack field; there was the main part of the pasture; I pastured the whole from the division line between the parties to the road. Morris Cooper ploughed
 20 the Indian orchard late in the fall of 1849, near the winter. Three cows were all the cattle Ralph kept on his farm in 1849. When Ralph undertook to drive out Morris's sheep out of the Indian orchard in the fall of 1849, I dont think he drove them all out. Ralph was trying to drive them out and Morris to keep them in; I dont recollect whether Morris drove those that were out back again that day or not; they were not in after that day; they were only in there two or three days and nights altogether; they took them away because the dogs got in and killed some of them; they were appraising them that day; they thought it was not safe to leave them so far from home. When Ralph made the declaration I have spoken about, keeping possession
 30 of the property, he said it was undivided, and he wanted to keep possession until the matter was settled; I did not hear him make any complaint about not having a deed, any more than what was spoken of before; I think it was Ralph's Dutchman, Henry, that was with his team in the orchard. I had some rushes and course stuff cut on the barrack field, in the summer of 1849. The part that was set off to Morris, was divided in three pieces in 1849; this does not include the Indian orchard. In the fences separating these 3 fields, I made gaps, so that the cattle could go from the one to the other, without interruption. I suppose there were about eighty acres in the three fields I pastured, in 1849.

40 Examination in chief, resumed by T. H. Dudley:—

I heard Ralph V. M. Cooper, during the summer of 1849, talk repeatedly

about keeping possession of the whole place. I did not turn the cattle of which I was speaking of, on the part assigned, that was assigned to Ralph Morris, did nothing on that part that was set off to Ralph. Morris wanted me to take possession and plough of some of that part of the that was set off to him. I objected to it, and did not do it, because Ralph told me he would keep possession of it, and I would get in some difficulty. I cut the rushes and rough stuff, I spoke of, to make the pasture better. I recollect Ralph telling Morris, when he turned the sheep out of the Indian orchard, that he had no business there. The sixteen head of cattle were not on the part set off to Morris, during the whole of the summer of 1849, they were there off¹⁰ and on,—part of the time they were on the farm where I lived. When they would eat up all the pasture there, I would then turn them on the other. My cattle, the sixteen head, in 1849, did not run on the Indian field at all. Ralph V. M. Cooper's cattle run there all the time—on the part set off to Morris, I mean.

Cross-examination resumed, by T. W. Mulford :—

In these conversations with Ralph, about keeping possession of the farm, he always said he wanted to keep possession, until the matter of the division between him and the complainant was settled.

ASA GASKILL. 20

Affirmed and subscribed before me,
this 28th day of January, A. D. 1851,
WILLIAM D. COOPER, M. C. }

Complainant also produces and offers on his part, a certain draught or map, made by William Collins, dated January 17, 1850, which said draught or map is marked by me. Exhibit L. on the part of complainant.

Exhibit objected to by T. W. Mulford, counsel of defendant.

The further examination of witnesses in this cause, by consent of counsel of the parties, adjourned to Tuesday, February 11th, 1851, at 9 o'clock, A. M., at my office, in Camden. 30

W. D. COOPER, M. C.

Tuesday, February 11th, 1851, by consent of the counsel of parties, further examination of witnesses adjourned till Friday, February 14th, 1851, at 9 o'clock, A. M.

W. D. COOPER, M. C.

Friday, February 14th, 1851. By consent of parties and counsel for the examination of witnesses, postponed until further notice, W. Morris Cooper, the complainant, admitted by defendant to be of the age of 21 years, in December, 1844.

Complainant produces and exhibits on his part a certified copy of deed, 40

from Ruben Burrough and wife, to Sarah Cooper, dated 29, April, A. D. 1819, recorded in the Clerk's office of Gloucester county, in book D. D., page 505, which said deed is marked by me, exhibit M, on the part of the complainant.

Complainant also produces and offers in evidence, a deed from Ralph V. M. Cooper, to William Morris Cooper, dated 26th of October, A. D. 1846, recorded in the Clerk's office of Camden county, in book D. page 133, &c., which said deed is marked by me, Exhibit N, on the part of complainant.

Complainant also produces and offers in evidence, a deed from Ralph V. M. Cooper to Sarah Ann Lee, dated 26th October, 1846, recorded in the Clerk's office of Camden county, in book D. of deeds, page 131, &c., which said deed is marked by me, Exhibit O, on the part of complainant.

Asa Gaskill, a witness before produced on part of complainant, being again called and examined on the part of complainant, says:—I have had a conversation with the defendant in this cause, since this suit was commenced. Complainant was present at the same time. He told complainant that all this suit cost him, he calculated to make off of him. We were, also, all there together, in a carriage, at another time. He then said: Morris, all this suit costs me I will make off of you—he said it over several times. I also went home with defendant in the stage, at another time; he then also said, he was going to make off of the complainant all this suit cost him.

Cross-examined by the defendant:—

In these several conversations, defendant always said he did not owe complainant anything, and all that it cost him he would make off of him.

ASA GASKILL.

Subscribed before me, this 14th day
of March, A. D. 1851.
W. D. COOPER, M. C.

JOHN T. COLES, a witness produced and sworn on the part of complainant, says:—I live in Camden county; am about thirty years of age; I live adjoining the Matlack farm; I knew Ralph V. M. Cooper, the defendant in this case; I recollect Robert Howey living on the Matlack farm; I believe Ralph V. M. Cooper moved on the Matlack farm when Howey moved away; he has continued to live there ever since. Ralph V. M. Cooper moved there the same time Howey moved out; our farm adjoins a part of the Matlack farm; if I remember right Ralph V. M. Cooper farmed the orchard adjoining us the spring he moved there. It was in the spring of 1846, 1847, or 1848, that he moved there; I don't recollect particularly, but it was the same spring Howey moved away. I put up forty or fifty parcel of post and rail fence for Morris, on the Matlack farm; it was their part of the line fence; the rails were all old; I believe the posts mostly new; our part of the line fence was up; Morris Cooper found the new

posts; Ralph V. M. Cooper neglected to put up the fence. It was the agreement between Morris Cooper and ourselves that we should put the fence up. Ralph V. M. Cooper had nothing to do with putting the fence up.

Cross-examined by defendant.

Ralph V. M. Cooper drove our cattle to the pound once, and had them in the barn yard once or twice, either before or since; our cattle were in Ralph's orchard, several times; the fence was not a lawful fence; we put up the fence to prevent our cattle going into Ralph's orchard; Morris employed us to put up the fence for that purpose; I believe he owned one-¹⁰ third of the place. I made the fence for my father; I do not know whether he received any reward for it; it is not likely that he did; I believe Ralph re-set the fence from our corner to his yard; I don't know whether the fence was all new or old; I don't wish to be questioned about it, because I do not know anything about it. I do not know how much fence Ralph V. M. Cooper put up elsewhere; I knew nothing about it.

Re-examined by complainant.

I believe I saw Ralph's men at work putting up the fence from our corner to his yard. When I spoke of the line fence not being a lawful fence, I mean Cooper's part. Ralph V. M. Cooper had possession of the farm ad-²⁰ joining us when we put up the line fence. Morris Cooper did not live on or occupy, to my knowledge, any part of the Matlack farm at the time we put up the fence.

JOHN T. COLES.

GEORGE T. RISDON, a witness produced and affirmed on the part of the complainant, (he alledging himself conscientiously scrupulous of taking an oath,) says:—I reside in the county of Camden; am fifty-one years of age; I knew the complainant and defendant; I know W. Morris Cooper is twenty-one years of age; I know where the Matlack farm is; am acquainted with the farm; have walked on it a great many times; I recollect Robert³⁰ Howey living on the farm; was intimate with him when he lived there, and was on the farm a great many times. I recollect very well when he moved off the farm; I think it was a few years ago this spring. I recollect the winter before when Mr. Howey was killing hogs, when Ralph V. M. Cooper sent a constable and warned him off; he warned him off once before; I was there then; he may have warned him off before, but I have no recollection of but the two times I have mentioned. Ralph V. M. Cooper moved on and took possession of the farm when Howey moved; I went there a few days after he moved there. I know the part of the Mat-⁴⁰ lack farm that has been set off to Morris Cooper; I have been on that part

two or three different times since the division. It was always my impression that the Indian orchard field was in the part set off to Morris Cooper. I can't recollect how many years Ralph farmed the whole farm, because I do not know when Morris took possession of his part. It is my belief that Ralph had possession of the whole farm until Morris took possession. I was there on the farm a dozen times when Ralph had possession. I sometimes took a walk with him over the fields. That farm was in a lightish condition when Ralph was there—a large portion of the farm was in an apple orchard in good bearing condition.

10

GEORGE T. RISDON.

Affirmed and Subscribed before me, this }
 14th day of March, 1851,
 W. D. COOPER, M. C. }

JOSEPH H. COLES, a witness produced on part of complainant, being duly affirmed, he alledging himself conscientiously scrupulous of taking an oath) says: I am past forty-two years of age; I own a farm near to and adjoining the Matlack farm, and reside on my farm. I recollect Ralph V. M. Cooper moving on the Matlack farm in the spring of 1847. He occupied the whole farm over two years: I do not recollect the exact time when he
 20 gave up possession; but it was over two years; as to the third year there was some grumbling about the creatures trespassing. Ralph said Morris had not possession entirely. In the pasturing season of the third year, Ralph's cattle were on the part set off to Morris—he said he had no other place to put them. In a conversation I had with Ralph V. M. Cooper, he told me that Fifield, and Sally Ann, and Morris had it so many years. Don't you think I had a right to have it some too, Ralph said he entered on the property as part owner, or on behalf of the property to take care of it, and he would be damned if they got any rent of him while the property was out of repair, because he said it was taking more to get the property up than
 30 he could make. Some seventy or eighty acres of this farm is in orchard; we always considered it one of the best. Ralph V. M. Cooper trucked it up pretty hard those years he had possession of it. I think he got as many as three crops a year off it some years. I should not suppose that there was over ten and not to exceed twelve acres of swamp land on the farm, the rest was susceptible of cultivation, except some small springs: I should suppose that there was an acre and a half—there might be two of springs. I don't recollect the exact number of acres of meadow—there was more than he made good use of. The Indian orchard was always considered a part of the
 40 farm; it was always rented with it; I have a knowledge of the farm some thirty-one or two years. At the time Ralph moved on the farm, I should

suppose that the farm was worth, in a good season for apples, between eight to ten hundred dollars a year.

Cross-examined by defendant:—

Ralph V. M. Cooper told me his counsel had told me to turn in some cattle in the third year, to keep possession of that part which had been set off to Morris. I think that Ralph had three cattle in there at the time we had that conversation: I don't know how many cattle Asa Gaskill had there at that time. I can't say positively whether he had any cattle there at that day; I don't know whether Asa Gaskill kept his cattle there all the time. I know he did not keep them there all the time. The part set off to Morris¹⁰ would not afford sufficient pasture to keep his cattle all the time. In the conversation we had about Ralph moving there, I understood that he had taken possession for the purpose of setting—I mean Morris and Sarah Ann—at defiance; that was as near the conversation as I could get at it. He said he did not acknowledge any man to be his landlord.

JOSEPH H. COLES.

Affirmed and Subscribed before me, this }
 14th day of March, 1854, }
 W. D COOPER, M. C. }

EXTRACT FROM THE WILL OF BENJAMIN B. COOPER,
DECEASED.

“ And on the day that my said minor son arrives at the age of twenty-one years, then I order and direct my son Ralph, and daughter Sarah Ann, to pay to him, out of their own estates, the sum of one hundred dollars a-piece, together with the other bequests hereinbefore given to him, being intended as some equivalent to what I have herein bequeathed to them.”

OPINION OF CHANCELLOR.

The complainant and defendant are brothers; their father, who died in 1835, by his will directed that the defendant as a condition of certain devisees and bequests, made to him in the will, should pay to the complainant, then a minor, on his arriving at the age of twenty-one years, the sum of one hundred dollars.

The complainant was twenty-one years of age on the 4th of December, 1844. He claims the one hundred dollars, and the interest from that date.

The defendant resists payment upon two grounds.

First. He alleges, that on the 23d of August, 1847, he, as the guardian ¹⁰ of the complainant, by virtue of such appointment by the will of their father, had a final settlement with the complainant, and that in consideration of two hundred and twenty-five dollars, then paid him, the complainant, executed a release under seal, by which he released and discharged the defendant of, and from all actions, suits, demands, and claims, whatsoever, which the said complainant then had, ever had, or could have against the defendant is his, (the complainant's guardian.)

The release does not cover this claim. Benjamin B. Cooper, by his will appointed one Benjamin Cooper, his cousin, and the defendant his son, the guardian of the complainant, with directions to educate and maintain him ²⁰ out of the estate, given to the complainant by the will. On the complainant's arriving at the age of twenty-one years, the defendant and his sister Sarah Ann, were to pay the complainant, out of their own estate, the sum of one hundred dollars each.

The release does not embrace technically, nor in its spirit, the claim in question. There is nothing in the pleadings, or proofs, to show that it was the intention of the parties to the release, that it should embrace any other claims between them, or claims in any other right, than the legal, technical construction of the instrument warrants. There is no allegation in the answer, that it was the understanding, or intention, of the parties, or of the ³⁰ defendant himself, that the release should embrace this claim. The reason is set up as a legal defence, and the defendant claims no benefit from it except what, upon the face of it, the law will give him.

Second. That defendant set up in his answer, that he took the benefit of the bankrupt law, and on the 16th day of August, 1842, received his discharge from the District Court of the United States, for the State of New Jersey.

It is unnecessary to decide the question discussed on the argument: whether the character of this debt is such as to exclude it from the operation of the bankrupt law; the defendant cannot avail himself of the defence unless he proves it. This he has not done, and his answer in this respect, is of no avail to him.

10 The defendant must account for the one hundred dollars, and interest, thereon, from the 4th of December, 1844.

The bill also prays an account from the defendant of the rents, and profits, of certain lands and premises, in the bill described, from the 30th March, 1847, up to the 7th of November, 1849.

The complainant and defendant, with their sister, were tenants in common of the lands in question, each entitled to one equal third part of the same.

There are three tracts of land lying adjacent to each other. On one of them is an apple orchard, and several cider mills and distilleries. The other tracts have been cultivated as farms.

20 All three of the tracts were occupied by tenants under rent for a number of years.

The distilleries, dwelling house and other buildings had been permitted to go to decay. The fences were dilapidated, and the land impoverished by improper cultivation. In this situation of the premises, the defendant went into the possession of them. He rebuilt part of the dwelling-house which had fallen down, put the cider mills in repair, renewed the fences, and by proper cultivation renovated the farming land. In the following month of March after the defendant took possession, the sister conveyed her interest to the complainant, who thus became seized of two equal undivided third

30 parts of the land in question.

On the 13th of October, 1849, the complainant and defendant agreed to a division, and for this purpose entered into writings under seal, by which they named and appointed three persons to divide the lands by metes and bounds, according to a line or division thereof, agreed upon by the parties, and to value and appraise the respective shares, and to settle to whom, and how, the difference in the valuation of the shares should be paid. A division was made in pursuance of the agreement, and it was determined the defendant should pay the complainant \$2,150 on the 10th day of January following, when the parties should mutually release to each other their re-

40 spective allotments. Releases were exchanged on the 16th of March, 1849, but the defendant did not deliver up the possession of the part allotted to the complainant until the 7th of November, 1849. The complainant claims

one-third of the rents from the 20th of March, 1847, the time when defendant entered into possession, up to the 25th of July, 1848, when his sister made the conveyance to him of her interest, and from that period up to the 7th of November, 1849, he claims two-thirds of the rent.

