

BELVIDERE APOLLO Print, Belvidere, N. J.

New Jersey Court of Errors and Appeals.

Between

Ruth P. C. Porter,
Appellant,

and

Elizabeth A. Osmun,
Appellee.

APPELLANT'S POINTS.

The appeal in this case is from the decree of the Chancellor allowing dower to the complainant in certain lands described in the bill of complaint.

We present the following points as the grounds upon which we rely for a reversal of the decree :

1. Because Eli Osmun, the husband of the said complainant, did, by his last will and testament, after decreeing that all his just debts and funeral expenses should be duly paid and satisfied as soon as they conveniently could be after his decease ; and after further giving unto his mother the sum of one thousand dollars and a portion of real estate for life, and after her death to his children, did give, bequeath and *devise the balance and residue of all his real and personal estate of whatsoever*, situated to his wife, Elizabeth Ann Osmun, the said complainant ; and did, in and by his said will, declare that the said gifts

and bequests to his said wife, the said complainant were made and *were to be received by her* in lieu of her right of dower in his estate, and did appoint the said complainant Executrix in his said will; and that the said complainant did accept the provisions of the said will, and did receive the *balance and residue* of the estate of the said Eli Osmun in lieu of her right of dower, and she is bound and estopped from having and demanding dower in the land in question.

10 2. Because the said complainant after the death of the said Eli Osmun, by virtue of the bequests and devises made in the said will to her took all the property and estate of the said Eli Osmun into her own hands, and did treat and use it as her own, and did receive the rents, issues and profits, and did lease the said property, and did greatly misuse and mismanage said estate, and did give up the control of the same as executrix, and she cannot claim or receive dower in said estate under any such circumstances.

20 3. Because the said decree is erroneous in not directing the Master to take an account of the taxes which the appellant has paid on said property since she became the owner thereof.

30 4. Because the direction to the Master to ascertain the value of the life estate of the complainant in the one-third of the said property, and also what sum of money will bear the same proportion to the amount of said encumbrances that the value of said life estate in the one-third of said property bears to the value of the whole property is erroneous and does not fairly represent the amount the said complainant should pay of the mortgaged encumbrances upon the said property.

5. Because the said complainant if entitled to anything in the said premises was only entitled to her dower in the surplus money which the said real estate brought over and above the amount of the mortgages on the premises, and she cannot recover that in this suit.

6. That the complainant cannot recover under this bill, because it is simply and purely a bill for dower; she sets forth no encumbrances upon the property whatever, makes no offer to pay the amount of the encumbrances on the premises nor any part thereof, and offers to do no equity, and has no equity in her bill.

Whatever conclusion this Court may reach in this case I feel sure such conclusion will not be based upon the ground taken by the Chancellor in his opinion. He invokes the 16th section of the statute, Rev. page 322, section 6, the case of *Egbert v. Thompson*, 2 Harr. 459, as the authority for his opinion that the complainant is entitled to dower. But the statute referred to certainly has no application to this case. The section in question refers only to cases in which a devise of real estate has been made to a female without specifying in the will whether such devise is intended to be in lieu of dower. In such case the widow must elect within six months and signify her election by filing her dissent, otherwise she shall be barred of her dower. But the act only applies to 20 that particular class of cases.

English v. English, 2 Green, Chancery Reports, page 508. In this case the will is perfectly explicit and clear. He declares that "the above gifts and bequests to my said wife are hereby made and to be received by her in lieu of her right of dower in my estate."

So that all discussion on the question *whether* what he gave her was in lieu of dower is entirely out of the question. The will announces it in unmistakable terms. Now the real question to be considered in the first place is, has 30 she accepted the gifts and bequests made by the will so as to bind her, if she has then the case is at an end, because having once accepted she cannot withdraw and attempt to get her dower. *Davison v. Davison*, 3 Green Report, 242.

Now the widow in making her election could not under any circumstances be mistaken as to the true character

of the bequests to her. The will speaks in most unmistakable language.

The testator first directs that all his just debts and funeral expenses should be duly paid and satisfied as soon as could be after his decease.

2nd, he gave and bequeathed to his mother the sum of \$1,000 to be paid to her by his executrix within one year after her death. Also gave his house and lot in Willow street, in the town of Hackettstown, to his mother for her
10 life and to his father for his life if he survived her, and then he gave it in fee to his children.

And then thirdly, he says, "it is my will and I do hereby give, bequeath and devise the balance and residue of all my real and personal estate of *whatsoever* situated to my beloved and affectionate wife, Elizabeth Ann Osmun, to her heirs and assigns forever."

4th. He advises and recommends that for the best interests of his estate, the stock and good will of the newspaper known as the *Hackettstown Gazette*, and a vacant
20 lot on Moore street, should be sold as soon as could be, at either public or private sale, and he advised that the building known as the "Hackettstown Gazette Building" should not be sold unless it became absolutely necessary and the interests of his estate demanded it.

5th. He declares that the above gifts and bequests to his said wife are hereby made and to be received by her in lieu of her right of dower in his estate.

And lastly, he appoints her sole executrix.

He, by a codicil, appoints his father executor along with
30 his wife.

Now the terms of this will are clear and well defined, and Mrs. Osmun could have no difficulty in understanding what the testator meant. She was to take what was left of the estate, whether much or little, after the debts were paid and the bequests and devises he had made were deducted. Did she accept it?

We submit she did, and in such a way that she cannot escape from the consequences of it and come in and ask for dower.

What is an acceptance depends, as the Chancellor in *English v. English*, in the case in 2 Green Ch. Rep. 508, already cited, on each particular case. No established rule can be made. The prominent points are: When the party understanding the nature of the gift, takes possession of the property, uses it and treats it as her own, leases the real estate and receives the profits, and so acts that others would be injured by her attempt to claim dower. The cases upon the subject are innumerable. I shall only cite a few from our own decisions. They contain as clear an ¹⁰ exposition of the law on the subject as can be found anywhere. I refer to *Slack et al. v. Huuter et al.*, Saxton Rep. 216; *Davison v. Davison*, 3 Green L. R. 235; *English v. English*, 2 Green Ch. Rep. 509; *Norris v. Clark*, 2 Stockton 55; *Camden Ins. Co. v. Jones*, 8 C. E. Green 172.

I will only refer to a case or two out of this State, *Allan v. Pray*, 3 Fairfield (Maine) 138; *Reed v. Dickerson*, 12 Pickering 146. All the cases are collected in 4 Kent's Commen., pages 55 and 59; 2 Williams on Ex. 20 889.

Now let us see what the complainant did. She tells all herself. See page 13 of Book.

Notice her husband died November 19th, 1877. She qualified as executrix, and she took charge of the property and run it as her own.

She was editor. See page 23.

She repaired the building at a cost of \$300 out of the estate.

She received a salary of \$228.

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She borrowed money, page 25.

She leased the property, one lease made for three years one for five years, see page 29.

She effected an insurance in her own name on the building in the winter of 1879.

She got the rent in March, 1878, page 29.

She never expressed any dissatisfaction with the will, page 31, line 28 to 30.

She made up her account and filed it and a balance of

\$49.80, which she kept until the day before she was examined as a witness, which was the 1st day of October, 1880. See page 33, lines 20 to 30.

Notice what the Chancellor says about it, page 67, line

Treats her as if she had paid it long before, but she in fact kept it all the time and intended to keep it until she was about to be sworn as a witness.

She knew all about the situation of the property.

She did not expect even to get much.

10 Hear what she says, page 16, line 30, etc.

She got \$500 insurance on the life of her husband, page 34.

She gave up her executrixship.

She let the property be sold far below its value, as she says.

She says the mortgages on it were \$3,500

Struck off to Mrs. Porter, 3,150

—————
\$6,650

20 Were, she says, worth \$10,000.

Her father attended the sale and bid.