The defendant denies that he had possession of the three tracts, but admits that he occupied the buildings and a part of the land; and he claims that the improvements made by him should be allowed him as a set off to the rent.

I think the evidence sufficiently proves that the defendant had the possession of all the land.

10

There is proof that he exercised a control over the whole of it, and that he declared he had the possession and would hold it until the difficulties between himself and brother should be settled.

A proper allowance should be made to the defendant for the permanent improvements put by him on the premises. It is shown that the repairs and improvements were absolutely necessary to make the buildings and premises fit for use, and to prevent their going to complete ruin. The defendant had the benefit of the improvements, in the division and valuation made by the persons who made partition between the parties, and it is equitable, under the circumstances, that in accounting for the rents and profits, the improve-20
ments should be taken into the account. For the repairs of fences and the manure put upon the land, the defendant can have no allowance in the shape of improvements.

The impoverished state of the land and the general condition, as to fences and other particulars essential to its enjoyment, will, of course, enter into the calculation in fixing an estimate of the value of the premises for which they were adapted.

Let a reference be made to a Master with directions to charge the defendant with the one equal third part of the yearly rent and value of the premises from the 20th of March, 1847, to the 25th of July, 1848, and 30
with two equal third parts of their yearly rent and value from the 25th of July, 1848, to the 7th of November, 1849. Let no allowance be made to the defendant for the one-third of the value of the permanent improvements put by him on the premises between the first named period, and for the value of two-thirds of such improvement from the 25th of July, 1848, to the first of November, 1848, when the partition was made.

IN CHANCERY OF NEW JERSEY.

BETWEEN
WILLIAM MORRIS COOPER, Complainant, } *Bill for Account, &c.*
AND
RALPH V. M. COOPER, Defendant. }

This cause coming on to be heard at the last regular term of the Court of Chancery, held at the State House, in the city of Trenton, before the Chancellor, in the presence of Thomas H. Dudley of counsel with the complainant, and Thomas W. Mulford, of counsel with the defendant, and the pleadings, depositions, exhibits, and proofs being read, and the arguments of the respective counsel being heard and considered, and the Chancellor having taken time to advise thereon; and now, on this tenth day of February, in the year of our Lord one thousand eight hundred and fifty-three, it appearing to the Chancellor that the complainant is entitled to relief, and to have the legacy of one hundred dollars, set out and prayed for in the complainant's bill, with lawful interest thereon, from the fourth day of December, eighteen hundred and forty-four, and to the full and equal third part of the yearly rent and value of the premises mentioned and set out in the complainant's bill, from the twentieth day of March, one thousand eight hundred and forty-seven, to the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and forty-eight; and to the full and equal two thirds part of the yearly rent and value of said premises, from the twenty-fifth day of July, eighteen hundred and forty-eight, to the seventh day of November, eighteen hundred and forty-nine; and that the defendant is not entitled to any allowance for repairs to fences, &c., and for the manure put upon the land, except so far as the same may enter into the account in executing the yearly rent and value of the premises. But that the defendant is entitled to an allowance out of the rents and value of the premises, for one-third of the permanent improvements put by him upon the premises, between the twentieth day of March, eighteen hundred and forty-seven, and the twenty-fifth day of July, eighteen hundred and forty-eight; and to two-thirds of the permanent improvements put by him upon the said premises, between the twenty-fifth day of July, eighteen hundred and forty-

eight, and the first day of November, eighteen hundred and forty-eight. It is therefore ordered, adjudged and decreed, that the same be referred to William D. Cooper, Esq., one of the Masters of this Court, to report in the first place, the amount due the complainant for his legacy of one hundred dollars. The said Master to calculate and report the amount of principal and interest due on the same, the interest to be calculated on the said hundred dollars, from the fourth day of December, eighteen hundred and forty-four, up to the time of making his report.

In the second place, that the said Master take an account of the yearly rent and value of the whole of the premises, set out in the complainant's¹⁰ said bill, from the twentieth day of March, eighteen hundred and forty-seven to the seventh day of November, eighteen hundred and forty-nine; and that the said Master take an account of the cost of all the permanent improvements put on the said premises by the said defendant, (not including fences and manure, &c.,) from the twentieth day of March, eighteen hundred and forty-seven, to the first day of November, eighteen hundred and forty-eight. And that the said Master allow the said complainant, the one full and equal third part of the yearly rent and value of said premises, from the said twentieth day of March, eighteen hundred and forty-seven, to the twenty-fifth day of July, eighteen hundred and forty-eight; and with the full and equal²⁰ two thirds part of the yearly rent and value of said premises, from the date last aforesaid, to the seventh day of November, in the year of our Lord one thousand eight hundred and forty-nine, with legal interest from the date last aforesaid, up to the time of making his said report. And that he allow to the defendant, to be deducted from complainant's share of the value and rent aforesaid, the one full third part of the permanent improvements aforesaid, put on to the said premises by the said defendant, (not including fences, manure, &c.,) from the twentieth day of March, eighteen hundred and forty-seven, to the twenty-fifth day of July, eighteen hundred and forty-eight; and two thirds part of the costs of the permanent improvements, put³⁰ on the premises by the said defendant, from the date last aforesaid, to the first day of November, eighteen hundred and forty-eight, with interest from the date last aforesaid, and that the said Master have liberty to use and refer to the testimony already taken in this cause, and to take such new and additional testimony as he may see proper. And that the said Master proceed to make said report with all convenient speed, and that all further equity is reserved until the coming in of said report.

B. WILLIAMSON, C.

[A true copy, DANIEL B. BODINE, *Clerk.*]

FILED FEBRUARY 10, 1853.

IN CHANCERY OF NEW JERSEY.

BETWEEN
WILLIAM MORRIS COOPER, Complainant }
VS. } *Testimony taken by the Mas-*
RALPH V. M. COOPER, Defendant. } *ter upon the reference to him.*

Examination of witnesses in a cause depending in the Court of Chancery of New Jersey, wherein William Morris Cooper is Complainant, and Ralph V. M. Cooper is Defendant, taken at the office of William D. Cooper, in the city of Camden, on the twelfth day of March, in the year of our Lord one thousand eight hundred and fifty-three, in the presence of Thomas H. Dudley, Solicitor of complainant, no one appearing for the Defendant, although notice of taking this testimony was duly served on him.

JOSEPH H. COLES, a witness produced on the part of complainant, being duly affirmed, according to law, saith:—I know the Matlack farm, the Bar-10
rack field and Indian orchard included; knew it in 1847, and for many
years previous. I am a farmer; my farm adjoins a part of the Matlack
farm. I recollect the spring of the year 1847, when Ralph V. M. Cooper
moved on the Matlack farm. I should think for the year eighteen hundred
and forty-seven, seven hundred dollars would not have been a big rent, tak-
ing the farm as it was when he moved on it. And for the year eighteen
hundred and forty-eight, I would consider eight hundred dollars a fair rent,
and the same for the year eighteen hundred and forty-nine, and from March
25, 1849, to November 7, of same year, I would consider no abatement should
be made from the said rent. The new roof on the kitchen was put on by 20
Ralph, in the year 1849, it was in the cholera season. The stables and out-
buildings were put in order about the same time, I think I have no know-
ledge of any permanent improvements till the year 1849; I lived along side
and would have been apt to have seen them. Robert Howey occupied the
farm the year before Ralph moved on it, the farm was then very much out

of repair and cultivation. Howey was there some six or seven years. Ralph did not put up the fences, he did not treat the farm different from an ordinary tenant, he farmed the place hard, but he did justice to the orchard.

JOSEPH H. COLES.

Affirmed and subscribed before me }
 this 12th March, A. D. 1853. }
 W. D. COOPER, M. C. C. }

ASA GASKILL, of the township of Delaware, and State of New Jersey, 10 a witness produced on the part of complainant, being duly affirmed according to law, saith, I am a farmer, and live adjoining the Matlack farm. I came there in the year eighteen hundred and forty-nine, it is a farm worth more some years than others, on account of the orchard, I would consider it worth in a bearing year, one thousand dollars. From the knowledge that I have of the farm, that for the year 1847, seven hundred dollars would not have been an unreasonable rent, the year 1848 was a bearing year, and I should consider \$800 a fair rent for that year; in the year 1849, Ralph had a good many apples, I should consider the farm worth \$800 that year. The farm would have been eight hundred dollars from March 25th, 1849, to November 7th, of that year. The kitchen was roofed in 1849; 20 I think it was not until 1850 the out buildings were fitted up. Silas McVaugh, was the carpenter who put the roof on. From the appearances of the place, there had been no permanent improvements put on the place till the year 1849; it was the year 1850 when the outside fence was put up, a post and picket fence. Silas McGaw the carpenter, died of the cholera, in 1849, soon after the improvements were finished.

ASA GASKILL.

Affirmed and subscribed, this 12th day }
 of March, A. D. 1853. }
 WM. D. COOPER, M. C. C. }

30 Friday, December 9, 1853.—Parties in the above cause again attended before me, pursuant to notice of complainant's counsel, for the purpose of taking testimony to be used on making report in this cause, pursuant to interlocutory decree and reference, dated February 10, 1853.

THOMAS H. DUDLEY, Solicitor of Complainant.
 WILLIAM HALSTED, for Defendant.

CHARLES S. GARRETT, of the city of Camden, and State of New Jersey, being duly sworn on part of defendant, saith, on being shown a book marked by me, Exhibit A, on part of defendant, says: I have seen this book before; have seen Ralph V. M. Cooper make entries in it; I have 40 found it to be correct; I have seen Ralph V. M. Cooper write; the book

is in his hand writing ; I believe it to be his book of original entries, and have never known him to have another.

Cross-examined by Mr. Dudley :—

I have never known Ralph to have any other book.

The counsel of complainant here asks counsel of defendant for what purpose this book is offered ? who answers—it is offered for the purpose of proving permanent improvements on the premises, and for any other purpose for which it may be legally offered. Admission of book objected to by counsel of complainant. Also, objected to as being evidence of permanent improvements ; also, because specific charges are not pointed out. 10

By consent of parties, further taking of testimony in this cause adjourned until Monday, December 26th, 1853, at 10 o'clock, A. M., at my office in Camden.

WILLIAM D. COOPER, M. C. C.

Monday, December 26, 1853—10 o'clock, A. M.,—Parties attended at my office for the purpose of taking additional testimony, pursuant to adjournment.

THOMAS H. DUDLEY, Counsel of Complainant.

WILLIAM HALSTED, Counsel of Defendant.

JAMES COLLINS, a witness produced on the part of the defendant, being duly 20 sworn, says, I am acquainted with the parties in this suit ; I am acquainted with the Matlack farm ; I did work on that farm for R. V. M. Cooper, putting up fences there, I don't recollect in what year it was, I think it was four years ago. Witness being shown a paper to refresh his memory, says, on looking at that paper, I put up 120 panels, I recollect the number without looking at the paper.

[Objected to by counsel of complainant, because paper not produced.] I was looking at the fence the other day ; I counted the panels then,—some of it was outside fence, and some was not ; some were near half was outside 30 fence, including the lane fence. The fence was cedar rails and cedar fence ; the whole I put up outside and inside both. I charged fourteen cents for putting up the fence, including holeing the posts,—the rails were old rails—the posts were new, and were white cedar ; I do not know what they were worth a hundred. White oak posts are worth fourteen cents a piece on the rough, in the woods. I can't say which are the best, oak or white cedar, for I don't know. In my opinion the posts on the ground were worth sixteen cents. I did not put up any worm fence ; I saw worm fence that had been put up on that farm. I saw the farm before that fence was put up— and I saw the farm after it was put up, I saw it about three weeks after it 40

was put up. This worm fence was put up after the post and rail fence was put up. It was the same season the post and rail fence was put up. I cannot recollect how many panel of worm fence was put up—there was upwards of two hundred; I can't recollect every panel. It costs three cents a panel to put up worm fence, that is what I always charge; some was outside fence and a part line fence; the line fence was between Ralph V. M. Cooper and Robert, and part between Ralph and Morris. I can't tell the time exactly only it was after the post and rail fence was put up. I can't say what it is worth to have this fence. You can go two loads a day from the Chew's
 10 Landing place to the Matlack place. I suppose they would want two dollars a day for the team; some want two dollars and a quarter. In addition you have to have chunks or stone for the corners; it is worth the same to have them. There are about eight rails and riders in a panel—and two stakes besides. The worm fence that went through the place a part of it was new rails; the fence through his place was one hundred and six panels; about three or four rails in a panel were new rails; the new rails were cedar rails; I do not know what they are worth; I don't know what they brought that year.

Cross-examined by Thomas H. Dudley, for complainant.

20 I do not remember how many panels of the division fence was between Ralph and Robert's; there must have been fifty panels. I don't know how many panels there was between Morris and Ralph, I should think there was about fifty; I counted them all about four days ago, at the request of Ralph V. M. Cooper. I was looking at the fence. Ralph asked me to count them. I went there to look at the post and rail fence at his request. He stopped at my house to ask how many panel I had put up, I told him I could tell if I went there and counted; I told him I would go. He did not tell me what he wanted it for; it was four days ago—Thursday or Friday last; nobody was then present except Mr. Cooper and myself. I don't know if there has
 30 been any other fence up since. After we counted the posts and rail fence we went and looked at the worm fence. There had been an old fence where we put up the post and rail fence; it had all gone down; there was now and then a post. Mr. Cooper's team hauled the rails where we put the fence up; the old rails came off the place at the time; we put up the whole of the fence with old rails. There was about thirty panels of the post and rail fence in the lane, and about thirty I should think in the road. There was a part of the old fence along the road, it would not turn anything—it had rotted off. I do not know how long after I put up the post and rail fence that the worm fence was put up. I do not know whether it was all put up
 40 at the same time. I saw the whole of this worm fence as much as two years ago; I did not see myself any of it put up. Of my own knowledge I do

not know who put up that fence ; I cannot tell whether there was an old fence where this worm fence was put up or not.

I don't know whether there was an old line fence between Ralph and Edward's before the fence I was speaking about was put up ; I lived where I live now when the fence was put up ; I cannot specify when this worm fence was put up ; the fence I speak about running through the farm, runs along side of the orchard ; I first recollect seeing the worm fence two years ago any how ; it might have been three years ago ; the fence alongside the orchard, comprising the 106 panels I have spoken of, was made up of old and new rails—there being about three new rails to a fence panel ; the fence between Ralph and Robert's was made up pretty much of all old rails ; there is one new rail to every ten panels ; the line fence between Ralph and Morris has four or five panels all new rails ; the panels are nearly all old rails ; in counting the worm fence, I counted it the way he told me to count ; I mean as far as he told me to count ; he counted out the place where I was to count to ; I do not know what proportion of the Robert's line fence that Ralph put up ; I do not know where any of the rails came from that were put in this worm fence ; some post and rail fence I put up for 12½ cents, some 13 cents and some 14 cents ; it is altogether owing to the stuff ; the lowest price is 12½ cents ; I charged Ralph 14 cents and found ; I have had 20 no conversation with Ralph about this examination to-day ; when I speak of Edward's farm I mean Samuel Edwards ; he lives on a part of the Matlack farm, the part set off to Morris Cooper ; the line fence I speak of between Ralph and Edwards' is the line fence set off to Morris and Ralph.

JAMES COLLINS, his X mark.

Sworn and subscribed before me, this }
 26th day of December, A.D. 1851. }
 W. D. COOPER, M. C. C. }

DANIEL A. STOY, of the county of Camden, a witness produced on the part of the defendant, being duly sworn, says :— 30

Witness being shown paper marked by me Exhibit No. 2, on part of defendant, says the signature of the subscribing witness thereto, is my handwriting, I saw William Morris Cooper sign and seal the same.

Counsel of complainant here objects to this paper as inadmissible and irrelevant.

And witness being shown paper marked by me Exhibit No. 3 on part of defendant, says William Burrough, resident of the State of New Jersey, in Pennsylvania, I have seen him write five hundred times ; the signature of William Burrough to the papers marked Exhibit 3, and by 40 part of defendant, I believe to be his genuine signatures.

The counsel of complainant here objects to this paper as irrelevant.

Cedar rails on the Matlack farm, were worth three or four years ago, from seven to seven and a half dollars a hundred. What I bought three or four years ago I gave five and a quarter dollars in the swamp. I valued the hauling at two dollars, with my own team. What I hired, I gave two and a quarter, making them seven and a half. I got from William Morris Cooper, the mortgage which Ralph gave to Morris on settlement. It has been a good bit ago. It will take me a good bit to recollect what Morris said to me at the time. The mortgage was dated August 23, 1847. It includes, I believe, all the land which Ralph owns in the State of New Jersey. I said to
 10 Morris, Ralph will never pay me this money, and I don't want to have any trouble. He says you will have no trouble. I think, because this mortgage was given for the settlement of the guardianship of Ralph for Morris to release Ralph's securities, James Stoy and Joshua P. Brownig. I understood this was to close the accounts between them. I am satisfied that it was to settle the guardianship accounts between them up to that time. I don't mean it to close all their accounts.

DANIEL R. STOY.

Affirmed and Subscribed before me this
 20 26th day of December, 1853.
 W. D. COOPER, M. C. C. }

John G. Rowand, of the county of Camden, a witness produced on the part of the defendant, being duly affirmed (he alledging himself conscientiously scrupulous of taking an oath,) says, I am a carpenter. I worked for Ralph V. M. Cooper on the buildings on the Matlack farm. When I first commenced working on the buildings on the Matlack farm, was when Ralph first moved there. The first repair we did was to the cider-press, the next to the kitchen—there were one, two or three of us first, as it happened. We fixed up the cider press so as to press out the juice—it took several days. We took out the old floor of the kitchen and put in some new joist, and laid
 30 a new floor; the door-sill and bottom of the door was out of repair, we mended them. The floor on the kitchen was ploughed and grooved—it had settled down in the middle. It took four or five days to repair the kitchen. There were two of us, I think. I sent men to do it. I was the boss, and paid the men. I done the work about the still house. I put a new floor, a new partition; part of the boards were new; I fixed the windows; I fixed the shed of the house—the piazza it was called in old times. I fixed the floor of the bark shed. We went through the house, fixed all the doors, and put some new locks, from the garret to the cellar. I built the spring house—there had been one there which had gone down, and we rebuilt it. We did
 40 considerable to the cider-house and crib house. There were new gates made, either by my hands, or somebody else's hands. I made garden fence. I suppose there was twenty-five panels—there might have been more. It was

picket fence. We made some picket fence down the lane, alongside of the orchard. There was, I should judge, in the neighborhood of one hundred panels of picket fence down the lane—there might have been more. I suppose the picket fence would cost a dollar and a quarter a panel. I cannot tell what work I done in forty-seven. In the three years I think it would amount to seventy-five or a hundred dollars. In forty-seven the first work was in the cider-press, kitchen, and still-house. I think all that work was done in forty-seven. As near as I can tell, the work at the cider press, kitchen, and still-house, would cost about one hundred and fifty dollars. It might not cost that—I mean the carpenter work and everything else. The next we done was to put up the yard fence and garden fence; some of it was done last year, and some the year before—not a great deal. The year before last year there was considerable done.

Cross-examined by J. H. Dudley, for Complainant :—

The fence in the lane of which I have been speaking of, was put up in forty-nine I think; the garden fence in fifty-one and fifty-two; I rendered Ralph a bill of the work I done there; there is one bill we have not settled yet; that was the bill for work in fifty-one and fifty-two; we have settled the bill for the work done before fifty; we often settled before we left without any bills; I have never seen the bills for the week I done upon the house and still since we settled in fifty; I keep a book account; I charge the week where they don't pay cash; my book is at home; I do not know whether he paid the cash for fixing cider press or not; he has settled it; I can't tell whether he paid me the cash at the time I did the work at the kitchen; it is settled; I went through the house and put on the locks in forty-seven; it was a good bit ago; I put the floor in the still house in forty-seven or eight; I put the floor on the kitchen in forty-seven; I do not know whether it was the same year I put the floor on the still house; it was pretty near together. The cider house is distinct from the cider press. I did some of the repairs to the cider house; some in forty-seven, some in forty-eight, and some since. I cannot say exactly what we did to the cider house in forty-seven; we did some work; I can't specify any thing we did to it in forty-seven; we done some fixing to it in forty-eight; and that is about all I can say; I can't say exactly what we did to it then; I cannot tell how many days work we did to the cider house in forty-seven; I cannot tell how many days work we did to it in forty-eight; it might have been a dozen or more. We built the spring house last spring was a year, in the spring of eighteen hundred and fifty-two. We fixed up the piazza the first year he went there, in forty-seven. The work to the piazza was charged in my old book which was destroyed, or else I would show you day and date. Ralph I think has some of the old bills. The solicitor of complainant here calls upon solicitor of defendant to produce all bills rendered by witness, John G. Rowand.

And being shown a bill produced by said defendant, and marked by me, exhibit on part of complainant, witness says—It is a bill which I furnished defendant for work done for him; I expect the dates on this bill, when I did this work, is correct; part of the work was done in forty-seven, and part in forty-eight, and part in forty-nine; it is, I think, the bill for the work done in those years for Ralph V. M. Cooper. This bill was settled in January, 1850, as appears by a receipt on the back; I cannot tell what all the work that was done in forty-seven to the building was worth; I did not do all the work; the barn was tumbling down; it was put up by somebody
 10 else; it was worth thirty dollars to do the work to the barn; there was work done by me and settled by Ralph before this bill was given; there was no bill; it was first settled. In making my estimate of the work being worth one hundred and fifty dollars, I include the work done in the three years, '47, '48, and '49; I can't tell what portion of the work was done in forty-nine, it has gone from my mind; I should judge that there was as much work done to the buildings in forty-nine as forty-seven. This \$150 worth of work I divide in three years; I can't tell how much was done in
 20 forty eight; I cannot recollect what work we done in forty-nine; I can't tell how much of the \$150 of the work was carpenter's work. In making my estimate of the \$150 worth of work, I made no calculations, it was a rough guess, it might be more or less; I have made no calculations or estimate about it; I have no idea of what other work, besides carpenter's work, was done in those years; I do not know how much work I done on that place for Ralph V. M. Cooper before May 22d, 1847; I can't tell the number of days I worked, or the number of hands I employed, or the amount what it came to; I have no recollection nearer than this about it. The work on the bill, marked by me, exhibit on the part of complainant is for work I did after that. The kitchen was laid with new boards, I think Carolina pine; I can't tell how many of the gates were in this bill.

30 Re-examined by Solicitor of Defendant:—

Ralph used frequently to pay me as the work was done, sometimes before, then no bill was made about it; this was during the time of this bill.

Re-cross-examination by Mr. Dudley:—

I cannot tell how much he thus paid me; I cannot tell how much work I thus did; I cannot tell when the work for which he paid me was done; I cannot tell where the work was done, it might have been done in the still-house, or in the house; I cannot tell in which of these it was done; I cannot state to a certainty that it was done in either; I would not like to say that he paid me as much as five dollars or not above that bill, but I

guess he has; I cannot tell how many payments he made me; I have no recollection about it other than I have given.

JOHN G. ROWAND.

Affirmed and subscribed before me this }
 20th day of December, A.D. 1853. }
 WILLIAM D. COOPER, M. C. C. }

John A. Swinker, of the county of Camden, a witness, produced on the part of the defendant, being duly sworn, says—I am a mason; I have done some work for Ralph V. M. Cooper on the Matlack farm, it was in 1848, I can't tell the time exactly; it was in the spring. The first was in the tenant¹⁰ house back in the orchard; I lathed and plastered, and put some bricks on the chimney to make it higher; I was engaged in doing it about two days; he paid me cash; it was in the spring of 1848. I next went to the still-house and re-set them, it was in forty-eight; I do not recollect at what time; I made a little memorandum of it from my book; I have lost it, it was not all on the book; this was, as near as I can recollect, about four days. I then lathed and plastered the garrets in the Matlack farm where he now lives; this time was a week at the first coat; I then put on two other coats; we generally calculate the first coat to take as much time as the two other, this was all I did at this time. In the fall of forty-eight I²⁰ done some work in the kitchen: I laid a big fire hearth; I also laid a pavement in part of the shed to the pump; paved the gutter from the pump to the garden, that was all at that time, he paid me in cash at the time; I made no charge for it. I then put in window frames in all the cellars, and I pointed his cellar walls up, inside and out, the mortar had begun to work out; I mended up his milk house; I then went to the barn cellar, part of that had fallen down, the rats had got through it; I went to work and walled it up, and put a fence where a door-way had been; I was several days at that; this was all the work I did in forty-eight; I charged for my work one dollar and a half a day; I had nobody at work for myself; Ralph³⁰ found tenders and materials and boarded us; the material was worth more than my work, a good deal more; the lath and plastering was worth double the worth; in brick-work it is worth a great deal more than double. He had two tenders sometimes, we have generally to pay a tender a dollar a day; the board was worth from two-and-a-half to two-and-three-quarters a week.

Cross-examined by Mr. Dudley.

I rendered an account to Ralph V. M. Cooper for a part of this work; I gave him a bill, but our account was not all in the bill.

Counsel of complainant here calls upon counsel of defendant to produce the bills rendered to defendant by this witness.

Counsel of defendant states that he has no bills prior to forty-nine.

There was no bill rendered for the two days work at tenant house; I cannot say whether there was two tenders or one; I think there was only one; the tender was one of Mr. Cooper's hired men; I cannot tell what are the usual wages of hired men on a farm, some give fifteen dollars, some ten and some eight dollars a month for men; the next week was at the still house, four days I think; I had two tenders then; I do not know whether they were his hired men or not; Cooper found them and paid them; this was in July or August; the next work I done was lathing and plastering the garet; I had one hand tending on me then; do not know his name; I cannot tell whether he worked for Mr. Cooper or not; he was a colored man; I do not recollect the precise time; it was in the fall of forty-eight, toward husking time; I think this work was charged; I cannot tell for certain; I cannot tell whether the work done at the still was charged or not; the next work I did was to lay the big fire hearth; it was near about the same time, I think; I had two tenders then waiting on me to clean the old brick, and so on; it took one to clean the old bricks; I can't tell how many days I was at that; I think I charged this work in the bill; then I went to the cellar, after a week or ten days; I had ten or a dozen charges against him in my book that year; I had one tender waiting on me then; it was in the fall of forty-nine, I guess it was in October; it was not later than that; the work at the barn was not much later; it was before he put his apples in; I had two tenders then, one to bring stone, and one to bring mortar. Sometimes these tenders were his own men, and sometimes not; I think they were all his own men but the black man; he tended on me some time; I don't know the black man's name; my book account, in which I made these charges of which I have spoken about, is at home; I could bring it down here, I suppose; I don't recollect whether the cash paid for pointing up the cellar was charged or not; I know he paid me some cash; I rendered Ralph V. M. Cooper bills for all the work that was not in cash or trade. (The counsel of complainant here calls upon counsel of defendant for the bills rendered for the work in forty-eight. Counsel of defendant replies that he has none of them.) Some of

the bricks were old, and some new; I made the memorandum of which I spoke from the book; I will bring down the book for them, if they want or pay for it; I will bring it down for either party, if they pay me for it.

JOHN A. SWINKER.

Sworn and subscribed before me, this
26th day of Dec. 1853.
WM. D. COOPER, M. C. C. }

ELWOOD H. FOWLER, a witness, produced on the part of the defendant, alleging himself to be conscientiously scrupulous of taking an oath, and¹⁰ being duly affirmed, says:—I recollect seeing the advertisement of the constable for the sale of the Matlack farm in forty-eight. The constable's name was Theodore Rodgers. (And being shown the paper marked by me Exhibit on part of defendant, says.) this is the advertisement put upon one similar to it; I recollect reading it at the time from a word in it that I did not then understand; the next year, forty-nine, Ralph paid me the balance of the tax for forty-nine; I know George T. Risdon; he is sick in bed with consumption; Silas McVaugh is not living; I have seen him write; (and being shown the papers marked by me Exhibit on the part of defendant, says:) the signatures to this paper is that of the said²⁰ Silas McVaugh; after Silas's death there was a balance of a bill paid to me; I do not recollect the amount; my father was the administrator of Silas McVaugh, and he gave me an order on Ralph for the amount and he paid it to me; this balance was for carpenter's work.

Cross-examined by Mr. Dudley for complainant:

Mr. Rodgers is alive now; he resides in Camden county, my father is also living; he resides in this county; I dare say he has Silas McVaugh's books; I do not know of my own knowledge where the work of the bill was done; the balance was as near as I can recollect about eighteen dollars; I do not know when the balance of this was done or where it was done. 30

ELWOOD H. FOWLER.

Sworn and subscribed before me, this 26th
day of December, A. D. 1851,
W. D. COOPER, M. C. C. }

AARON ZANE, a witness, produced on the part of the defendant [being duly sworn, says:—I am a carpenter, and being shown the bill marked by me Exhibit on part of defendant, says: This is a correct bill of the work I have done on the Matlack farm; the signature is my handwriting; Ralph V. M. Cooper furnished the materials of the work; the first work was pale fence in the orchard and yard; the next work was putting⁴⁰

a new roof on the kitchen; the next a new roof on the shed over the front door; we took out the piazza floor and put new floor on and repaired the posts—spliced—I won't speak positive; I think I put a new roof on one side of the house; I took down the cider mill and repaired that, and repaired three presses under the same roof; the rest was done by Ralph; he worked all the time with me, except three days from morning to night; I done some small jobs besides not of much account though; I can't form an estimate of the amount of the materials without going there; I do not know how much shingles were worth a thousand, nor do I know what materials were used; he boarded me while I worked.

Cross-examined by Mr. Dudley.

The work was done in forty-eight or forty-nine; I think the bill will show; whatever date is on the bill is right; I charged that week in my book; I think I have the book now; I made the charges every Saturday night; I have filled several books since then; I have no recollection of the year in which this work was done save from the bill; there is nothing in this bill in my handwriting but my signature; I know I sat by him when he made out the bill; the bill was made out by Ralph V. M. Cooper on the day on which the work was finished and within an hour from the time.

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AARON ZANE.

Sworn and subscribed before me, the
 26th day of December, 1854,
 W. D. COOPER, M. C.'C. }

By consent of the parties, the taking of further testimony in this cause adjourned on Monday, February 27, 1854, at my office in Camden, at 10, A. M.

Monday, February 27, 1854, 10 A. M., parties met at my office, pursuant to the above adjournment, for the purpose of taking further testimony in this cause. Thomas H. Dudley, Esq., counsel of the complainant, William Halsted, Esq., counsel of defendant.