She had a brother-in-law, Gibbs, a man of business, who says in his evidence he would give \$10,000, and yet they let it go. Why if she had bid up the property to anything like what she expected she would have realized the \$1,000 she expected. Mr. Post, her brother-in-law, was a lawyer. She was surrounded by friends, men of business, who told her all about the business.

30 Neither she nor her friends said a word about any claims on the day of sale. She called on Mrs. Porter to buy the property, page 18, lines 10 to 20.

She never demanded dower. Mrs. Porter never knew anything about it.

Notice what passed between her and Cooke, page 18.

Page 38. She not there; her attorney bid; she not even intimated to him she claimed dower.

It has injured Mrs. Porter. She never would have purchased if she had known or expected such a thing—she is wronged and injured.

Notice Mr. Cooke; notice that admitted she knew nothing, page 65, line 30.

Under all these circumstances ought she not to be es- stopped? Will it not work great injustice to Mrs. Porter? Notice *Egbert v. Thompson*, 2 Harr. 459.

That case has not the slightest application to this. There a particular piece of real estate was devised to the widow. The will did not specify whether in lieu of dower. This real estate was afterwards sold to pay debts. It was a particular devise, and the Court say to carry out the intention of the will they must hold that she must take the land as devised. No such thing here. He gave the wife the balance and residue of real and personal es- tate, whatever it might be, and now to carry out the in- tention of the testator this Court must hold she is not en- titled to dower. These statements cover the 1st and 2nd points taken.

The next point taken is that the decree is defective in that it does not require the Master to take an account of the taxes paid by Mrs. Porter. She became the owner. 20 The 183d Rule of Court requires it. See Corbin Rules, page 169. The law requires it. *Cronkright v. Haul- enback*, 8 C. E. Green Rep. 409; same case, 10 C. E. Green 408; *Foley v. Kirk*, 6 Stewart 180; *Holcomb v. Holcomb Exrs.*, 12 C. E. Green 473; same case, 2 Stewart 597; Act of 1879, page 54; Act of 1883, page 52.

These authorities settle the law upon the subject and the omission in the decree to give this direction is wrong.

We cannot see how upon the authorities the directions to the Master can possibly be right.

It is not in accordance with the ordinary rules. Was she, 30 if entitled to dower at all, entitled to anything more than one-third of the surplus money over and above the mort- gage. *Hinchman v. Stiles*, 1 Stockton 455. And can she under this bill have relief, under any circumstances re- cover her dower? Mrs. Porter, the appellant, purchased the equity of redemption. She also stands in the place of the mortgagee. She holds the mortgages signed by the complainants at law. She has no remedy at all.

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Thompson v. Boyd, 2 Zabriskie Rep. 548, and cases cited.

If she has any remedy it must be in equity *to redeem the property*. *Thompson v. Boyd*, above cited; *Bell v. The Mayor, &c., of New York*, 10 Paige 49, and cases cited.

She ought to have asked to redeem the property. A party that asks equity must do equity, and must ask to redeem. *Opdyke v. Bartles*, 3 Stockton Rep. 133; 10 *Palmer v. Carpenter et al.*, 2 C. E. Green 206; *Mutual Benefit Life Ins. Co. v. Brown*, 3 Stewart 199; *New Jersey Franklinites Co. v. Ames*, 1 Beasley 513; *Yard v. Insurance Co.*, 2 Stockton Ch. 489; 1 Story's Equity Jur., section 64e and note 2.

Now, in this bill there is ^{no} offer to do equity. The bill simply prays that appellant may discover the rents, issues and profits she has received from the said real estate, and may account therefore and may be decreed by this Court to pay her so much as she might be entitled to, and that 20 the dower of complainant might, as signed to her as such, seem paid to her as might be equitable and just.

She never says a word about the mortgages, never proposes to redeem or to pay. And the decree in this case is so different from the prayer of the bill that one would scarcely recognize the bill.

If the complainant had made demand of dower or had offered to redeem the defendant might have been in a very different position.

The bill should be dismissed.

30

J. G. SHIPMAN & SON,
Solicitors of Appellant.

In Chancery of New Jersey.

Between

ELIZABETH A. OSMUN,

and Complainant,

RUTH P. C. PORTER,

Defendant.

} *On Bill, &c.*

BILL FOR RELIEF.

[Filed April 23d, 1880.]

*To the Honorable Theodore Runyon, Chancellor of the State
of New Jersey:*

Your oratrix, Elizabeth Ann Osmun, of Hackettstown, in the State of New Jersey, humbly complaining, showeth unto your Honor as follows:

1st. That your oratrix was married on the fifteenth day of May, eighteen hundred and seventy-two, to Eli W. Osmun, of Hackettstown, aforesaid, and has continued to reside there 10 until the present time.

2d. That the husband of your oratrix departed this life on the nineteenth day of November, eighteen hundred and seventy-seven, leaving a last will and testament in the words and figures following, to wit:

In the name of God, amen. I, Eli W. Osmun, of Hackettstown, in the county of Warren, and State of New Jersey, being

of sound mind, memory and understanding, for which blessing I thank God, do make and publish this my last will and testament in manner following, that is to say—

First. It is my last will, and I do hereby order, that all my just debts and funeral expenses be duly paid and satisfied as soon as conveniently can be after my decease.

Second. I give and bequeath unto my kind mother, Sarah Ann Osmun, the sum of one thousand dollars, to her, her heirs and assigns forever, to be paid her in cash by my executrix,
10 hereinafter named, within one year from the date of my decease.

I do hereby further give and bequeath unto my mother, Sarah Ann Osmun, the house and lot situate on Willow Grove street, in Hackettstown, Warren county, New Jersey, being the same premises in which she now resides, to have, hold, use and enjoy the same during her natural life, also to have the right to rent the said premises to any tenant or tenants and to receive all the rents, issues and profits therefrom, to her own and separate use forever; and in case my father, Ziba Osmun,
20 should survive my mother, then it is my will, and I do hereby order, that he shall have the use of the said house and lot on Willow Grove street, to hold, use, occupy and enjoy the same and to receive all the rents, issues and profits forever, the same during his natural life; and after the decease of my father it is my will, and I do hereby give and devise the said house and lot to such child or children that I may then have living, to them, their heirs and assigns forever.

Third. It is my will, and I do hereby give, bequeath and devise the balance and residue of all my real and personal
30 estate of *whatsoever* situated, to my beloved and affectionate wife, Elizabeth Ann Osmun, to her, her heirs and assigns forever.

Fourth. I do hereby advise and recommend, that for the best interests of my estate, that the stock and good will of the newspaper now published by me, and known as The Hackettstown Gazette, and also the vacant lot situate on Moore street, in Hackettstown, aforesaid, be sold and disposed of, either at public or private sale, as soon as the same can be conveniently

done without injury to my estate; and I also further advise and recommend, that my executrix, hereinafter named, do not sell or dispose of the building situate on Main street in the said town of Hackettstown, and known as the Hackettstown Gazette Building, unless it be absolutely necessary, and the best interests of the estate demand it.

Fifth. The above gifts and bequests to my said wife are hereby made and to be received by her in lieu of her right of dower in my estate.

Sixth. I do hereby constitute and appoint my said wife, Elizabeth Ann Osmun, my sole executrix, without security, of this my last will and testament.

In witness whereof I have hereunto set my hand and seal this thirtieth day of June, in the year of our Lord one thousand eight hundred and seventy-seven. Signed, published and declared by the said Eli W. Osmun to be his last will and testament, in the presence of us, who were present at the same time and subscribed our names as witnesses in the presence of the testator, and in the presence of each other.

R. S. PRICE. 20
JAS. FISHER.

[CODICIL.]