Theodore W. Rodgers, of the county of Camden, a witness, produced on the part of the defendant, (being conscientiously scrupulous of taking an oath) and being duly affirmed, says, on being shown a receipt marked by me, Exhibit says the signature thereto is my handwriting. I was, at the time I signed the same, constable of Delaware township. Ralph V. M. Cooper paid me the tax mentioned in the above receipt. It was the tax on the farm on which he now lives. It is called the Matlack farm. In the first place I had the tax warrant. I went to Ralph V. M. Cooper for the tax, he seemed to think he ought not to pay the tax. I then went to Morris Cooper for the tax—he told me to sell the rails on the fence. I then advertised the rails, and went to Ralph Cooper, and told him that I was going to sell the

rails on a certain day, for the tax, he then pulled the money out of his pocket and paid me the tax. It was the tax for the year 1848. Ralph V. M. Cooper also paid me part of the tax for 1849, and I handed the tax list over to Mr. Fowler. I think Ralph paid me about nine or ten dollars. It was the tax on the same farm taxed against Benjamin B Cooper's heirs. In consequence of information I received from Mr. Risdon, I went to Ralph V. M. Cooper to collect the tax on the Matlack farm for 1847. I did not collect the tax for 1847. Georg T. Risdon was the collector for Delaware township, for the year 1847. Mr. Risdon is now sick. When a farm is leased for a year, if there is nothing said about grass seed in the lease, it 10 is the custom, as far as I know, for the landlord to pay for the grass seed.

Cross-examination by T. H. Dudley, for complainant:—

I do not mean to say, that if I rent a farm from a man, and nothing is said about grass seed, that I have a right to go and purchase grass seed, and to charge it to him. I do not think the owner would be bound to pay for the grass seed unless he authorized the purchase of it, according to the custom of the country. As I understand it, he would not be forced to pay for it unless there was an agreement for it.

Question by defendant's counsel:—

Who does the grass seed benefit, the man who sows it, or the landlord in 20 case the tenant moves off?

This question specially objected to by Mr. Dudley.

It benefits the landlord; of course it puts the property in a better state to rent the next year. It is considered to be the course of good husbandry, so to sow grass seed on the rye and wheat land.

THEODORE ROGERS.

Subscribed before me, this 27th day

of February, A. D. 1854.

W. D. COOPER, M. C. C. }

Samuel Howey, of the county of Camden, a witness produced on the part 30 of the defendant, being duly sworn, says: my father's name is Robert Howey. He lived on the Matlack farm. I think he left the farm in forty-seven or forty-eight. I lived on the farm with my father, and worked with Ralph V. M. Cooper part of the year after my father left. The fences, when Ralph V. M. Cooper took possession of the farm, were down a good deal, and the buildings out of repair.

It was necessary to put up or repair a good deal of fencing, in order to keep the cattle out. I cannot tell what part of the fences he put up new or repaired; he put up the garden fence; part of it was all new fence and new posts; I suppose the garden had half an acre or three quarters; the fence 40 was done up all around the garden; I can't remember how much fence was

put up around the fields ; he had a Mr. Brown there putting up fence ; a good deal of it blew down ; it was rotted off ; I can't tell how many panels ; it was over two hundred panel that wanted putting up on the place ; that was down or out of order as I think. The whole house wanted a new roof and repairing ; the kitchen we did not pretend to live in ; a rain would drive everything out. The shed over the piazza wanted a new roof ; the kitchen wanted a new floor, so did the shed ; the hay house wanted a new roof ; the stable door wanted repairs ; some few of them ; some of the doors were gone altogether ; the other out buildings were in tolerable good
 10 repair ; there was a strip of the cider cellar wanted putting up ; I suppose about fifteen or twenty feet of it. I lived on one of the tenant houses on the farm ; it was in very good repair ; it leaked ; wanted new windows and doors ; the spring house was all to pieces ; there was no privy to the tenant house. After Ralph came on the place, he let me have a privy. Mr. Cooper put a strip of new fence along Robert's line, by my house. Ralph put some new fence, new posts, along the road ; I will not be sure about the year ; I think it was in the first year he came there. Ralph had the houses that were out of repair done up the first year he came there. The stills were out of repair ; some of the stills were taken to town, to be repaired ; Ralph
 20 bought a new worm for the still ; all the stills wanted new settings when my father was there ; but it never was done until Ralph came there ; one of the stills was good for nothing except for old copper ; the bottom was burnt out ; the sluice that let the water from the still house, was all rotten, and required to be repaired ; there was one new pump when Ralph went there ; the other two were good for nothing, and he got two new ones, I think ; I know he got one, and I think two ; he put a new sluice in—and a new well curb in one well, I know, and I think in two ; he had to dig about fifty or one hundred yards to drain off the water. In some places the ditch was three feet deep, and then went off tapering ; I can't tell the average depth ; I can't say how
 30 wide it was ; I suppose it was two feet wide at the top ; it was a ditch to drain the water from the sluice ; my father lived on the farm seven or eight years ; he farmed to shares, all, except one year ; I think it was the last year ; I don't think he bought any manure during all that time ; I think there was some lime bought ; I think it was bought by the landlord ; there was not much lime ; it was put on a little strip, part of a nine acre lot.

This was all the manure put on, except what was made on the place. When my father left the farm, some of the fence was pretty good and some not. The nine acre lot was pretty good, the best on the place ; there was an eight or nine acre lot on which Morris now has a house, which was the next
 40 best, that was pretty good, but in the orchard they could not raise much, these were the only lots on the farm which I considered pretty good ; there were two other fields some parts of which I considered pretty good and some part not, on

which we could raise pretty good crops : I think he called one of these fields seven acres ; and the other I think eight acres ; about one-third of the seven acre lot was, I think, pretty good ; about one-half of the eight acre lot was, I think, pretty good. When my father lived on these premises, the landlord furnished the grass-seed. I believe it is the custom of the country, when farms are rented, for the landlord to find the grass-seed. When Ralph took possession some years, there would be a pretty good sprinkling of apples and some years not ; the orchard was poorish. The land was very poor for want of manure when Ralph took possession of it. Some of the apple trees were full of suckers and dead limbs ; when Ralph took possession he had a great many of them trimmed. I did not help him then ; I helped to haul some of the brush off. The post and rail fence that divided the two orchards, was pretty much down. Ralph, I think, put up a part of it. I don't know whether he put up the rest of it. I think there was a hundred panel down. I think he put up one-third of it, if not more. The fence was down so that Ralph lost the pasture for part of it. The cider-presses were out of order ; I think Ralph had them repaired. I came by there this fall and saw another mill there, and the old mill standing outside. I think my father paid two hundred and twenty-five or two hundred and fifty dollars a year rent when he rented the farm.

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Cross-examination by Thomas H. Dudley, for complainant :—

This rent was when my father rented the farm, which, I believe was the last year. I lived, I suppose, in the tenant house, about six or eight months after my father left the farm ; I then moved near Cole's church. I worked for Ralph after I moved off the farm for about three or four months, I suppose. I worked for Ralph all the time I lived in his tenant house. I began to work for him before he moved there. I suppose about a month before he moved there. I quit working for him somewhere about harvest time of that year ; I worked off and on for him after I moved ; I worked for him about December ; I have not worked for him any since. The work I did for Ralph was the first year when Ralph was on the farm. I paid him at the rate of twenty dollars a year for the tenant house. He was to do the house up and also the spring-house ; but it was not done up when I was there ; I don't know when it was done ; it was after I left. The garden fence was done up the first year that Ralph moved there. I can't say what man it was that did it ; Ralph had some man there at work. I cannot say that the garden fence posts were all new ; they were pretty much all new. It was a pale fence. There were some few of the pales new and some old. There was a strip of the fence that he put up all new. It was across one end of the garden ; it was about eighty or ninety feet. I think there was as much as two hundred panel of fence on the place that was blown down, or wanted re-

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when Ralph went there. I don't think he repaired one-half of it the first year. I should think he put up and repaired sixty or seventy panel of fence the first year that he was there. The old rails were all there; he used all the old rails that were of it. I do not know what fence he put up the second year nor the third year. I think Mr. Brown put the fence up the first year; I can't say positively. I put up some worm fence for him. There was some pasture growing in the orchard the first year. There were not a great many apples that year. The privy that I spoke of was an old privy but a very good one; he brought it to the tenant house on a wagon.

10 There were two or three of the stable doors nailed up; the doors were entirely gone. The cellar wall, of which I spoke, was under the grain barn, a part of the fifteen feet of which I spoke, had fallen down. I think Mr. Cooper put up the strip of fence along Robert's line, of which I spoke after I moved away. I can't speak of the repairs to the farm after I moved away, or of the time when they were done. I think the fence along the road, of which I spoke, was put up after I left. The kitchen was repaired while I worked for Ralph. He dug out the sluice at the still the first fall. I was not there when he did it; I was there after it was done. The new pumps were not put in while I was there; I do not know who put them in nor when they were put in. The ditch that I spoke of was dug after I left. The stills

20 were taken to town after I left. I was there and they told me that they were out. All that I know about that part was what they told me. My father kept cattle when he was on the farm. Sometimes he would have eight and sometimes a dozen cows—sometimes more and sometimes less. He generally kept three or four horses, and sometimes he would have half a dozen. The manure that was made was all put on the farm. My father was in the habit of farming some part of the orchard whilst he was there. I should not suppose that if nothing was said about grass-seed at the time of renting, that the landlord was to pay for the seed; but I believe that it is customary for the landlord to find the grass-seed. A part of the orchard fence, of which I have

30 spoke of, was put up whilst I was there; I don't know whether the rest is put up yet. There is, I suppose, eighty acres of orchard on the place. He had some part of it in crop and could not pasture the rest for want of fences. He wanted to pasture my cow, but could not. Ralph cultivated about fifteen acres of the orchard the first year; it might have been more or less. He cultivated also, the first year, some part of the other fields; I can't say how much. The cider-mill was not repaired while I was there. I don't know of my own knowledge when I was done; I was over there at the time.

Re-Examination in chief resumed:—

I went with Ralph's other man to the swamp and got a load of rails. The

40 cattle came in on the farm, when Ralph moved there, for want of fence. Brown was there some months working at the fence; I don't know how long.

I saw the new still and worm after Ralph brought them there ; I do not know when it was. I did not see any tubs.

Cross-examination resumed :—

All I know about them, is that I merely saw them there ; I do not know of my own knowledge who brought them there or when they were brought ; the cattle that I spoke of as coming on the farm, came through where the fences were down, as I have spoken of before.

SAMUEL HOWEY.

Sworn and subscribed before me, this }
27th day of February, 1854, }
W. D. COOPER, M. C. C. }

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MICHAEL CHRISTIAN, of the county of Camden, a witness produced on the part of the defendant, being duly sworn, says :—I worked on the Matlack farm the first year Ralph V. M. Cooper moved there ; I done repairing to the cider mill and press ; worked at the pumps ; put in two new pumps and cleaned out the wells ; I made some new spouts at the still-house of white pine boards ; I set two of the still tubs and helped dig the main sluice under the still where the lees dropped ; as near as I can tell, the work I done in two years for Mr. Cooper amounted to about forty dollars. 20

Cross-examined :—

I had a settlement with Mr. Cooper ; I made memorandums when I did the work, but do not keep bills ; I furnished him with no written bills ; I don't think I ever gave him receipts ; I might have given him one ; I put in the pumps before he could go to distilling the first season in both of them I think ; it must have been about August, I think ; I done something at the cider press before I worked at the stills ; it was so long ago I can't remember ; the post and bed pieces were worn away ; I also set the stills the first season ; the sluice was cleaned out at the same time ; the second season I made some more new spouts and put in some bed pieces under the presses ; I have no memorandum of the work I did ; my recollection is distinct about the money he paid me ; I can recollect more about the money he paid than about the work ; I might have nailed up the stable doors and done other little jobs that came in. 30

MICHAEL CHRISTIAN.

Sworn and subscribed before me, this }
27th day of February, 1854. }
W. D. COOPER, M. C. }

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JOHN EASTLACK, of the county of Camden, being duly sworn on the part of the defendant, says:—I am acquainted with the Matlack farm; I worked on it; I can't tell exactly in what years; it is three years ago since I moved on Morris' share; I had been acquainted with it before that; I was acquainted with it when Ralph V. M. Cooper moved on it; It could not be poorer than it then was; I think he could not raise anything on it; I worked for him; and I mowed for him on shares the year he moved there; I was to have half I got; half a ton of hay for my share, and he got half ton more
 10 off the nine acre field; there was also half an acre of timothy grass on it that was good; and that he would not let me mow; he took it himself. (This field is the one that Mr. Howey, the former witness, called the second best field on the place.) I can't say how much the farm was worth that year; if the apple trees would bear, one might get something, if not, it would not pay to cultivate the orchard; all the farm, except the two big fields of which Mr. Howey spoke of, is in orchard, except some small bits; there was about eight or nine acres in each of those two fields; I worked for W. Morris Cooper after he took possession of his part; I worked by the
 20 month for him; I was the manager of this farm; he and I together, I suppose; his part, also, was poor; the whole of it; we could not raise anything on it; I could not tell how the fences were when Ralph moved on in the spring of the year; there are more fences down now, in the county, than in the summer; the fences were generally poor on the farm; I saw Mr. Gaskill drive cattle on the farm after Ralph moved there; I cannot say I saw him drive there; it was some of his people; it was after Gaskill moved on Morris' farm; I can't tell how many head there were; there was about fourteen or fifteen, perhaps, not more than twelve; when Ralph moved on the
 30 farm the trees wanted trimming and manuring; I can't tell whether Ralph trimmed or manured them, or not; when I first moved on Morris' part, I told him the land was so poor it would not pay to farm it; I told him it would not pay; I moved there the 1st day of April, and I moved away the first of August; unless I had had good friends, I should have starved to death; he would not pay me anything, and I could not raise anything to pay me in that time; he did not pay me my wages; I told him it would not pay for working it; it would not pay the tax, the way it was; I worked for Ralph the first year he moved there; once and a while; I can't give any idea

whether the place would pay to work it or not; the part that Ralph got was generally better than Morris' part; when the farm was divided, Ralph got the best part; I heard them say Ralph paid a good deal of money for it, because he got the best share of the farm; there was no part of the farm out in common when Ralph moved there, as I know of; I live in my own house now.

Cross-examined by Mr. Dudley.

My house is on the Marlton Turnpike; I own nearly four acres of land with it; I can't tell how much land was set off to Ralph V. M. Cooper; I mean in the division; I can't say how many acres of land Ralph now has of the Matlack farm; I can't tell how many acres were set off to Morris; I do not know how many acres there were in the Matlack farm; I have no idea how many; there is more than a hundred acres, though; I can't tell how many acres there were in the orchards; about one half of the farm was in orchards, I guess; I have no supposition how many acres were in the orchard; I don't think there was one hundred acres in orchard; there was more than 50 acres; I suppose Morris has twenty-five acres set off to him, beside the orchard; I believe they call one orchard Morris has seventeen acres; one other small orchard has four acres; he has about eight or ten acres of meadow; I don't know whether or not, this comprises all that was set off to Morris; I suppose Ralph got about seventy-five acres; this part that was set off to Ralph was as poor, but was better soil; I worked for Ralph the first year he had some stalks, but not much corn; he had a little potatoes and some cabbage; and a little of everything that they generally have on farms; I don't know how many apples he had the first year; I don't suppose he knew himself; I could not tell how much the whole farm was worth; I never rented a farm; I don't know the value of farms for renting purposes. I do not know in what year Asa Gaskill moved on Morris' farm. I therefore do not know in what year it was, that the cattle I have mentioned were driven on Ralph's part. Asa Gaskill lives on Morris Cooper's farm now, and has lived there ever since. I can't tell how long the cattle were pasturing there; I don't know who it was who drove them. There had been no Timothy sowed on the part of the field where I sowed. I can't tell how much cider Ralph made the first or second year; he made some cider; it is likely I saw him making some. I don't know that I ever heard Ralph he made a thousand dollars the first year, from the farm and in

distilling. I have heard him talk pretty much that way, sometimes—he was in fun about it, I mean. I don't know that I have heard him say that he has made a great deal of money off the farm. I am a German by birth.

Re-examination for defendant.

I know Hewlings Coles; Morris Cooper came to my house with him; he hid himself in the wagon and then Morris commenced quarreling with me; that is the way thieves and robbers come in the old country where I came from; my son told me that he was in the wagon.

10 Cross-examination resumed.

I believe Morris Cooper to be a rascal; I went on Morris's farm to work for him by the month; he was to give me twenty dollars a month, horse and cow pasture; when we first quarreled it was because I put my cow in the field after harvest. When Hewling Coles and Morris Cooper called on me we quarrelled, because I moved my share of the fowls away; I am not on good terms with Morris Cooper now, and don't wish to be; he sued me for stealing chickens; for damaging the farm; and for grubbing; he never let either of these suits come to trial.

JOHN EISELE.

20 Sworn and subscribed before me,
this 28th day of January, A. D. 1851,
WILLIAM D. COOPER, M. C. }

EDWARD HOUSTON, of the county of Camden, a witness produced on the part of the defendant, being duly sworn, says:—I live on the farm adjoining the Matlack farm; it is fifteen years next spring since my father moved there; I knew the Matlack farm when Ralph V. M. Cooper moved there; I should say it was then in a poor condition for a tenant; a good many of the fences were down and a good deal out of repair; the orchard was in very poor condition; it wanted trimming; the buildings I should judge were a
30 good deal out of repair from what I saw of them; the cider press, still houses, and mills wanted repairs; one barn also wanted repair. The cider house barn was pretty good; the wall, some of it, wanted repairs; Ralph put up a good deal of fence, the first and second years he was there; he trimmed a good many of the apple trees; he had some of the buildings repaired the first and second years; he had the still house and cider press repaired I recollect; there would be a good deal of risk to run in renting the farm; if it was a good year for apples, I should think it was worth from two hundred and fifty dollars to three hundred dollars in the condition in which it was in with the fences down and the buildings out of repair; in the second

year I should not think it was worth any more ; I don't recollect how the apple crop was the first year ; I don't think there was much fruit ; I can't say either as to the second year ; I recollect seeing Gaskill's cattle on the part of Ralph's farm during the first year ; I suppose there might be from a dozen to twenty head ; not less than a dozen. What they called the Hill orchard, Ralph never had any crops on, though Morris has had since the division ; the fence was down when Ralph had it.

Cross-examined by Mr. Dudley.

All the rails that were left were lying there ; some were rotten and some broken, after all the buildings had been repaired and put in proper condition ; I should think the whole farm would have been worth three hundred dollars at least ; I don't think it would have been worth any more ; I have never heard Ralph V. M. Cooper say what he made off the farm the first year, nor the second year. I do not know what he made off the farm the first, second, or third years ; I know he made not much of a crop the first year ; I do not know how much grain, hay or other crops he raised the first year ; I knew he did not raise much ; I don't know how many acres Ralph had set off to him ; I don't know how many acres there were in the whole farm before the division, nor how many acres was set off to Morris ; I do not know whether Ralph made any cider the first year. He might have distilled some whiskey the first year ; he distilled some the year ; I do not know how much ; he could not have distilled much ; I do not know whether he made any cider the second year, or whether he distilled any whiskey ; I know that he made cider and distilled whiskey the third year, but I do not know how much ; I do not know how many acres he cultivated the first year, or the second year, or the third year ; if he cultivated a great deal it did not pay him for cultivating it ; I knew Asa Gaskill's cattle were on the Matlack farm, I mean the part that Morris has now, off and on pretty much all summer ; I should not call it very good pasture ; I do not of my own knowledge how long they were there ; I saw them there often in the first part of the summer and the latter part also ; they would be there a week at a time when they would be away ; I don't know the year when this was, the cattle were there.

EDWARD S. HUDSON.

Sworn and Subscribed before me, this }
 14th day of March, 1854, }
 W. D. COOPER, M. C. }

By consent of parties the taking of further testimony in this cause adjourned to Friday, March 10, at 10 A. M., at my office in Camden.

W. D. COOPER, M. C. C. 49

Friday, March 10th, 1854, parties again attended, pursuant to the above adjournment, to take further testimony in this cause.

WM. HALSTED, Esq., Counsel of Defendant.

T. H. DUDLEY, Esq., Counsel of Defendant.

Samuel Edwards, of the county of Camden, a witness produced on behalf of the defendant, being duly sworn, says: I reside in Camden county, in Delaware township, on the farm of William Morris Cooper. It is on the farm called the Matlack farm, that was divided between Ralph and Morris. It will be two years, the 24th of this month, since I have resided there. Our
 10 agreement was, that I was to pay him three hundred dollars rent per year; one hundred of the same in manure. I did not pay him the three hundred dollars; I actually paid him two hundred and fifty dollars. I considered the lay rather too hard, and Mr. Cooper amicably and willingly threw off fifty dollars. I actually paid him one hundred and fifty dollars in cash, and put one hundred dollars worth of manure on the place. That was, in my opinion, a fair rent for the farm. The part which I rent is called between ninety and one hundred acres. I was not acquainted with the farm before I rented it.

Question by Mr. Halsted.

Have you had any conversation with William Morris Cooper, as to the im-
 20 provements he has put upon it; as to manure and draining the farm?

[Objected to by Mr. Dudley.]

Answer.—I have had some conversation with him. He said he had drained it and put some manure and lime upon it. I did not hear, particularly, how much money it cost. He bought a boat load of manure, and left a part of a load on the place when I went there. The manure he left there went in the bargain. He said, also, he had improved the Indian orchard, trimmed the trees, scraped them, and gave it, what you might call a thorough trimming. He mentioned how much it cost him; he went over the orchard, said it was a good job. It cost him near a hundred dollars—there were sev-
 30 eral hundred trees. I never heard him say what the expenses were. There was a house part finished—it is not quite finished. There was a small barn there when I moved there. There was a new floor laid after I came there. There was a crib built by Morris. I understood the orchard would not have been worth a great deal, unless Morris had trimmed it as he did. The ground would have been worth more without it; the trees were declining. There was another orchard between the house and wood, that had been trimmed and manured. That orchard was small, stunted and the old trees and the little ones. The land was better without the orchard than with it. The land was poor until Morris put a good deal of manure upon it. By the
 40 looks of the apple trees the land must have been poor, or else the trees would not have got so sickly.

Question.—From your knowledge of the farm, was it worth more when you took it than it was in forty-seven or forty-eight?

I should judge it was, because there had been some manure put upon it. A good deal of the land was marshy, and some bore cranberries. Morris Cooper had plowed it—dug a drain through the farm, and put the improvements I have spoken of upon the place. He had put a waggon house, pig pen, and garden fence, since I have been there. The crib had been put there before I went there. I did not see the fence put there. I can't certify anything about the fences, except the garden fence and the yard fence, which were put there since I came. I fenced off two or three fields with worm¹⁰ fence, with Mr. Cooper's rails.

Question.—What is the custom in this county, where a tenant takes a farm for a year, as to who finds the grass seed, the landlord or tenant?

[Objected to by Mr. Dudley.]

For my part, when I have taken a farm for a year, I have generally kicked against it. When I take it for a longer time, the landlord has furnished it to me the first year; and the tenant furnishes it afterwards. I have always been a renter. On the three last farms I have furnished no seed, because I rented only from year to year. I do not know what others did. I only know for myself. If I had known the farm as well at first as I did after-²⁰wards, I should not have been willing to give as much rent for it as I did. If I had known it had been in such a fix as it was, I would not have taken it at any price. I have been under the necessity of renting another barn. There was no room in the barn on the farm. I paid five dollars rent for the use of one mow.

Cross-examined by Thomas H. Dudley :—

I moved on the Morris farm, March 24th, 1852. I knew nothing about the Matlack farm until March, 1852. It is good kind of land to put in cultivation. I therefore, don't know what kind of crops were raised on the Matlack farm in the years 1847, 1848, and 1849. I suppose the crops³⁰ were light; but of my own knowledge I know nothing about it, or the value of the farm for those years. The part of the farm I occupy is the part of the farm set off to Morris Cooper. Ralph had the part of the farm that had buildings on, set off to him. The part set off to Ralph, I should judge, was the best part. It was more fertile and less stone. I don't know that the landlord or tenant either is bound to put clover seed on without an agreement. There has been a good bearing year for apples since I have been on the farm—there was a good bearing in fifty-two, very few in fifty-three.

SAMUEL EDWARDS,

Sworn and Subscribed before me, this }
 10th day of March, 1854, }
 W. D. COOPER, M. C. }

WILLIAM GASKILL, of the township of Delaware in the county of Camden, being duly sworn, on the part of the defendant, says:—I am acquainted with the Matlack farm. My father resides on Morris Cooper's farm, adjoining the Matlack farm. He moved on the farm in 1849, I don't know now many cattle he kept that year, I suppose between twenty and twenty-five; He pastured those cattle on a part of the Matlack farm. My father farmed a part of the Matlack farm for Morris [Copper, in 1850. I do not know any thing about the manure he put upon it. He limed it—I don't know how much he put upon it. He limed all of it where he had corn, I don't
 10 think he dunged the corn in the hill. I think there were two boat loads of manure put upon the Morris' part the year Eastlack lived there. I don't remember what year it was. It was after the year forty-nine, Morris Cooper tore down a barn on one part of the Matlack farm, and removed it to another part.

Cross-examined by T. H. Dudley, Esq.:

I don't remember, what year he tore down the small barn; it was the year Eastlack lived there; Eastlack had the farm after my father; I don't know upon how much of the Matlack farm my father pastured the cattle upon; I think he commenced pasturing the cattle before harvest; the cattle
 20 were not continued there all the time; I can't say whether they were pastured there by Ralph's consent or not; I can't say whether Ralph had charge of the Matlack farm that year or not; he lived where he does now on a part of it; the year after my father moved there was the first year he had charge of it; he moved there in forty-nine, so it was in the year 1850 he had charge of it; I should think the best part of the Matlack farm was set off to Ralph Cooper; I don't hardly know what the whole of the Matlack farm was worth in 1849; I should think it was worth eight hundred dollars; there are very large orchards on both parts of the farm; most of the orchard is on the part set off to Ralph; there is, I should think, about twelve
 30 acres on the part set off to Morris; there is somewhere about fifty or sixty acres on the part set off to Ralph; by the 7th of November, the crops are generally all gathered; no crops can be planted after November and before Spring; if a man has had a farm from the 25th of March to November, he has had all the crops he can get off it for the year; I have seen the picket fence along the Whiskey road, called a pale fence; it runs the whole length of Ralph's line along the public road; that fence has been put there by Ralph since my father moved on Morris's farm; it has been erected since March, 1849; I forget whether it was commenced in forty-nine or fifty; it was put up in one or other of those years; I have seen the post and rail
 40 fence up the lane to his house; I can't remember whether this post and rail fence was erected before this time or not; it was erected since my father moved on Morris's farm in forty nine.

Re-examination by Mr. Halsted:—

I cannot recollect when my father commenced pasturing his cattle on the Matlack farm; I never rented a farm myself; nobody ever told me what my father swore to about the rent; I don't know that the farm was worth \$800; I just supposed it; my occupation is that of a farmer; I am just twenty-one years of age; I work for my father; I never farmed for myself.

Cross-examination resumed:—

I think I have heard Ralph V. M. Cooper say that he has made as high as one thousand dollars a year off that farm; I am not certain; the wood on which the Matlack farm is situated is called the Whiskey road.

WILLIAM GASKILL. 10

Sworn and subscribed before me, }
 this 10th March, A. D. 1854. }
 W. D. COOPER, M. C. C. }

JACOB M. WILSON; of the city of Camden, a witness produced on the part of the defendant, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed, says:—I am a carpenter; I worked upon the Matlack farm in the year forty-eight; I helped to shingle the house, and I helped to do other carpenter work about; some of it was done to the still house, some to repairing the gates, and some other little jobbing that was done; there was between three and four thousand shingles used; they were worth about twenty-five²⁰ dollars a thousand; they were worth about ten dollars to put on and tear off; we used the old lath; I can't say what the work at the still house cost, it was so long ago, nor the work at the gates; Silas M. Gough was the boss carpenter who paid me; I don't know who employed him; he is now dead; I suppose it would take about twelve or fourteen pounds of nails to put on the roof; the nails were worth five cents a pound; we put in a new sluice trunk at the still house; we likewise put some new sash at still house; I don't recollect about a new curb at the well; we put spouts to vent the lees at the stills; I don't think I could tell at present how much the work was worth; we put new spouts on the still house and went over the boards;³⁰ fixed up the windows; I don't recollect about banisters; we laid a new floor under shed; the shed had been roofed the year before, also a new roof on kitchen the year before; we made two new gates; the materials and work of the two new gates would be worth between two and three dollars a piece; previous to doing this work in forty-eight I went over the farm with Morris Cooper; I should say the farm was in a pretty bad condition; we went over the farm with a pair of mules; they got mired; he said the farm was in a bad state and he thought he might some day get it in a better condition, but he did not know how or when; a portion of the farm was miry; the part of the farm that was dry was poor land; Morris talked a great⁴⁰

deal about building a barn and house, and of making a farm of it; there was a barn on the place that Ralph said belonged to him; Morris said he would have good luck if he got it; he did not say that he was going to take it down.

Cross-examined by Thomas H. Dudley:—

I worked for Silas McVaugh as a young man; Silas did not work there himself; I worked there in November, 1848; it was at that time when the roof was put on; I can't say at what part of the month; I forget how long I worked; I can't say whether we done all the work in November or whether
 10 we run over to December; I don't remember which was done first, putting on the roof or the work at the still house; I don't recollect whether we were at work there a month or not; I did not work there in the year of forty-nine; I don't know if Silas worked there in forty-nine; I had not charge of the work there; Benjamin Silence also worked there with me; it was the main house we shingled; it was the shed floor we laid; I can't say whether I worked there one, two or three days; I can't state the number of days; I helped put on the whole of the roof; I helped take the old one off; there were two of us at work at the roof all the time; I don't know whether the other man worked at the roof all the time; I can't recollect
 20 what I did when I did not work at the roof all the time; I can't recollect what I did when I did not work at the roof; I can't tell how long it would take another carpenter and myself to lay two or three thousand shingles. I can myself lay different numbers owing to the shingles; these shingles were two feet shingles; I can lay three hundred of them; it is owing to where they are laid whether this is a good day's work.

Question.—Is the lying of three hundred shingles on Ralph V. M. Cooper's roof, an ordinary day's work for a good carpenter?

Answer.—It is on the eaves, and the large, but in the middle a man could lay five hundred a day. I don't recollect how many it took on that roof, or
 30 the eaves.

Question.—How many shingles would be an average day's work on that roof?

Answer.—From three to five hundred. I suppose there would be at least seven days work at laying that roof. I suppose one man could take that roof off in one day, if he had had nothing else to have done. This work that I have spoken of, was done in October, I meant to say. I know it was the month of October, from my brother's dying. The whole of the work was not done in October, the other was done in November. I think such shingles
 as were put on the house were worth twenty-five dollars per thousand, they
 40 were prime shingles. I have no recollection of the month in which I went over the farm with Morris Cooper. I don't know whether it was before or after I

did the work. I don't recollect whether it was warm or cold weather. I don't know whether it was in forty-eight or nine, it was before fifty. I recollect the number of shingles from the estimate that was made at the time, by Silas and Benjamin; I don't know that it took that number, all that I know is from the calculation that was on the shingle at that time. I don't know where the shingle is, my knowledge of the nails is from the same source.