Whereas, I, the said Eli W. Osmun, of Hackettstown, Warren county, New Jersey, have made my last will and testament in writing, bearing date the thirtieth day of June, in the year of our Lord one thousand eight hundred and seventy-seven, and have thereby made, ordained, constituted and appointed my wife, Elizabeth Ann Osmun, executrix of my said will: Now I do by this, my writing, which I declare to be a codicil to my last will and direct to be taken as a part thereof, will and direct that my father, Ziba Osmun, shall be one of the executors of my said last will and testament, jointly and together with my said wife, Elizabeth Ann Osmun, and I do hereby accordingly make, ordain, constitute and appoint them, the said Elizabeth Ann Osmun and Ziba Osmun, joint and sole executors of my said last will and testament. 30

In witness whereof to this present writing, which I hereby

declare to be a codicil to my last will and testament, and which I direct to be added thereto and to be taken as a part thereof, I have set my hand and seal this thirtieth day of October, in the year of our Lord one thousand eight hundred and seventy-seven.

Signed, sealed, published and declared by the said Eli W. Osmun, as and a codicil of his last will and testament, and to be taken as a part thereof, in *presents* of two several persons whose names are hereunder subscribed as witnesses to the signing, sealing and publishing the same, which two persons did so hereunder subscribe their names at the request and in the presence of said Eli W. Osmun, and in presence of each other.

R. S. PRICE.

JAS. FISHER.

And your oratrix further shows that letters testamentary were issued to your oratrix and the said Ziba Osmun, as executors of said will, by the Surrogate of Warren county, and they took upon themselves the burden of the *executors* thereof. But the said Ziba Osmun interested himself actively in the management of the affairs of said estate without consultation with or advice from your oratrix, and for some time continued the publication of the paper known as "The Hackettstown Gazette," of which your oratrix's said husband was the publisher at the time of his death; prior to the death of her husband your oratrix was entirely unacquainted with his financial condition, and after his death your oratrix was led to believe, from the manner in which he had made bequests, that he was a man of means, and that his estate would prove abundantly able to pay all debts and liabilities and leave a large sum to your oratrix.

By reason of the conduct of her co-executor in assuming and taking upon himself the settlement of the affairs of her husband's estate, your oratrix had no means of ascertaining, and did not, in fact, know anything concerning the true condition of her said husband's estate, but becoming dissatisfied with the manner in which her said co-executor was managing affairs, your oratrix petitioned said Orphans' Court to compel the said Ziba Osman to account, and to give bonds for the faithful per-

formance of his duty, which said petition was granted and the executors order to account.

Your oratrix filed her separate account and the same was passed and allowed by said Court, but her co-executor has not yet fully accounted to said Orphans' Court.

And your oratrix further shows that on the seventh day of February, eighteen hundred and seventy-nine, your oratrix and her co-executor petitioned said Orphans' Court to be discharged as executors, and on the eighteenth day of February, eighteen hundred and seventy-nine, they were so discharged, 10 and on the same day one Joseph K. Rice was appointed administrator, with the will annexed, of the estate of said Eli W. Osmun, deceased.

The said Eli W. Osmun at the time of his death was seized in fee of the said premises mentioned in paragraph four of this will, and therein described as the Gazette Building, on Main street.

The said Joseph K. Rice, as such administrator, on the twenty-fifth day of March, eighteen hundred and seventy-nine, applied to said Orphans' Court (as your oratrix is informed) for 20 an order to sell two certain lots of land of which said Eli W. Osmun died seized, one whereof was the same so as aforesaid described in the fourth paragraph of said will, on the ground that the personal estate was insufficient to pay the debts of the deceased. And the said Court, on the eighth day of July, eighteen hundred and seventy-nine, ordered said administrator to sell said premises, and the said administrator, in pursuance of said order, sold the land so described in said fourth paragraph of said will, situated on Main street, in Hackettstown, aforesaid, and known as the Gazette Building, to Ruth P. C. 30 Porter, for the sum of three thousand one hundred and fifty-one dollars, subject to all mortgages, &c. And the said Court, on the twenty-second of December, eighteen hundred and seventy-nine, confirmed said sale and directed said administrator to execute conveyance of said land to Ruth P. C. Porter for the same, which was done, and said Ruth P. C. Porter is now the owner of said lands, as your oratrix is informed and believes the truth to be.

Your oratrix further shows that she did not know anything of the condition of the _____ of her husband until some time after the appointment of said Joseph K. Rice as administrator with the will annexed, when your oratrix ascertained her said husband's estate was practically insolvent, and that after the payment of his debts nothing would remain whatever. And your oratrix humbly insists that her said husband never contemplated leaving her destitute when he devised to her the "balance and residue" of his said estate to your oratrix and
10 made said devise in lieu of dower, and your oratrix humbly submits that she is entitled to dower in said premises known as the Gazette Building, in Hackettstown aforesaid.

And your oratrix declined to join in the conveyance of said premises to said Ruth P. C. Porter without first being paid her dower right therein, to which your oratrix claims she is entitled.

And your oratrix further shows that all the real and personal estate of her said husband was taken in payment of debts, and that your oratrix has received nothing from the
20 said estate and nothing will remain for her after the payment of the debts.

And your oratrix further shows that she has made demand upon said Ruth P. C. Porter to pay to your oratrix some reasonable sum as a satisfaction for her claim of dower in said premises, with which request the said Ruth P. C. Porter absolutely refuses to comply, but gives out and pretends that your oratrix is not entitled to any dower whatever in said lands, because of the devise to your oratrix in and by the will of said Eli W. Osmun, and that when she, the said Ruth P. C. Porter,
30 purchased the said premises from said administrator with the will annexed, she took the same free and clear of any claim of your oratrix for dower in said premises, and she refuses to assign or set apart the dower of your oratrix or pay her any sum in lieu thereof, and does not account to your oratrix for the rents, issues and profits of said premises.

Your oratrix is advised that she can only have adequate relief in the premises in this court.

To the end, therefore, that your oratrix may have relief in

the premises, she prays as follows: That the said Ruth P. C. Porter may, without oath, answer all and singular the premises, and may discover the rents, issues and profits she has received from the said real estate and may account therefor, and may be decreed by this Court to pay to your oratrix so much thereof as she may be entitled to, and that the dower of your oratrix in said premises may be assigned and set apart to your oratrix, or that such sum in possession be paid to her as should be equitable and just for her dower in said premises, with the damages for the detention thereof, under the direction of this court. 10

May it please your Honor, the premises considered, to grant unto your oratrix the State's writ of subpœna, issuing out of and under the seal of this honorable Court, to be directed to the said Ruth P. C. Porter, therein and thereby commanding her on a certain day and under a certain penalty therein to be expressed, to personally be and appear before your Honor in this honorable Court, then and there to answer the premises and to stand to abide by, *by* and perform such order and decree as your Honor shall make therein. 20

LINN & BABBITT,
Sol'rs and of Counsel with Compl't.

A true copy:

H. S. LITTLE, *Clerk.*

ANSWER.

The answer of Ruth P. C. Porter, defendant, to the bill of complaint of Elizabeth A. Osmun, complainant, this defendant, now and at all times hereafter saving and reserving unto herself all and all manner of benefit and advantage of exception to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereunto or unto so much thereof as this defendant is advised it is material or necessary for her to make answer unto, answering, says: 30

That she admits the marriage of the complainant and the

subsequent death of her husband, Eli W. Osmun, as alleged in her said bill of complaint, leaving a last will and testament and codicil thereto, in the words and figures set forth in the said complainant's said bill of complaint, and that letters testamentary were issued by the surrogate of Warren county to the said complainant and the said Ziba Osmun, as executors of the said will, and that they took upon themselves the burthen of the execution thereof.

10 And this defendant, further answering, says that she denies that said Ziba Osmun managed the affairs of the said estate without consultation with or advice from the said complainant, but alleges the truth to be that the said Elizabeth A. Osmun, the said complainant, took an active part in all the affairs of the said estate, and joined with the said Ziba Osmun in the publication of the said "The Hackettstown Gazette" newspaper.

20 And this defendant, further answering, denies that the said complainant was at any time in ignorance of the amount and condition of her husband's estate, or that she was at any time misled by the bequests in his said will.