The barn that I spoke of was standing over the other side of the place, near a road.

Question.—How much is the price per thousand for putting on shingles, and how much for tearing off. 10

Answer—I can't answer that question.

Question—How much is it worth per thousand to put on new shingles.

Answer—I don't know how much they charge per thousand, I never made an estimate for putting on by the thousand, and I don't know how they rate it.

Question—How came you then, to say, in your examination in chief, that it was ten dollars a thousand to put them on.

Answer—I did not say ten dollars a thousand.

Question—What did you say in your examination in chief, that it was worth to tear these shingles off, and to put them on. 20

Answer—I don't recollect now what it was I did say.

Question—What was it worth to take the old shingles off, and to put them new on.

Answer—I could not make a very correct calculation on that because there were a good, many old nails to draw.

Question—What then did you mean when you said, in your examination in chief, when you said it was worth ten dollars to tear off the old shingles, and put the new ones on.

Answer—I suppose you wanted to know some where near the calculation, and this is as near as I can come to it. 30

Question—In making this calculation, how much did you allow for taking the old ones off, and how much for putting the new ones on?

Answer—I did not make any calculation of the difference, I could not do it. It is merely guess work of the time of doing it.

Re-examination resumed by Mr. Halsted.

Witness being shown a paper marked by me exhibit, on the part of defendant, says, I know the handwriting of Silas M'Vaugh, to this paper is his handwriting.

Exhibit objected to by Mr. Dudley, because books of original entries not produced. 40

Cross-Examined resumed.

I was talking to Ralph V. M. Cooper, at one time, about how much he

was making on the farm, I said, I supposed he was making about one thousand dollars a year; he replied that if I would insure him four hundred he would give me all even. This was when I was working there.

JACOB M. WILSON.

Affirmed and subscribed before me, this }
 10th day of March, A. D. 1854. }
 WM. D. COOPER, M. C. C. }

JOB B. KAY, of the county of Camden, a witness produced on the part of the defendant, being duly affirmed, according to law, says:—Ralph V. 10 M. Cooper, purchased lime of me when he lived on the Matlack farm, which I believe went on the farm. It appears from my book, to have been three hundred and twenty-five bushels; it was in the year eighteen hundred and forty-nine. I have no account of any he purchased in forty-eight, I have no recollection of his purchasing any in forty-eight. I don't recollect particularly what was the condition of the Matlack farm in forty-eight or forty-nine. I went over a part of it, the orchard with him, in that year: it was very poor that part, I did not go over quarter of it.

Cross-examination by Mr. Dudley. [No question.]

JOB B. KAY.

20 JOSEPH A. BURROUGH, of the county of Camden, a witness produced on the part of the defendant, being duly affirmed according to law, says: I was one of the commissioners who divided the Matlack farm between Ralph and Morris Cooper. The farm was very much out of repair, and the land very much exhausted; the fences were very much out of repair. In the condition in which the farm was when we divided, I should not have been willing to give more than three hundred dollars a year for it; two hundred and fifty, I think would have been nearer right. My recollection is not very distinct as to the repairs at that time, I think the kitchen part had a new 30 roof on it. I don't recollect any request being made to Ralph not to sow any winter grain on the farm, so that Morris might have his share without any crops on it.

Cross-examined by Thomas Dudley.

The commissioners who made the division were, Benjamin W. Cooper, Ezra Evans, and myself. I can't recollect the time when the division was made. The line was established between the two brothers, and we merely sanctioned it.

And witness being shown a paper hertofore marked by me Exhibit G. on the part of complainant, says, the signature Joseph A. Burrough, to said paper, is my handwriting and signature. I believe this to be the division 40 that was made by us between them. It was made on the day it bears date.

I don't know how much orchard there is on the Matlack farm; I should judge twenty acres about; I do not now know how many acres there was in the Matlack farm. We went pretty generally over the farm on the day when we made the division; I took my notes of the valuation of the farm at the time. I can't say whether I now have them. I think there was not much new fencing on the place at the time. It seems to strike me that there was a part of a new fence between Ralph and the Robert's place, my recollection is not now distinct about it, my recollection does not serve me, whether it was a new fence or had been put up out of old rails; I should judge about one half of the fence had been put up new on the Roberts line. I can't 10 tell now how long this fence is. I can't tell whether this fence had been put up by Ralph or Roberts. The rental of the farm would depend very much upon whether there was a full crop of apples, the farm is not worth much without them.

It now being late in the afternoon, I adjourned the further taking of testimony in this cause, and requested the counsel of the parties to name some early day on which to continue the examination. Mr. Dudley, counsel of complainant, objects to any further delay in taking testimony, and making report. Mr. Halsted, counsel of defendant, stating that his professional engagements would prevent his attending before Monday, March 20th, 1854, 20 and requesting an adjournment to that day. I accordingly adjourned the taking of further testimony to Monday, March 20th, 1854, at 10 o'clock, A. M., to my office in Camden.

Mr. Dudley objected to said adjournment.

WM. D. COOPER, M. C. C.

MONDAY, March 20th, 1854—Counsel of parties again attended at my office, pursuant to the above adjournment, for the purpose of taking further testimony.

Cross-examination of Joseph A. Burrough, continued:—

My memory does not serve me as to the kind of fencing that was on the 30 farm at the time we divided the farm. Ralph showed us where we had been putting on some new improvements; I do not recollect as to the extent, but there was a perceptible improvement on the premises. I have reference, in speaking of those improvements, to that part of the land where he had put on manure. This manure was on the part principally that we set off to

Ralph. My memory is not distinct as to any other improvements, except to the land. The fences were a good deal out of repair, taking the whole property. My recollection does not serve me as to whether the fences had been put up with new or old rails. I think a portion of the line fence between the Matlack farm and the Robert's line, was made with new rails; but I 40

don't know whose part it was. I don't recollect of any other new fencing. It was the same fence of which I spoke the other day. It is the only new fence of which I have any recollection.

JOS. B. BURROUGHS.

Affirmed and Subscribed before me this }
 20th day of March, A. D. 1854. }
 WILLIAM D. COOPER, M. C. C.

JOHN E. HOLMES, of the city of Camden, and State of New Jersey, a witness produced on the part of the defendant, being duly sworn, says: I am acquainted with the Matlack farm, and have been a number of years; I have been frequently there, but don't remember the date, was there when John Pike lived there, and after; was there at Howey's sale, the spring that Howey left it. Ralph V. M. Cooper came there when Howey left it; I was there after Ralph came on it. I observed the situation of the farm at the time of Howey's sale; I observed how the farm had gone to destruction since Pike had left it. The lands had got poor; the buildings gone to rack; and the fences were all gone; the house looked desolate; the roof off the shed. I noticed the orchard particularly—the trees were full of bush. I believe on account of it, a great many trees had died for want of taking care of them. I commenced with Ralph the second season after Howey left. The situation of the farm was so bad that I left. I thought it was too poor for him to make a living on the farm and pay me big wages; at that time big wages were five shillings a day, that was about as high as wages were going; I would have got that wages anywhere. It was about customary daily wages. The farm was not improved much from the time that Mr. Cooper had went there, he had improved the sheds some, I should not have liked to have given more than seventy-five dollars a year for the farm at that time, and I should have liked to have had a lease for five years at that. I trimmed the apple trees for him. The trees were in a quite bad condition then. We could hardly get the brush out, especially the wine sap trees; some of the trees were dead; some dead on one side. I put up some fence for Mr. Cooper; I can't tell the year; I think it was two years after I undertook to work for him; I commenced working for him the spring of the next year after Hickey left.

Cross-examination by Mr. Dudley:—

I don't remember how long I worked for Ralph—about four or five days. It might have been a week—I mean at the commencement. I have worked for him since. I carry on work for Samuel Lytle now. He lives on a little farm, here in Camden. I think I did not trim many trees that spring I commenced. It was a blustering spring. I cut some potatoes and clean-

ed out the barn-yard. I have worked twice for him since. I don't know what Robert Howey gave for the farm the year he lived there. I understood he worked it on shares. I do not know how much Ralph offered for that farm before he went there. I do not know how many acres there are in the farm. I don't know what he raised on the farm the first three years he was there. I now get four dollars a week and found for my wages. I lived in Joseph Shriver's house, on the Marlton turnpike, when I first went to work for Ralph. It is about four miles from Ralph's. The second time I went to work for Ralph was three years ago last summer—that would be the summer of 1850. It was before that I trimmed the trees; I lived at 10 Cooperstown then; when I trimmed the trees it was the winter of forty-nine and fifty.

Re-examination resumed :—

I commenced trimming the trees late in the fall. I have worked for Ralph every year since Howey left; every year except the first, up to last year.

Cross-examined resumed :—

I worked considerably for Ralph the next spring after Howey left. I mean the spring of forty-eight. I trimmed a good many trees that fall and winter; the farm looked better then. He did not pay me big wages that winter. I can't tell how many days I worked for him that fall. In the fall I helped with the cider the latter part of the season. I disremember about the quantity; he bought considerable of apples while I was there. He had not many apples that season; the apples were small I think it was November I was there. It was at late apple-gathering I was there. The farm was very little improved; it looked rather better; it did not look good enough to pay me big wages then; I don't think the house was repaired then; I know it was not. The out-buildings were not in good repair then. The house leaked—a part of it I know. I can't answer how long I worked for him the next year. I can't say positively that I worked for him that year. I think I did; I worked for him, I think, every year except the last.

JOHN HOLMES.

Sworn and subscribed before me this }
20th day of March, A. D. 1854. }
WILLIAM D. COOPER, M. C. C. }

By consent of parties the taking of further testimony in this cause, adjourned to Thursday, March 23d, 1854, at my office, at Camden, at 10 A. M.

W. D. COOPER, M. C. C.

Thursday, March 23, 1854, parties and their respective counsels again attended for the purpose of taking further testimony, pursuant to the above adjournment.

JOHN HUDSON, of the county of Gloucester, a witness produced on behalf of the defendant, being duly sworn, says: I am acquainted with the Matlack farm; I lived on a farm adjoining the Matlack farm. I moved there, I think, in the spring of thirty-nine; I lived there six years. After I left that farm, I moved about six miles off. I was on the Matlack farm after I moved about five or six times a year. When I lived adjoining, I was well acquainted with the Matlack farm. I should suppose that in the years forty-seven, forty-eight, and forty-nine, from three hundred to three hundred and fifty dollars, would have been about a fair rent. I do not know much
 10 about the repairs; I think he did put some new roof on. I don't know much about the fences. The apple trees in these years were not in good condition, they wanted a good deal of trimming; a good many of the trees were dying or dead; I do not know from what cause; the trees had been dying for years; a good many were dead and dying in forty-seven, eight, and nine. The land was poor, thin and worn out. Mr. Howey, was a good farmer, but he farmed the land pretty hard; I mean he worked the farm to his own advantage more than to any one else; and to the landlord's disadvantage. I don't know that Howey bought any manure on that land; I don't think he did. Mr. Howey had one fruit year.

20 Question by Mr. Halsted, whether the fruit year, Mr. Howey had, was an abundant year.

Objected to by Mr. Dudley, because irrelevant.

Answer--It was an abundant year, there was a great deal of fruit.

Cross-examined by Mr. Dudley.

I don't know that Ralph farmed the place hard or not. I left the adjoining farm two years before Ralph moved there. I suppose Ralph farmed it so as to make the most out of it; but I should not think he abused it as bad as it had been before; what I mean to say, is that, I don't think Ralph farmed it any harder than Howey. Howey plowed the best field on the
 30 place and put in corn two years in succession. I never did such a thing as that, though I have been a farmer ever since I was able to follow a plow, Ralph raised corn, wheat, and potatoes the first three years he was there; I say this of my own knowledge. I suppose he raised other crops. A good many trees all through the orchard was dying; I can't say what proportion. He made cider and distilled whiskey in the years forty-seven, forty-eight and forty-nine, I don't know how much. Robert Howey had not the Indian orchard field. In my estimate of the rent, I only included the part to the right of the whiskey road, and not the Indian orchard as you go to the Marlton turnpike. I don't know what would be a fair rent for the Indian orchard.
 40 I would not give much for the land to the left of the road. It is not the kind of land I like to farm, it is cold and stiff. I have not been on that part of the place for nine years. When there are a great many apples they

are not worth much; a quarter of a crop is worth more than a whole one, when fruit is scarce, in fact the fruit there in the Indian orchard is not good, they are principally grey-house apples, but they are as good as any apples for making cider and whiskey. There is about seventeen or eighteen acres in that field. One of the main branches of business on the farm is making cider and distilling whiskey. The land in the Indian orchard, without the trees, is not worth anything; I have seen crops growing there, that did not pay for gathering. I should think the rental value of the Indian orchard, taking all risks, is worth one dollar per year per acre, if it is worth anything, I think I would have been willing to give a dollar an acre¹⁰ for that orchard in the condition it then was, and run all the risk. I moved away from the neighborhood of this farm two years before Ralph moved on it. I have never had any suits with Morris Cooper.

Examination in chief resumed:—

I meant the farm was worth from three hundred to three hundred and fifty dollars a year.

In an abundant season of apples, I found malting cider and distilling whiskey not to be profitable. If I had not to have hauled the apples so far, it might have been more profitable. Having had so many apples that he would not take mine, and I had to haul them to²⁰ John Robert's from a mile and a half to two miles. In that year I was only able to get twenty-five cents a gallon for fourth proof. When whiskey is very scarce it brings a dollar a gallon. The fruit on the whole farm is not good fruit, it is too much for making cider, and marketable apples are more profitable. There are good apples however, scattered all through the orchard, but very few. The orchards are divided by fences, and there are more good apples in some than others.

JOHN HUDSON.

Sworn and subscribed before me,
this 23d day of March, A. D.,
1854.

WM. D. COOPER, M. C. C. }

30

SAMUEL NICHOLSON, of the County of Camden, and State of New Jersey, being conscientiously scrupulous of taking an oath, and being affirmed according to law, says:—

Since I was examined in this before, I have examined my books, to find the exact share of Sarah Ann Lee, in the six years I was her agent. I find the average of her share for those years was one hundred and twelve dollars and thirty-three cents. Howey had the⁴⁰

farm on shares previous to my having anything to do with it. I had the care of it to the 25th of third month, 1846; I do not know of the value of the farm since, Richard W. Howell, and myself rented it to Howey. I am not certain that there was a written lease. I do not know in what year Howey left it.

Cross-examination.

The one hundred and twelve dollars and thirty cents, was the average rent, after deducting taxes and repairs. The rent of the farm, the year it was rented, was \$300. In the year 1845, I received
 10 for Sarah Ann's share of rent of the Indian orchard fifteen dollars, this I suppose would be at the rate of \$45, for the whole of the Indian orchard field. It was in the spring of forty-six that I received the one hundred dollars for Sarah Ann Lee's share. In the year 1845, the Indian orchard was rented to Howey. I do not know to whom, it was rented the other years. It appears that in the year 1844, Sarah Ann's shares was \$163.72; in 1845, I did not receive her full share. In 1845 it was rented as I have above stated. I had nothing to do with the place after 1846. In settling with Howey, he
 20 would bring me a bill of what he had sold, and would take out the taxes and repairs, and give me one-third for Sarah Ann's share, I did not investigate the matter for myself, but took what he gave me.

Examination in chief resumed.

In the rent for 1844, as I have above stated, it appears was included some whiskey, that was made in the year previous, amounting to \$13.96. I am a farmer—that is my business. In many cases farms that are rented, grow poorer and poorer every year, unless there is manure brought on. I don't remember to have paid for any manure whilst Howey was on the place, but it has been long since.

Cross-examination resumed.

30 In the average of the six years, as I have above stated, the last four years would average \$129.19, I mean for Sarah Ann's share, which was one-third. This does not include the \$15 for the Indian Orchard.

SAMUEL NICHOLSON.

Affirmed and subscribed, before me, }
 this day 12th day of March, 1851. }
 W. D. Cooper, M. C. }

ENOCH ROBERTS, of the County of Camden, a witness produced on the part of complainant, being duly affirmed, according to law, saith:—

I own the farm adjoining Ralph Cooper, called the Matlack farm; I live there, have lived there six years this spring; I put up a part of a new line fence, I mean my share, in 1848; Ralph's part of it now is in tolerable good condition, in 1848 it was a good deal rotted down; I do not know of his putting up a new line fence, since I have been there, I know that he could not have put up a fence with new rails, without my knowing it; Ralph's part of the line fence, in forty-eight and forty-nine, was good enough to turn the cattle, it did turn them anyhow; the part where I put my fence, was taken away a while before I came there, the balance that was remaining there was old fence, bushes were growing up where the fences were, and where it had been; I don't think there are any new rails in Ralph's part of the fence. 10

Cross-examined by Mr. Halsted:—

I do not know who built the line fence in forty-seven, I was not there then, I don't know who put it up then; I have seen Ralph plant and raise crops there that would not pay him for raising. 20

Examination in chief resumed:—

There has been no new fence put up on Ralph's share of the line, since I can recollect; I was acquainted with the land before I moved there.

ENOCH ROBERTS.

Affirmed and subscribed before me, }
 this 23d day of March, A.D. 1854. }
 WM. D. COOPER, M. C. C. }

RICHARD LECONEY, of the County of Camden, a witness produced on the part of the complainant, being duly affirmed, according to law saith:—I live at Roberts' Mill, about three-quarters of a mile from the Matlack farm, have lived there 13 years; I recollect seeing a new roof put on Ralph's house, it was about four or five years ago, to the best of my recollection, that would make in the year forty-nine, to the best of my knowledge it was in the year forty-nine; it was the season the cholera was here, the cholera year was in forty-nine. 30

Cross Examined by Mr. Halsted.

I do not know who done the work ; I knew Silas McVaugh, he died in the cholera season, I think in July. The roof must have been put on in the spring, I made no memoradum of the time when the roof was put on, it must be in forty-nine not forty-eight; if I recollect it must be about that time, I have not talked with anybody, but as far as I can recollect it must have been about that time; I saw the roof when it was done, but did not see anybody working at it, it is right opposite my mill; I can't tell how long it would take to put on the roof, I owned the mill at that time, I had owned it one year that spring, I suppose; I don't know whether the new roof was cedar or pine, I did not take any notice; I knew there was a new roof off, I could not tell what kind of wood it was, whether cedar or pine; my reason for saying it was in forty-nine, is because I saw the new roof on the house. My memory is pretty good for dates, I can recollect pretty well, I can recollect dates and facts all alike; Asa Gaskill moved on Morris Coopers farm in 1849. The new roof I saw, was on the north side, I don't know whether it was on both sides; it must have been in the fall of forty-nine, that the Commissioners divided the farm, I don't recollect anything about it, I know it was divided, though I paid very little attention to it.

Question by Mr. Halsted.—“Did you hear it was divided about the time it was divided?”

Answer—It was after it was divided.

Question repeated.

Answer—I can't recollect what time it was exactly, it was afterwards of course, I don't recollect hearing anything about it at the time they were dividing it; I did not see the Commissioners there, when they were dividing it; it was in the year 1849 when I first heard of it, I can't tell at what time of the year it was; I don't recollect whether I heard of Burrough talk of being there and dividing the propetry.

Examination in chief resumed:—

My mill is a mile from Ralph's house, the house is in plain sight from my mill.

RICHARD LOWERY.

Affirmed and subscribed, before me,
 this 23d day of March, A.D. 1854. }
 W.M. D. COOPER, M. C. C. }

GEORGE T. RISDON, of the County of Burlington, and State of New Jersey, a witness produced on the part of complainant, being duly affirmed, according to law, saith :—I am about fifty-four years of age, I am well acquainted with the Matlack farm, have lived within a mile and a quarter of it, for thirty years. Ralph V. M. Cooper came to my house this morning, for the purpose I suppose of getting me to come here and testify for him. I lived there near the Matlack farm, in the years forty-seven, forty-eight and forty-nine, where I had lived for thirty years. From the time Robert Howey moved there I have been well acquainted with the farm, I knew it ¹⁰ tolerably well before; I was on the farm in forty-seven, forty-eight and forty-nine, and at the house frequently; I am rather a poor hand at judging the rental value of farms, I am not a practical farmer, I have ever since I have been a housekeeper, farmed small lots; it is rather a delicate question to say what the farm was worth a year, I should suppose it was worth from seven to eight hundred dollars, I mean the whole of it together; in forty-seven and forty-nine, I should think it was worth from seven to eight hundred dollars a year; in forty-eight, I should think it was worth from five to six hundred dollars, because I think there were no apples of consequence ²⁰ that year, this is the reason of my putting the farm down that year to five or six hundred dollars. There was a roof put on the kitchen and on the shed, and some other repairs, down there in the year forty-nine; it appears to me, that it was about the same time that the house was roofed, but I will not be positive, I can't be positive, but I think it was after Asa Gaskill moved on Morris Cooper's farm that it was done, according to the best of my recollection, the whole of these roofs in 1849; my impression is that they were put on in forty-nine; I was there whilst these roofs were being put, this is why I have the impression that it was in forty-nine, it was the year my ³⁰ wife died, and I frequently called on Mr. Cooper for favors which were freely granted; I was there, I saw them at work on the roofs; Ralph V. M. Cooper made considerable whiskey those years; he manufactured his apples into cider, and marketed a good many of them, in forty-nine, I don't recollect his marketing them in forty-seven; there were but few apples in forty-eight, I have no recollection of his marketing them in forty-eight; Ralph raised considerable potatoes in those years; I don't know when the division was made; but I think most of the permanent repairs after that;

he put up some fence before that, I mean repaired them, he put up no new fence I think.

Cross-examined by defendant:—

I was collector of the taxes in Delaware township in the years forty-seven, eight, and forty-nine, and was collector of the township for eight years; one year I was hired by the committee to collect the taxes after the return; it was in the year forty-eight; Ralph V. M. Cooper paid me taxes for that year; I think the tax was between sixteen and twenty dollars; I don't know exactly how much; I base my opinion of the value of this farm from what I knew of this farm and the value of farms in the neighborhood; I am a brush-maker by trade, but I have not followed it for the last few years; I have worked at some but not followed it for some ten years; riding over the township as collector gave me my idea of the value of farms; I am no practical farmer, although I farmed six or ten acres; I have never plowed a furrow; the farm was in a poorish situation when Mr. Cooper moved there; it had been farm land; the fences had got out of repair through carelessness; the buildings were out of repair a good deal, the house, kitchen and shed; the outbuildings were not so bad; Ralph trimmed the trees a good deal; the trees were not dying that I recollect; I was frequently on the farm; the trees were vigorous, but had been neglected and wanted *trimming*; I recollect of getting whiskey of Ralph several times; in forty-nine I asked him for some; he said he had none to spare, but in case of sickness I might have some; he gave me a demijohn, but I never paid him for it; he made no charge of it; I recollect coming with Morris to Ralph's when some man was putting a new roof on the house shed; I think it was Aaron Zane, but I am not positive; it was not the last year Morris lived on his farm; Morris had moved to Moorestown and we came round by Colestown.

Examination-in-chief resumed:—

I moved to Moorestown last week; it is in Burlington county; I can't tell in what year Morris moved there; it was the year Gaskill moved on his farm; I have a duplicate of the taxes the year I collected them; in the sum I have mentioned for taxes are included three tracts; I knew where they lay; I dare say the Cherry Hill tract was included in this tax; the Cherry Hill tract is no part of this farm; it was in forty-eight I collected this tax; I think it was in the fore part of winter of forty-nine that I got the whiskey; it was sickness that I got the whiskey for.

Cross-examination resumed:—

I think Ralph gave me an order for the tax on the day that Morris had his vendue, or the next day; I don't recollect whether the vendue of Morris Cooper was in forty-seven or forty-eight, although I clerked it; if either one of the Mr. Coopers had mentioned it to me this morning I would have brought the duplicate; Ralph told me he wanted to prove by me that he paid the taxes; it was this morning.

G. T. RISDON.

Affirmed and subscribed before me,
this 23d day of March, 1854,
W. D. COOPER, M. C. C.

10

CHARLES PEARSON, of the County of Camden, a witness, produced on the part of the complainant, being duly affirmed, says:—

I lived in Ralph V. M. Cooper's house in '48 and '49; I moved there in June '48; it was a small tenant house on the Matlack farm I lived in; I paid him twenty-five dollars a year.

Cross-examined by Mr. Halsted:—

I had between three-quarters of an acre and an acre, with the house; he found me manure, about seven cart loads; he paid the ²⁰ taxes.

Said witness now being called on part of defendant says:—

The land of the Matlack farm was poor when I took possession of the little house; the fences were poor pretty much all the way round; the orchard wanted trimming very bad; Ralph employed me to trim it; I worked on it one winter off and on; and then pretty much one summer time; it was in my opinion necessary to preserve the lives of the trees that they should be trimmed; Ralph put a good deal of lime on the orchard; I don't know whether he limed the whole of it; he limed some part of the other land; he got up a boat load of ashes ³⁰ also, while I was there, I mean such a boat as goes up the creek; there was also a sloop load of manure; there were more apples in '48 than in either of the other years; part of the orchard bore pretty well in '48, and part did not. Asa Gaskill occupied, I think, a part of the Matlack farm in '49; it was the part where Edward lives now.

Cross-examined by Mr. Dudley:—

I do not know whether it was in '49 or '50, when Gaskill ploughed

a part of the Matlack farm. There were a good many apples in '48; in '49 there were not many; in '48 Ralph marketed the apples and made cider of them; I don't know how much cider he made; I guess he was making cider the biggest part of the season; I can't tell how often he went to the Philadelphia market with apples—about two or three times a week, I think, he went in about in '48; I don't know how much the boat held; I suppose about a couple of wagon loads at a trip; the apple season I suppose begins about the first of July, or the last of June; sometimes it keeps on until the weather gets
 10 cold, till about the last of October, or the first of November; I trimmed the apple trees in the winter of '48 and '49. Some of the lime of which I have spoken of, was brought on the farm the first winter I moved on the farm; some time the spring of '49; I moved on the farm in June '48.

Re-examination resumed:—

Some of the apples of the year forty-eight were good for market, and some not, most of them were gray house apples, which are poor to eat; in forty-eight, Ralph took in apples to make cider for other people.

20 Cross examination resumed:—

There were not many wine apples, Newtown pippins, or Monmouth pippins that year, that he took to market. These were the grey house apples, Wine Sap, Hollow Core, Spittenbergs, some Newtown pippins, but not a great many, several kinds that I don't recollect, there was a large Blush pippin; the small and inferior apples he made cider of, those that were not fit to market.

CHARLES PIERSON.

Affirmed and subscribed, before me, this
 23d day of March, A.D. 1854.
 30 WM. D. COOPER, M. C. C. }

EZRA EVANS, of the County of Burlington, and State of New Jersey, a witness produced on the part of complainant, (being conscientiously scrupulous of taking an oath,) and being duly affirmed, says:—I am upwards of forty years of age, and am a farmer; I was one of the commissioners that made a valuation of the Matlack farm in the fall of 1848.

And being shown the paper heretofore marked by me, Exhibit G, on the part of complainant, says:—It is the report of the said com-

missioners, and is in my handwriting, and the signature Ezra Evans thereto is my proper handwriting and signature. To the best of my recollection, at the time we made that valuation and division, the permanent improvements on the building and farm, had not been made; after turning over the matter and reflecting upon the subject, I am satisfied that the improvements to the buildings were not then made. I was there at Ralph's some year or two after, and then noticed the improvements, and talked with Ralph about them; at this time I noticed the new roof on part of the buildings; I don't recollect observing any new fence on the farm, at the time the commissioners¹⁰ divided it, I remember a new fence had been set on one of the lines on Roberts' lines, I do not know who did it; Ralph or Roberts; I remember the division was in the fall of forty-eight, the report will tell the date. I think the new fence I spoke of, was put up with old rails. The farm at that time, I should consider to be in a poor state for agricultural purposes, a large amount was in apple trees; the farm at that time independent of the orchard, I should think was then worth from three hundred to three hundred and fifty dollars a year; the profits of the orchard I am unacquainted with; including the orchard I should think it was worth six hundred dollars, but as²⁰ everybody knows apples are an uncertain crop; in 1848, I have no doubt the farm was worth more. Putting the good and bad years together, I should lay the farm at about six hundred dollars a year; the year 1848 was in most places an apple year.

Cross examined by W. Halsted:—

I cannot now distinctly remember at what price we valued the farm per acre, I now recollect from a memorandum shown me by Ralph, we valued one side of the farm at thirty-five dollars an acre, and the other side we valued at twenty-five dollars an acre, the side set off to Ralph, was valued at thirty-five dollars an acre,³⁰ there were eighty-four acres of it; the part set off to Morris was valued at twenty-five dollars an acre, and there were one hundred acres on it. This valuation was exclusive of the building; I never occupied any part of that farm; I rent one of my own farms and live on another farm of forty acres; I don't think I ever noticed any of the crops growidg on the Matlack farm, I was very much of a stranger to it, until I went there to divide it; the first time I knew there was any difficulty about this matter, was about ten days ago. Morris Cooper called upon me about it, he told me there was a diffi-

culty about the rent, I told him I would look over the report and think about it.

Re-examination in chief:—

The buildings were valued at \$1,600. The aggregate value of the whole farm was by one valuation \$7,250, and the other \$7,077 75; the last, I think, was the true one—five per cent upon the value of a farm is considered generally a good rent.

Examination-in-chief resumed:—

By the calculations to which I have above referred, Ralph was to
 10 pay Morris \$2,212 25. This sum does not agree with the report. These calculations were no doubt afterwards changed for some cause. These calculations of which I have spoken, were on a paper handed to me by Ralph. I had no recollection of these valuations until the paper was shown to me by Ralph; but I have no doubt these were the valuations from the other business.

Cross-examination resumed:—

These valuations were the real values we placed upon them at the time.

EZRA EVANS.

Affirmed and subscribed before me,
 20 this 23d day of March, A. D. 1854.
 W. D. COOPER, M. C. C. }

WILLIAM GASKILL of the County of Camden, a witness, produced on the part of complainant, being duly sworn, says:—

I recollect that the roof was put on the Matlack farm house in the year 1849; I was passing by Ralph's in 1849, and saw the man on the roof; it was Jacob Wilson I saw on the roof; he stayed at our house one or two nights whilst he was doing it; this was the dwelling house where Ralph lives; this was after my father, Asa Gaskill, had moved on Morris' farm; my father moved on Morris' farm in
 30 the spring of 1849; Morris' farm where my father lives, lies adjoining the Matlack farm, and is sometimes called the Champion farm; Jacob Wilson stayed at my father's house several nights; he said he hoped it would not rain, because he said he had the roof off Cooper's house.