And this defendant, further answering, admits that the said complainant caused the said Ziba Osmun to be cited to an account, but alleges the truth to be that she did not take such action until long after she should have taken such action, having long prior thereto full knowledge of numerous improprieties and wasteful acts on the part of the said Ziba Osmun.

30 And this defendant, further answering, says that she admits that the said complainant filed a separate account, and that the same was passed and allowed by the Orphans' Court of the county of Warren, but alleges the truth to be that the said account showed that the said Elizabeth A. Osmun had appropriated to her own use, as residuary legatee, the sum of five hundred and ninety-five dollars and seventy-five cents, which said sum of money she yet retains.

And this defendant, further answering, admits that the said complainant and the said Ziba Osmun were discharged at the time and in the manner set forth in her said bill of complaint, and that one Joseph K. Rice was appointed administrator with the will annexed of the estate of the said Eli W. Osmun.

And this defendant, further answering, says that she does not know, except as informed by the said complainant's said bill of complaint, whether or not the said Joseph K. Rice, as such administrator, made application, on the twenty-fifth day of March, A. D. eighteen hundred and seventy-nine, to the Warren Orphans' Court, for an order to sell the land, and described in paragraph fourth of the said will of the said Eli W. Osmun, on the ground that his personal estate was insufficient to pay the debts of the deceased, nor whether or not the said court, on the eighth day of July, A. D. eighteen hundred and seventy-nine, ordered said administrator to sell said premises. 10

And this defendant, further answering, admits that she became the purchaser of the land described in the said fourth paragraph of the said will, and known as the "Gazette building," for the sum of three thousand one hundred and fifty-one dollars, subject to all mortgages, and received a deed therefor from the said administrator; but this defendant denies that the said sale was made in pursuance of the said order of the said Orphans' Court, but alleges the truth to be that said administrator with the will annexed had full power and authority, 20 under the said will of the said Eli W. Osmun, to sell the said land and building thereon, whenever it was necessary so to do and the best interests of the estate of the said Eli W. Osmun demanded such sale; and that if any such order was obtained, it was wholly unnecessary, improper and inoperative, and that this defendant relied upon the said will of the said Eli W. Osmun, deceased, which, by its terms, conferred the said power of sale upon the said Joseph K. Rice as such administrator, and also divested the said complainant of all right of dower in the said lands by said will devised, upon acceptance by her of 30 the gifts and bequests to her made in the said will of her said husband.

And this defendant, further answering, denies that the said complainant did not know anything of the condition of the estate of her said husband until some time after the appointing of the said Joseph K. Rice as such administrator, but alleges the truth to be that the said complainant, in disobedience of the will of her said husband, did, together with the said Ziba

Osmun, co-executor, retain the stock and good will of the newspaper known as the "Hackettstown Gazette," for about the space of six months, and did print, publish and circulate the same, as executors, at a loss; and that the said complainant did actively participate in the publication of the said newspaper, acting as book-keeper, and did charge, in her final account, the sum of two hundred and forty-five dollars and ninety-five cents, parcel of the sum of two hundred and ninety-five dollars and seventy-five cents, and did take and receive other moneys
10 belonging to the said estate to her own use.

And this defendant, further answering, says that the said complainant resided in the said building during the publication of the said paper by the said executors; that she leased two stores in the said building and also the dwelling portion, and that considerable sums of money were spent by the said Ziba Osmun and the said complainant in improvements and alterations upon and in said building, and that these were of an unnecessary character; and that large purchases of new type and other commodities were made by the said complainant and
20 the said Ziba Osmun, for use in conducting the publication of the said newspaper, and that large sums of money were also paid to the said Ziba Osmun as wages, and that the said complainant, on the eighth day of February, eighteen hundred and seventy-nine, effected an insurance, in her own name, upon the said building, for the sum of three thousand dollars.

And this defendant, further answering, says that the complainant permitted the said sale of the said land and premises to be made without disclosure of any claim of dower therein, or of any intention to make such a claim, and had been silent as
30 to any such claim for over the space of two years, and that it was her intention to accept the provisions of the said will.

And this defendant, further answering, says that the acts of the said complainant, herein set forth, were acts of acceptance of and acquiescence in the provisions of her said husband's will, and were done with full cognizance of her rights, and that by reason thereof this defendant was led to purchase the said land and premises, and that she cannot now be restored to the situation in which she would have been, had it not been for the said

acts of acceptance of the said complainant, and that the said complainant is not of right and title to any dower in the said lands, and that if ever so entitled, she, the said complainant, by her said acts of commission and omission herein set forth, is estopped and barred from making any claim therefor against this defendant, and that if she has any claim therefor it is against the fund in the hands of Joseph K. Rice, as such administrator, derived from the sale of the said land.

And this defendant, further answering, says that at the time of the said sale, the said estate of the said Eli W. Osmun had not been declared insolvent, nor was any representation at the said sale that the said estate was likely to be insolvent, but, on the contrary, the said complainant and the said Ziba Osmun, before said sale, paid and satisfied in full notes held by Margaret Titman and Jane White, relatives of the said Eli W. Osmun, aggregating four thousand four hundred and fifty dollars or thereabouts. 10

And this defendant, further answering, says that the money of the said estate has been lost and wasted by the mismanagement, negligence and illegal acts of the said complainant. 20

And this defendant, further answering, says that on the third day of April, A. D. eighteen hundred and seventy-four, the said Eli W. Osmun and the said complainant, his wife, made, executed and acknowledged, in due form of law, a certain indenture of mortgage unto one Jacob R. Davis, upon the said land and premises, for the sum of fifteen hundred dollars, which said mortgage was, on the twenty-fifth day of March, A. D. eighteen hundred and eighty, by the said Jacob R. Davis, in consideration of the payment of the sum last aforesaid, assigned, in due form of law, by writing, under his hand and seal, unto this defendant. 30

And this defendant, further answering, says that on the first day of April, A. D. eighteen hundred and seventy-three, the said Eli W. Osmun, together with the said complainant, his wife, made, executed and acknowledged, in due form of law, unto Thomas Shields, Jr., of the town of Hackettstown, an indenture of mortgage on the said land for the sum of thirty-five hundred dollars; upon the debt secured thereby there has been paid the

sum of sixteen hundred dollars, which said mortgage was, in due form of law, assigned by the said Thomas Shields, Jr., unto John C. Welsh, and by the said John C. Welsh, upon payment to him of two thousand dollars by this defendant, was assigned, on the third day of May, A. D. eighteen hundred and eighty, unto this defendant, by writing, under his hand and seal.

And this defendant further says that she acquired both of the said last-mentioned mortgages with the intention of keeping them alive, for the protection of her title, as against the said
10 complainant and all others, and that no offer of any kind has been made by the said complainant to pay the said mortgages or to redeem the said land.

And this defendant, further answering, submits that she, the said defendant, is entitled to all the rights of a mortgagee in possession.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith she is by the said bill charged, without that, that any other matter or thing in the said complainant's said bill of complaint contained, material or
20 necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is willing and ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

S. PIERSON COOK,
Solicitor for and of Counsel with Defendant.

REPLICATION.

TESTIMONY.

Examination of witnesses in the above stated cause, taken this second day of October, A. D. 1880, at the office of Linn & Babbitt, 47 Montgomery street, Jersey City, New Jersey, in the presence of John Linn, Esq., counsel for complainant, and Messrs. Pierson Cook and Henry S. Harris, counsel for the defendant. Due notice admitted.

Mrs. Elizabeth Osmun being duly sworn by Mr. Linn by consent, is examined and testifies as follows :

Direct examination by Mr. Linn—

10

Q. You are the complainant in this suit Mrs. Osmun, are you?

A. Yes, sir.

Q. When did your husband die?

A. November 19th, 1877.

Q. How much of a family did he leave at the time of his death?

A. Two children.

Q. What were their ages?

A. One was two the previous January, and one was about 20 eight months old at the time of his death.

Q. Where did he reside at the time of his death?

A. At Hackettstown, at the time of his death, at my father's house; my father is George W. Johnson.

Q. After his death did you continue to reside with your father?

A. Yes, sir.

Q. For how long a time?

A. I have been there ever since.

Q. What real estate did he leave?

30

A. He left the Gazette building, a house and lot on Willow Grove street, two lots on the corner of Moore street; I don't know the name of the other street.

Q. Do you know whether this real estate was mortgaged?

A. That building was mortgaged.

Q. For how much ?

[Objected to.]

A. The building was mortgaged, I think, for about \$1,500, and \$2,000 I think, upon the lot.

Q. Do you know who held those mortgages ?

A. John C. Welch, German Valley.

Q. Held them both ?

A. Yes, sir ; one of the mortgages was made at—

Q. I don't care where they were made.

10 A. John C. Welch held one and Jacob Davis the other.

Q. Was the other property mortgaged—the lots ?

[Objected to.]

A. Well there was another mortgage, I don't know what it was on.

Q. Who held the other mortgage ?

A. Mary Osmun.

Q. She is related to your husband ?

A. She was a cousin.

Q. Do you know what that amount was ?

20 A. I think about \$1,100.

Q. At the time of your husband's death who occupied the Gazette Building ?

A. Mr. Robert Little, and the lower story was occupied by Ramsey & Rice as a store ; the other side was occupied by the Gazette office, and up stairs as our house.

Q. Then you lived there at the time of his death ?

A. I was at my father's then ; he had been away for some months previous to his death, and during that time I had gone there, and remained there after his death. I moved my things
30 in January from the Gazette Building.

Q. Since your husband's death you haven't occupied the Gazette Building for your residence, at all ?

A. No, sir.

Q. Do you know what that building was rented for—what was the amount of annual rent received for it during his life ?

A. Yes ; or at the time of his death, or about that time, \$475, I believe ; I can't say positive, because I didn't know about those transactions.

Q. How much of the building was occupied by your husband for his office and paper?

A. The lower floor in one-half and the cellar entire.

Q. Do you know what the annual rental value of the whole building was?

A. At the time of my resignation as executrix it was \$875.

Q. Do you know what that property cost your husband?

[Question objected to.]

A. \$16,000.

Q. After your husband's death you and his father qualified 10 as executors of the will, did you?

A. Yes, sir.

Q. How long did you act in that capacity?

A. Until the 2d of September next following.

Q. Who had the principal charge and management of the business of the estate during that time?

A. Mr. Osmun.

Q. What part of it did you do, if anything?

A. For about three months I edited the paper—did the entire editorial work; the succeeding months, until September, I acted as book-keeper for him for the estate.

Q. After your husband's death, for about three months, the paper was published by whom?

A. By the executors.

Q. Representing the estate?

A. Yes, sir.

Q. What then was done—what change was made?

A. The 12th of March the Gazette was sold—the paper and press, &c.

Q. Who purchased it?

30

A. Mrs. White and Mrs. Titman.

Q. For about what price?

A. \$6,000.

Q. Who received that money—did it ever come to your hands?

A. No, sir.

Q. Why did you not act any longer than the following September in the capacity of executrix?

A. Because I saw from the accounts I was keeping that the estate was not properly managed, and I didn't want to be a party in its mismanagement.

Q. Did you make an application then to the Orphans' Court to be discharged, or for any purpose?

A. To have him discharged.

Q. To have your co-executor removed?

A. Let me make one correction there; he was willing to go out as executor at the time, and said he would sign papers of
10 release, or whatever they were, and pass all the papers over to me the following day, and he thought I would be able to manage the rest of the matter, but afterwards—two days after—he refused to do it. I saw it was necessary to have him discharged, and the Surrogate gave me what papers he thought were necessary for protecting my estate.

Q. Then you commenced proceedings in the Orphans' Court for the purpose of having him moved?

A. Yes, sir.

Q. Who acted as your counsel?

20 A. Shipman, of Belvidere.

Q. At the time of your husband's death had you any knowledge whatever of the amount of his indebtedness?

[Objected to.]

A. No, sir, I don't think I had. I supposed it to be very small.

Q. At the time when you surrendered your office of executrix, did you know then what was the condition of the estate?

A. I don't think I did.

Q. What did you suppose then even at that time?

30 A. I supposed there would be enough to pay the debts off and have something over—not less than \$1,000.

Q. Have you ever received anything from the estate as widow of the testator?

A. For services?

Q. For anything as the widow.

A. For my services as editress and book-keeper I received about \$228, I think.

Q. Did you file your account for settlement in the Orphans' Court as executrix?

A. Yes, sir.

Q. A separate account?

A. Yes, sir.

Q. Which has been settled?

A. It has been settled.

Q. With the exception of this \$228 or \$245, whatever it may have been, which you say you received for your services as editress of the paper during the time that was carried on and for keeping the books afterwards, did you receive anything else?

10

A. Not a dollar.

Q. How have you supported yourself or provided yourself with a livelihood?

A. I have been supported by the charity of my friends and by teaching school.

Q. Are you teaching school now?

A. Yes, sir.

Q. At the time this property was sold by Mr. Rice, Joseph K. Rice, as the administrator with the will annexed, had you any knowledge of it—did you know it was to be sold?

20

A. I believe I did; yes, sir; I saw the advertisement.

Q. At or before that time did you give any notice to anyone that you claimed your dowry in that property?

A. Not before the sale.

Q. Did you after the sale?

A. When Mr. Cook called I did.

Q. When was that?

A. Not long after the sale; I don't know how many days.

[Objected to.]

Q. What did Mr. Cook call for?

30

A. He called to ask if I intended to claim a right of dower in the property, as he supposed there might be one there.

Q. In whose behalf did he call?

A. In the behalf of Mrs. Porter, or acting as her attorney.

Q. What reply did you make?

A. I said that I should claim any rights that I had.

Q. Why did he want to know just at that time?

A. He said if there was a right he was going to see the

Chancellor and have the sale set aside, or something to that effect.

Q. Do you know whether the sale had been confirmed at that time by the Orphans' Court?

A. I don't think it had.

Q. Do you know what Mrs. Porter paid for the property?

A. I do not know, exactly; between six and seven thousand dollars.

[Objected to.]

10 Q. What was a fair value for that property at that time, if it was sold clear of all rights of dower?

A. I don't know whether I can answer that question. I suppose the property was worth \$10,000—not less than that.

Q. What is the property worth now?

A. It is not worth any less.

Q. Did you ever call upon Mrs. Porter to make known your claim, and see if she would settle?

A. No, sir; not for that purpose. I called the morning after the sale to find out if I could secure the property from her.

20 Q. For the sum that she gave, or a slight advance?

A. She had gone away—

[Objected to.]

A. Mr. Cook wasn't up and I promised to call again.

Q. Did you see Mr. Cook about the same thing?

A. I didn't see him.

Q. Did you say anything to him about your desire to acquire the property?

A. I didn't see him at the time.

Q. Nor to any one else?

30 A. No, sir.

Q. Did you ever see Mrs. Porter about it or ever speak to her about it?

A. No, sir; I couldn't see her until it was too late. I didn't attempt again.

Cross-examination by Mr. Harris—

Q. What was your husband's business when you married him?

A. He was editing the Hackettstown Gazette.

Q. Was he then the owner of this building?

A. No, sir.

Q. When did he acquire it?

A. He built it in '73 and '74, I think.

Q. Did he own the land previously?

A. No, sir.

Q. Who built it for him?

A. He built it himself.

Q. Who did the work; was it done by the day or by con- 10
tract?

A. I think part was done by the day and part by contract.

Q. How long was it in process of construction?

A. The building was commenced in the fall of 1873 and was finished so that the press was moved in in the fall of 1874, and his house was finished in the spring of 1875.