Cross-examined by Mr. Halsted:—

I was at Cooper's gate when I saw the man at Cooper's roof; I

can't remember whether he put both sides of the roof on, or only one; I saw him putting the front side on; I can't say whether anybody was helping Wilson or not; it was not when my father lived at the white house, that Wilson put the roof on; I was standing at Ralph's gate when I saw him putting the roof on; it was in 1849.

WILLIAM GASKILL.

Sworn and subscribed before me, this }
 23d day of March, 1854, }
 W. D. COOPER, M. C. C. }

HENRY MOORE, of the county of Camden, a witness produced on the 10 part of the complainant, being duly sworn, says:—I am about twenty-five years of age; I am acquainted with the Matlack farm where Ralph lives; I worked for Asa Gaskill in the year 1849; he lived then where he lives now on Morris Cooper's farm, called the Champion farm; I recollect Ralph V. M. Cooper's house being shingled in that year, in 1849; I saw the men at it; I was over to Ralph's when they were doing it; Jacob Wilson was one of the men that was doing it; I saw Wilson at the roof when I was over at the house; this was while I was working for Asa Gaskill, and was in the year 1849.

Cross-examined by Mr. Halsted:—

20

I made no memorandum of the time when I saw Wilson at the house; I can't write; I saw Wilson on the part of the roof next to the road, on the front side; Coney's Mill is on the back side of the house; it was not on that side of the house; I have lived with Gaskill pretty much of five years; I lived there when he first moved on Morris' farm; I lived with him I guess eight months when he lived on the White Horse farm; it was six years ago when I first lived with Asa Gaskill; he then lived on Mr. Matlack's farm down at the White Horse; the White Horse is several miles distant from the Matlack farm.

Examination-in-chief resumed:—

30

The reason that I know it was in 1849 is because I saw him at it; it was after Asa Gaskill moved on Morris' farm; he moved there in 1849.

HENRY MOORE, his \times mark.

Sworn and subscribed before me, this 23th }
 day of December, A. D. 1854, }
 W. D. COOPER, M. C. C. }

The complainant produces and offers in evidence a deed from Ralph V. M. Cooper, which said deed is marked by me Exhibit on part of complainant.

IN CHANCERY OF NEW JERSEY.

BETWEEN
WILLIAM M. COOPER, Complainant
AND
RALPH V. M. COOPER, Defendant. } April 22, 1854.

In pursuance of an order of this Court, entered on the tenth day of February, in the year of our Lord one thousand eight hundred and fifty-three. I have been attended several times by the counsel of the respective parties, and have examined the testimony heretofore taken in this cause, and have also taken the testimony of numerous witnesses produced before by the complainant and defendant, upon the several matters referred to me by the said order, and after examining and considering the same, I do respectively report, in the first place, that there is due to the complainant for his legacy of one hundred dollars mentioned in said order, and the interest as directed to be calculated in said order, the sum of one hundred and fifty-eight dollars and forty cents, and the Schedule A hereunto annexed, and making a part of this report, contains a statement of the calculation of said legacy and interest.

And I do further report in the second place, that I have taken an account of the yearly rent and value of the whole of the premises mentioned in said order, from the twentieth day of March, A. D. 1847, to the seventh day of November, in the year of our Lord one thousand eight hundred and forty-nine, and also, an account of all permanent improvements put upon said premises by the defendant, (not including fences and manure) except as affecting the yearly value, from the twentieth day of March, A. D. 1847, to the first day of November, A. D. 1848.

And I do report the said yearly value and rent of the said premises, for the time aforesaid, to be twelve hundred and fifty dollars.

And I do further report, that the cost of the permanent improvements as aforesaid, amount to two hundred and seventy-nine dollars and forty-one cents, no new fences having been proved to have been put up within the

time specified. And the Schedule hereunto annexed, and making a part of this, my report, marked Schedule B., contains a statement of the said yearly rent and permanent repairs.

And I do further report, that I have allowed the complainant one full third part of the yearly rent of the said premises, from the 20th day of March, 1847, to the 25th day of July, 1848, and the full equal two-third parts of the yearly rent and value as aforesaid, from the twenty-fifth day of July, 1848, to the seventh day of November, 1849, with legal interest thereon, up to the date of this report. And I have allowed to the defendant and deducted from the complainants said share, the one-third part of ¹⁰ the permanent improvements aforesaid, put upon the said premises by the defendant, (not including fences and manure) from the twentieth day of March, A. D. 1847, to July, 25, 1848, and the two-third parts of the costs of the said permanent improvements, from the 25th day of July, 1848, to November, 1, 1848, with interest from the date last aforesaid.

And after making said allowances, as aforesaid, I find there is due to the complainant from the defendant, for the yearly rent and value of the said premises, from the said 20th day of March, 1847, to the seventh day of November, 1849, the sum of six hundred and ninety-two dollars and ninety-two cents, at the date of this report. And the Schedule C., hereunto an-²⁰ nexed, contains a statement and calculation of said account, all of which is respectfully submitted.

WILLIAM D. COOPER, M. C. C.

SCHEDULE A.

Legacy of	-	-	-	-	\$100 00
Interest from Dec. 4, 1844 to April 22, 1854, -	-	-	-	-	58 34
					<hr/>
					\$158 34

WILLIAM D. COOPER, M. C. C.

SCHEDULE B.

Yearly rent and value, from March 20, 1847 to March 20, 1848,	\$350 00
“ “ March 20, 1847 to March 20, 1849,	450 00
“ “ March 20, 1849 to Nov. 7, 1849,	450 00
	<hr/>
Total yearly value,	\$1,250 00

SCHEDULE B.

Permanent Improvements.

Improvements from March 20, 1847 to July 25, 1848.	
Silas McVaugh's Bill,	\$44 07
John R. Rowand's Bill,	20 34
M. Christian's Bill,	40 00
Materials for the above work,	100 00
John A. Swinker's Bill and Materials,	25 00
	<hr/>
Improvements to July 25, 1848,	\$229 41
	<hr/>
Improvements from July 25, 1848 to Nov. 1, 1848,—	
John Swinker's Work and Materials for same,	\$50 00
WILLIAM D. COOPER, M. C. C.	

SCHEDULE C.

Yearly rent from March 20, 1847	
to March 20, 1848,	\$350 00
$\frac{1}{3}$ of same to Complt.	\$133 33
Yearly value from March 20, 1848 to July 25, 1848,	
being $\frac{1}{3}$ of \$450, \$150; $\frac{1}{3}$ of \$150, Compl's share	
to July 25, 1848,	50 00
	<hr/>
Amount due Complt. to July 25, 1848,	\$163 33 $\frac{1}{2}$
Interest from Nov. 7, 1849 to April 22, 1854,	41 64
	<hr/>
Amount due Complainant,	\$204 97
Amount over—being Complainant's share of rent, from	
March 20, 1847 to July 25, 1848,	\$204 97
Permanent Improvement from March 20, 1847	
to July 25, 1848,	\$229 41
$\frac{1}{3}$ of same to Def't,	\$76 47
Int. from Nov. 1, 1848 to April 22, 1854,	25 61
	<hr/>
Amount to be deducted from Complainant,	\$102 08
	<hr/>
Amount due complainant to July 25th, 1848.	\$102 89
	<hr/>

Yearly rent from July 25, 1848 to November 7, 1849, $\frac{2}{3}$	-	\$750 00
of same to Complainant,	-	\$500 00
Int. from Nov. 7, 1849 to April 22, 1854,	-	134 33

		\$634 33
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Complainant's share to Nov. 7, 1849,	-	\$634 33
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Permanent Improvements from July 25, 1848
to Nov. 1, 1848, $\frac{2}{3}$, \$50 00

to be allowed Def't,	-	\$33 33
Int. from Nov. 1, 1848 to April 22, 1854,	-	10 99

		\$44 32
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Amount to be deducted from yearly value, from July 25, 1848,		\$44 32
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Complainant's share from July 25, 1848 to		\$590 01
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Amount due Comp't from March 20, 1847 to July 25, 1848, \$102 89

Amount due from July 25, 1848 to Nov. 1, 1849,	-	590 01
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Total amount due Complainant,		\$692 90
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[A TRUE COPY.]

WILLIAM D. COOPER, M. C. C.

DAN. B. BODINE, Clerk.

IN CHANCERY OF NEW JERSEY.

BETWEEN
WILLIAM MORRIS COOPER, Complainant, } Decree, &c.
AND
RALPH V. M. COOPER, Defendant. }

Upon reading and filing the report of William D. Cooper, Esquire, one of the Masters of this Honorable Court, made in this cause and bearing date on the twenty-second day of April, in the year of our Lord one thousand eight hundred and fifty-four, by which report it appears, that pursuant
10 to a decretal order made in this cause the tenth day of February, in the year of our Lord one thousand eight hundred and fifty-three, the said Master had been attended by the parties, and examined witnesses, and proceeded to take an account in the first place the amount due the complainant for his legacy of one hundred dollars, and had calculated the interest due on the same from the fourth day of December, in the year of our Lord one thousand eight hundred forty-four up to the time of making his report, to wit, the twenty-second day of April last past; and, in the second place, had proceeded to take an account of the yearly rent and value of the whole of the premises set out in the complainant's bill from the twentieth day of
20 March, in the year of our Lord one thousand eight hundred and forty-seven to the seventh day of November, in the year of our Lord one thousand eight hundred and forty-nine, and of all the permanent improvements put on the premises by the said defendant (not including fences and manure, except so far as the same entered into the account in ascertaining the yearly rent and value of said premises—there being no new fencing) from the twentieth day of March, in the year of our Lord one thousand eight hundred and forty-seven, to the first day of November, in the year of our Lord, one thousand eight hundred and forty-eight, and allowed the said complainant the full and equal one-third part of the yearly rent and value of said premises from
30 the said twentieth day of March, in the year of our Lord one thousand eight hundred and forty-seven, to the 25th day of July, in the year of our Lord one thousand eight hundred and forty-eight, and the full and equal two-thirds part of the yearly rent and value of said premises from the date last aforesaid to the seventh day of November, in the year of our Lord

one thousand eight hundred and forty-nine, with legal interest from the date last aforesaid, up to the time of making his said report; and that he had allowed to the defendant, and deducted from the complainant's share of the value and rent aforesaid, the one full third part of all the permanent improvements from the twentieth day of March, in the year of our Lord one thousand eight hundred and forty-seven, to the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and forty-eight; and two-thirds parts of the cost of the permanent improvements put upon the premises by the said defendant, from the date last aforesaid to the first day of November, in the year of our Lord one thousand eight hundred and forty-eight, with interest from the date last aforesaid, as will more at large appear by the said Master's report and schedule annexed thereto.

And it further appearing, by the said report of the said master, that there was due from the defendant to the said complainant, for principal and interest on the legacy of one hundred dollars on the day of making said report, to wit: on the twenty-second day of April last past of the sum of one hundred and fifty-eight dollars and forty cents. And that there was due from the defendant to the complainant for his share of the rents and proceeds of said farm, from the said twentieth day of March, in the year of our Lord one thousand eight hundred and forty-seven, to the seventh day of November, 20 in the year of our Lord one thousand eight hundred and forty-nine, after making the deductions for all the permanent improvements in the manner directed by said decretal order on the day of making said report, to wit: the day and year last aforesaid, for principal and interest on account of said rent and value of said farm, the sum of six hundred and ninety-two dollars and ninety cents—making in all due the said complainant for said legacy, and the said rent and value of said farm on the day of making said report, the sum of eight hundred and fifty-one dollars and twenty-four cents.

And no cause being shown or appearing against confirming said report, it is on this eighteenth day of May, in the year of our Lord 30 one thousand eight hundred and fifty-four, by the Honorable Benjamin Williamson, Chancellor of the State of New Jersey, ordered, adjudged and decreed; and the said Chancellor doth by virtue of the power and authority of this court, hereby order, adjudge and decree that the Master's report do stand ratified and confirmed, and that the said defendant, Ralph V. M. Cooper, pay to the complainant, William Morris Cooper, the sum of one hundred and fifty-eight dollars and thirty-four cents, the amount of said legacy; and also the sum of six hundred and ninety-two dollars and ninety cents for the amount of the rent and value of said farm, making in all the sum of eight hundred and fifty-one dollars and twenty-four cents, reported by the 40 said Master to be due from the said defendant to the said complainant. And that the defendant do further pay to the complainant, his costs in this suit to

be taxed. And that the said complainant have execution thereof, and that interest from the date of the said Master's Report be added to the amount decreed, and that the complainant have execution thereof, deducting from said decree the costs of opening the former decree ; signed in this case on the fourth day of May, instant.

B. WILLIAMSON, C.

FILED MAY 18, 1854.

COURT OF APPEALS IN THE LAST RESORT.

BETWEEN
RALPH V. M. COOPER, Appellant,
AND
WILLIAM MORRIS COOPER, Appellee.

} *On Bill.*
} *Petition of Appeal.*

To the Honorable the Court of Appeals, in the last resort, in all causes of law. The humble petition of Ralph V. M. Cooper, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a penal decree, made in the Court of Chancery, by his Honor Benjamin Williamson, Esquire, Chancellor of New Jersey, bearing date the 10 eighteenth day of May, in the year of our Lord one thousand eight hundred and fifty-four; wherein, the said William Morris Cooper is complainant and the said Ralph V. M. Cooper is defendant in this respect, to wit, that the said decree confirms the Master's report, and that the said decree, also, adjudges that the said defendant do pay to the said William Morris Cooper, the sum of one hundred and forty-eight dollars and thirty-four cents, for a legacy in the said Bill of the Complainant mentioned. And, also, in this, to wit, that the said final decree, declares that the said complainant is entitled to receive of the said defendant the sum of six hundred and ninety-two dollars and ninety cents, for the amount of the rent and value of the 20 said Matlack farm, in the said bill of the said complainant mentioned.

And your petitioner humbly appeals from those parts of said decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, for that the report of the said Master, should not have been confirmed; and for, that the said complainant was not entitled to the sum of one hundred and forty-eight dollars, and thirty-four cents, and was not entitled to the said sum of six hundred and ninety-two dollars and ninety cents, for the amount of the rent and value of said Matlack farm, in the Complainant's Bill mentioned.

Your petitioner, therefore, prays that the said decree of the said Chan-30 cellor, may be in the particular aforesaid, reversed, set aside, and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

WM. HALSTED,
Solicitor and of Counsel with Complainant.

FILED OCTOBER 18, 1854.

COURT OF ERRORS AND APPEALS, N. J.

BETWEEN
WILLIAM MORRIS COOPER, Appellee,
AND
RALPH V. M. COOPER, Appellant.

} *On Bill, &c.*

The answer of William Morris Cooper, to the petition of appeal of Ralph V. M. Cooper, Appellant. The respondent, not confessing or acknowledging all or any of the matters or things to be true, as in and by the said petition of appeal are contained and set forth for answer thereunto, says that such final decree, as is complained of by the appellant, was made by the Court of Chancery, as in the petition is set forth, but as for the date, substance and contents thereof, this respondent humbly craves leave to refer thereto, when the same shall be produced.

And the same respondent is advised and believes that the said final decree complained of is agreeable to equity and justice, and he, therefore, humbly prays that the same may be affirmed, and that the said petition of appeal may be dismissed this Honorable Court, with costss to be adjudged to this respondent.

THOMAS H. DUDLEY,

Solicitor and of Counsel with Respondent.

Filed February 6, 1854