Q. How do you know, Mrs. Osmun, that it cost \$16,000?

A. He kept an account of it and he told me.

Q. At the time?

A. He kept an account of it at the time. 20

Q. Do you say that Mr. Welch held both of the mortgages at first?

A. Not at first; the one was on the lot and was given to Mr. _____, of whom he bought the lot. Afterwards it was transferred to Mr. Welch.

Q. To secure part of the purchase money?

A. Yes, sir.

Q. How soon did he hold it after it was given?

A. I don't know.

Q. Who held it for the last year before your husband's 30
death?

A. Mr. Welch.

Q. Were the mortgages on the Gazette Building you are speaking of continued, or the mortgages on the house and lot?

A. On the lot on which the Gazette Building stood.

Q. The other was made to Mr. Davis?

A. Yes, sir.

Q. How soon after the construction of the building?

A. I don't know ; it was after we moved into the building.

Q. How long after ?

A. Well, it might have been six months or a year ; I don't know.

Q. How much was it for ?

A. Fifteen hundred dollars, I think.

Q. The other was for how much ?

A. I think the other was for \$2,000. One is on one and the other on the other ; I don't know which is correct.

10 Q. You kept the account for him when the building was constructed, did you say ?

A. No, sir.

Q. After you husband's death did you make an inventory of the property he left ?

A. There were persons appointed to do that.

Q. Did you act with them ?

A. No, sir.

Q. Did you see it after it was made ?

A. Yes, sir ; the inventory only included the personal prop-
20 erty.

Q. After the death of your husband you say that the paper was run by the estate—how long did that state of affairs continue ?

A. Until the 12th of March, when the press was sold.

Q. In what year ?

A. 1878.

Q. When did you leave the Gazette Building as a residence ?

A. Between January 1st and January 5th, 1878, that is, I removed my goods from there at that time.

30 Q. Did you not reside there from November to January ?

A. No, sir.

Q. Mrs. White, you say, and some other lady, bought this property—did you receive the money that was paid for the press ?

A. No, sir.

Q. Who did ?

A. There was no money paid ; it was in answer to a claim, I guess.

Q. Your husband was indebted?

A. Yes, sir; there was a check beside, but I did not receive it.

Q. Who received it?

A. Mr. Osmun.

Q. How much was the check and how much was their claim or claims?

A. The check was over \$500; I didn't know the exact amount; the check was above their claims; they included some other claims. Their claims amounted to about \$5,500. 10

Q. Who made this bargain for the sale of the paper?

A. He did, I suppose.

Q. Didn't you know of it?

A. I can't say that I did; no, I didn't.

Q. Didn't you know it was going to be sold?

A. Yes, sir.

Q. Wasn't it sold at a public sale?

A. Yes, sir.

Q. You knew it was going to be sold at public sale before it was sold, did you not? It was advertised by your authority 20 as well as your co-executor's?

A. It wasn't advertised by my authority, but it was advertised.

Q. Was it advertised not by your authority?

A. Yes, sir.

Q. What did these ladies give, their notes or checks, when they purchased the property?

A. I don't know.

Q. What did they hold?

A. They held notes. 30

Q. Then their claim was paid in full?

A. Yes, sir.

Q. What relation are they to you, Mrs. Osmun?

A. They are my husband's aunts.

Q. Where do they reside?

A. In Willow Grove street, Hackettstown.

Q. Then the sale took place when you were acting as the book-keeper?

A. Yes, sir.

Q. Didn't the notes pass through your hands, at all?

A. I didn't see those notes at all after the first statement was made to the court, I think, in September; we made a joint account, with which he was satisfied, and those statements appeared, but not the vouchers.

Q. What proceedings were taken against Mr. Osmun, your co executor?

A. Why, he said he would resign as executor in September.

10 Q. I am not asking you that, I am asking what proceedings were taken—what they were?

A. Proceedings to have him discharged, or—I don't know whether he was to give bond or what; I have the papers here.

Q. You received the proceeds of the life insurance policy on your husband's life, didn't you, Mrs. Osmun?

A. Yes, sir.

Q. How much was that?

A. \$500.

20 Q. Was that policy for your benefit?

A. No, sir.

Q. For the benefit of the estate?

A. Yes, sir.

Q. Did you pay to Post and Lockwood \$100 for collecting that insurance policy?

A. Yes, sir.

Q. Is either of them related to you?

A. Mr. Post is.

Q. What relative is he?

30 A. Brother-in-law.

Q. Did he return this money to you after you paid it to him?

A. Yes, sir; may I explain one word in regard to that?

Q. Later you may. While the printing of the paper by the estate was in progress, you were fully cognizant of its affairs, were you not?

A. No, sir.

Q. You kept the books, didn't you?

A. Do you mean while the paper was being printed ?

Q. While you and Ziba Osmun were running it.

A. No, sir.

Q. Who paid for your services ?

A. He paid me part, and I collected bills and gave him receipts for it as executrix.

Q. That is the way this sum of money you mentioned was made up ?

A. Yes, sir.

Q. What part did he take ; what did he do ? 10

A. Well, he hired the boys and paid the bills and bought the paper and type and such things.

Q. Is he a printer himself ?

A. No, sir.

Q. Did he write any for the paper ?

A. I never saw anything he wrote.

Q. All he did was to hire the men and pay them and pay the bills that were incurred ?

A. As far as I know.

Q. You edited the paper and kept the books ? 20

A. Yes, sir ; I didn't keep the books at that time ; after the three months I kept the books.

Q. Who edited it then while your duties were confined to book-keeping ?

A. W. Niper, the foreman.

Q. Then you were there constantly in the building ?

A. No, sir.

Q. A great portion of the time ?

A. I was there about two hours a day.

Q. Every day more or less ? 30

A. Yes, sir.

Q. Was any repairing done to the building after your husband's death ?

A. Yes, sir.

Q. To what amount ?

A. I do not know.

Q. In round figures ?

A. It might have been \$300.

Q. Didn't you take part in that expenditure?

A. I recommended a part of it as far as it was necessary, but not all.

Q. When was it done?

A. It was done in 1878.

Q. How long before proceedings were taken in the Orphans' Court?

A. I guess the work was finished about that time or just a little before.

10 Q. Did you sign a check for payment of any of these expenditures in repairing?

A. No, sir; not that I know of.

Q. Or a note?

A. A note for repairs?

Q. Yes.

A. Not that I know of.

Q. Did you pay any of the money?

A. No, sir.

Q. How was Mr. Osmun compensated for his services in the
20 carrying on of the paper?

A. I don't know.

Q. What was his business at the death of your husband?

A. I guess he hadn't any; at the time my husband was away he took charge of the hands and paid them; he had no regular business.

Q. Is he a man of any means?

A. No, sir.

Q. He is a hard-drinking man, isn't he?

A. I saw him drunk once.

30 Q. Is that all?

A. Yes, sir; I have heard of it a number of times.

Q. Did you hear of it before your husband's death?

A. No, sir.

Q. You never heard of it before that?

A. I don't think he drank until after my husband's death; I don't know that he did,

Q. Didn't you and your co-executor, Mr. Osmun, borrow money out of the bank?

A. Yes, sir.

Q. And sign a note as executor and executrix?

A. Yes, sir.

Q. What was done with that money?

A. I don't know.

Q. How was it paid?

A. I don't know.

Q. Has it ever been paid?

A. Well, I suppose it has, for the estate is all settled.

Q. It is all settled, is it?

10

A. Yes, sir.

Q. All the debts paid?

A. Yes, sir.

Q. It did not prove insolvent, then?

A. No, sir.

Q. How did you come to sign this note? What was it for?

A. He said the undertaker wanted his money to pay funeral expenses. Of course, it was shortly after I was appointed executrix, and I supposed things were all right, so I did it.

Q. You consented to the appointment of Mr. Rice as administrator?

20

A. Yes, sir.

Q. Did he consult you about the sale of these buildings?

A. I don't think he did.

Q. Your father, Mr. George W. Johnson, acted for you in reference to the estate?

A. I don't know that he did.

Q. Haven't you advised with him in reference to it, and he with you?

A. We have talked about it; yes, sir.

30

Q. He has always attended court with you?

A. Yes, sir.

Q. During all the proceedings?

A. He took me over there.

Q. He is present here to-day?

A. Yes, sir.

Q. Did I understand you to say that you didn't know the sale of the real estate was to take place?

A. I only knew it when the advertisement came out—when I saw the advertisement in the paper.

Q. Do you know whether your father knew it at that time or not?

A. I do not know.

Q. Did you see the advertisement that was posted?

A. I don't think I did. You see, I wasn't out; I had my duties at home.

Q. You knew the date it was to be sold?

10 A. Yes, sir.

Q. Your father went there to attend the sale?

A. Yes, sir.

Q. With your knowledge?

A. Yes, sir.

Q. At your request?

A. I think not.

Q. Was there not an understanding between you that he was to go there and attend the sale? I didn't suppose you formally asked him to go.

20 A. I guess he might have said he was going, that is all.

Q. Did you tell him to appear for you there?

A. No, sir.

Q. Did you know he was going to make a bid?

A. Yes, sir.

Q. How did you know that?

A. I do not know how I knew it; by conversation, I suppose, with the family in general.

Q. Was that a bid made on your part?

A. No, sir; I don't suppose it was; I had nothing to pay.

30 Q. Was it made in your interest?

A. It might have been in my interest.

Q. How was it—was it for you?

A. No; I don't suppose it was.

Q. Was it for himself?

A. Let me correct that; no, he couldn't buy it himself.

Q. Not in a financial condition to purchase it himself?

A. No, sir.

Q. You called the next morning, you say, on Mrs. Porter?

A. Yes, sir.

Q. The object of your visit was to buy the property?

A. Yes, sir.

Q. Did you yourself advertise this property at any time?

A. No, sir.

Q. Did you not advertise with Mr. Osmun?

A. There was an advertisement, but I didn't advertise and I didn't know it.

Q. How do you know there was one?

A. Because I saw the bill.

10

Q. Did you take it down?

A. Father did for me.

Q. When was the advertisement? Before or after you commenced proceedings in the Orphans' Court?

A. What is the date of that advertisement?

Q. September 14th, 1878.

A. After proceedings commenced to have him discharged.

Q. (By Mr. Linn)—Tell what your recollection is—what you know.

A. The surrogate said it would be necessary for me to make 20 a separate account.

Q. I don't want what the surrogate advised you to do. Was this not merely a citation to make him account for his management for the estate?

A. Perhaps it was; I don't remember.

Q. Is he default to the estate now?

A. That I don't know.

Q. After the citation was issued did you not agree upon a settlement with Mr. Osmun and the appointment of Mr. Rice?

A. I don't know about our agreeing upon a settlement.

30

Q. Upon a basis of settlement?

A. We agreed to appoint another executor.

Q. He filed his account, did he not?

A. Yes, sir.

Q. Did you make any exception to it?

A. Through the acting executor.

Q. Did you make any?

A. No.

Q. Can you give the exact words Mr. Cook used when he called upon you?

A. No nearer than I have given them.

Q. Did Mr. Cook say to you that he had met Mr. Osmun that morning?

A. I don't remember.

Q. Your father was present, wasn't he?

A. Yes, sir.

Q. Did he ask you to sign a paper?

10 A. No, sir.

Q. I don't mean that he produced a paper. Did he speak to you about a paper, a quit-claim deed, or a release, or anything of that sort?

A. Well, I don't know.

Q. Did he not say to you that he had heard rumors that you intended to make a claim of dower on the property, or that you might make a claim, and that he wanted you to execute a quit-claim?

20 A. The first part he asked me; the first part he might have asked me; I am not sure of the last; I rather think he did.

Q. And you told him if you had any right you meant to retain it?

A. Whatever rights I had.

Q. Did he not say, or otherwise he would have to file a bill in Chancery to quiet the title?

A. I don't know his exact words, whatever lawful proceeding was necessary to release him.

Q. What is the balance over and above the debts in the hands of Mr. Rice for distribution?

30 A. Nothing at all; I paid him forty-five dollars and some cents I had in my hands last Saturday and received his receipt for it.

Q. Paid it over to him?

A. Yes, sir; he said the debts were all paid except that to pay over.

Q. Have you read the answer filed by Mrs. Porter in this suit?

A. No, sir.

Q. Have you had it read to you?

A. Only parts of it.

Q. Where were you educated, Mrs. Osmun?

A. The last school I attended was Morris Institute, Morris-
town.

Q. Prior to that where?

A. The Academy at Hackettstown.

Q. You united in signing the leases on these buildings to
tenants?

A. Yes, sir. 10

Q. Did you sign the lease to Mrs. Titman and Mrs. White?

A. Yes, sir.

Q. And also the one to Isaac Katz for the store building?

A. Yes, sir.

Q. That is a five-years' lease, the other three years?

A. I am not sure.

Q. [Witness shown paper]. Are these the leases?

A. Those are the ones.

Q. Did you effect an insurance in your own name on the
building? 20

A. Yes, sir.

Q. That was in 1879?

A. Yes, sir.

Q. Was it not the 8th of February?

A. Well, it was in the winter; I don't know what time.

Q. For how much?

A. I don't know; \$1,500 I guess.

Q. Was it not \$3,000?

A. I don't know.

Q. Is this your name on this receipt on the back of this one 30
lease?

A. Yes, sir; receipt for rent.

Q. Yours and Ziba Osmun's name?

A. Yes, sir.

Q. Who got that money?

A. He received it and paid it to me afterwards.

Q. That was in March, 1878?

A. Yes, sir.

Q. Did you ever talk with Mr. Ziba Osmun, your co-executor, in reference to that dowry?

A. No, sir.

Q. Or any person until Mr. Cook came to see you?

A. The subject was mentioned to me.

Q. That is not an answer; I ask you if you ever did.

A. Well, yes.

Q. Who was the person?

A. Mr. Gibbs and my father; I am not sure who else.

10 Q. How near the time of the sale did you talk to your father about it?

A. I don't know.

Q. As near as you can estimate?

A. I can't estimate at all.

Q. Was it between the sale and the time of Mr. Cook's coming that you talked with them?

A. It was before and after, too.

Q. Before and after what?

A. Before the sale of the Gazette and before Mr. Cook called.

20 Q. You talked with your father before that time, did you?

A. Yes, sir.

Q. Did you talk about it after you knew the sale was going to take place, going to be made by Mr. Rice—did you talk about the dower then?

A. I don't know. I think I did.

Q. Did you talk to Rice about it?

A. I don't think I did.

Q. Was it your intention to allow this sale to proceed and then claim dower?

30 A. I don't think I thought anything about it; I had my duties, other duties, and I left the thing entirely or gave it very little thought.

Q. Then these discussions were probably after the sale, were they not?

A. No; the matter was mentioned before, I think.

Q. Did you join in the mortgages that were made to Mr. Davis and Mr. Welch?

A. To Mr. Davis, I did.

Q. Well, your co-executor, Ziba Osmun, wasted and mis-managed the estate, did he not?

A. I believe he did.

Q. Don't you know whether he did or not?

A. Well, yes.

Q. He is a debtor to the estate now, isn't he?

A. Well, you know I don't know.

Q. He was a debtor when your joint management ceased?

A. Yes, sir.

Q. How large a sum. A thousand dollars? 10

A. Yes, sir.

Q. Money that he had misapplied, did you mean?

A. Money he couldn't account for.

Q. Mrs. Osmun, when your husband made his will did he not consult you about it?

A. No, sir.

Q. Didn't you know what was in it?

A. I didn't know it was made at all, but just a few days before he died; he didn't then tell me what was in it.

Q. Did you read it? 20

A. No, sir; it was in Mr. Price's hands; I didn't see it until it was read to me.

Q. Didn't your husband inform you of the contents of it before he died?

A. No, sir; he merely said he wanted the Gazette Building sold; keep it about six months, advertise it well and then sell it; he said he presumed there would be enough left for myself and the children to live on; those were the only remarks.

Q. You never expressed any dissatisfaction with your husband's will, did you? 30

A. No, sir.

Q. At any time?

A. Well, not publicly; only to the family.

Q. Had you, at the time of the sale of this building, before it was sold, the intention to claim dower?

A. After I received the executorship?

Q. No. Answer the question, if you please.

A. I left other persons to manage it.

Q. Who advised you to proceed against Ziba Osmun—counsel?

A. Yes, sir.

Q. What gentleman was it?

A. Mr. Post and Mr. Gibbs.

Q. Are they lawyers?

A. Mr. Post is. Mr. Gibbs is not a practicing lawyer.

Q. Under whose counsel and advice did you act—legal advice?

10 A. Mr. Shipman's.

Q. From what time?

A. Some time in September, 1878.

Q. Up to the present time—up to the beginning of this suit?

A. No; I think I haven't had any advice since I resigned.

Q. Up to the time of your resignation?

A. Yes, sir.

Q. At the time you took proceedings to compel Mr. Osmun to account, you had no knowledge then of the condition of the estate?

20 A. As far as I could learn—

Q. You knew it was in a bad condition?

A. Yes, sir; I knew it was mismanaged.

Q. And that it was in danger of proving insolvent?

A. If it continued to be managed in that way; it wasn't at that time insolvent.

Q. That isn't the question. I asked whether you thought that there was danger of its being insolvent?

A. I don't see any other way of answering the question.

30 Q. Yes or no will answer it. The simple question is, whether you thought then there was danger of the estate proving insolvent?

A. Not from the amount of property on hand.

Q. When your husband died he was at your father's house, as I understand?

A. Yes, sir.

Q. Your goods and furniture were in the Gazette Building, were they not?

A. Yes, sir.

Q. Your husband had been away to Colorado?

A. Yes, sir.

Q. And came home sick?

A. He was sick when he went away and came home sick.

Q. How long did you keep possession of the apartments you occupied in the Gazette Building after his death?

A. Until January, 1878.

Q. What portion of it did you occupy?

A. The east side of the building.

Q. There was a balance in your hands, then, after your 10 account was stated?

A. Yes, sir.

Q. A balance of \$49.80?

A. Yes, sir.

Q. And you had retained that until last Saturday?

A. Yes, sir.

Q. When was your account passed?

A. I don't remember; I guess it was in February or March or April; one of those three months I think.

Q. In what year?

20

A. 1879.

Re-direct examination by Mr. Linn—

Q. Did you say that your husband advised you to sell the Gazette Building after about six months?

A. The Gazette office; did I say building? I should have said Gazette office.

Q. Then he did not advise you to sell the building, but the office, the fixtures, etc.

A. Yes, sir; the press.

Q. After his death who received the rents coming from that 30 building?

A. Ziba Osmun.

Q. What did he do with them?

A. I don't know.

Q. They did not come to your hands?

A. No, sir.

Q. And never have?

A. No, sir.

Q. Mr. Osmun, as you understand it, has never settled his separate account as executor?

A. I think he has settled with Mr. Rice.

Q. So that whatever was in his hands was paid over to Mr. Rice?

A. I suppose so.

[Answer objected to.]

Q. And Mr. Rice last Saturday received from you the balance which was in your hands?

A. Yes, sir.

Q. It was sufficient to pay the last debt due from the estate?

A. That almost finished paying the legacy; all the debts were paid and that was on the legacy.

Q. Legacy to whom?

A. To Mrs. Osmun, his mother.

Q. So she has had her legacy? the debts have been paid and Mrs. Osmun has had her legacy?

20 A. Almost all her legacy.

Q. Now you may explain, Mrs. Osmun, what you desire to say about this policy of insurance?

A. In July, 1878, I found among the papers in the office of the Gazette, a letter from an insurance company saying that if this policy was renewed—if the money was paid they would renew it. It is a policy for \$1,500. This letter remained unanswered until the time I found it. I put it in my brother-in-law's hands to get what he could out of it. He secured \$500 and retained \$100 for a fee. A number of months afterwards

30 he made me a present of \$100. It has nothing to do with this business.

Q. Was there any agreement on his part, or anything said between you, about his paying this money back?

A. No, sir.

Q. — until several months afterwards?

A. No, sir.

Recross-examination—

Q. That was in March, 1879, was it, that you paid him the \$100, or that he collected the money for you?

A. I don't know when he collected it; it was in the spring of that year 1879 some time.

Q. When had you last seen him prior to his sending you that money?

A. It was the holidays, I think.

Q. Was it then that you placed the policy in his hands?

A. He had it before the summer or fall of the previous year; 10
we had quite a search for that policy in order to find it at all.

Q. When did you first see him after he sent you this \$500?

A. It was collected in May, 1879.

Q. How much did you recover from the company, \$606?

A. I think it was \$506.

Q. You next saw him when?

A. In May.

Q. Was it then that he gave you the \$100?

A. He sent me a check just before I saw him; that is my 20
recollection in regard to the matter.

Q. Just before he saw you he sent you the check?

A. Yes, sir.

Q. You hadn't seen him between the time when he sent you the check for \$400 and the time he sent you his check for the \$100?

A. No, sir.

Q. Did you cause anything to be said to him to induce him to do that?

A. No, sir.

Q. He did it of his own free will, did he? 30

A. Yes, sir.

Q. Had you consulted with him about the condition of the estate before he collected that money?

A. Yes, sir.

[Counsel for complainant offers in evidence an exemplified copy of the final and separate account of Mrs. Osmun as executrix, which is marked C 1, Oct. 2d, 1880. He also offers in

evidence an exemplified copy from the Surrogate of Warren county of the proceedings had in the Orphans' Court of the County of Warren in relation to the removal of Ziba Osmun as one of the executors of Eli W. Osmun, which also contains a copy of the final account of Mrs. Osmun as executrix, which is marked Exhibit C 2; also the receipt of Joseph K. Rice as administrator with the will annexed, given to Mrs. Osmun for the \$49.80 which she has already testified to, the same being marked Exhibit C 3.]

10 [Counsel for defendant objects to the admission of the above papers.]

Q. That is the original receipt which he gave you—the paper marked C 3?

A. Yes, sir.

Redirect examination by Mr. Linn—

Q. This bequest of \$1,000, is that the one that has been paid?

A. That has almost all been paid.

20 Q. You said Mr. Osmun had settled his account, did you mean that he had stated it or paid over what he owed?

A. He stated it to the Court, and it has been allowed, I think.

Q. Your father bought one lot at that sale, did he not?

A. Yes, sir.

Q. Did he buy the real estate for himself or you?

For himself or Mr. Gibbs, I don't know which; he is not in condition to hold property himself.

Q. It wasn't for you?

A. No, sir; not at all.

30 Q. Have you demanded it of them?

A. No, sir; I haven't demanded it; I expect to if this is carried.

Sworn to before me this 2d day of October, 1880.

JOHN LINN,
Master in Chancery, N. J.

The signing of the testimony of this witness is waived by consent.

Examination of witnesses on the part of complainant taken this eighth day of January, A. D. 1881, at the office of Messrs. Linn & Babbitt, 47 Montgomery street, Jersey City, New Jersey, and before me, Isaac Romaine, a Master and Examiner in this Court, and in the presence of John Linn Esq., counsel for complainant, and the Hon. Henry S. Harris and S. Pierson Cook, Esq., of counsel for defendant.

Due notice of taking this testimony is admitted.

Joseph Rice, a witness called on the part of the complainant, being sworn by Mr. Linn by consent, is examined and testifies 10 as follows :

Q. Were you administrator with the will annexed of the estate of Eli W. Osmun, deceased?

A. Yes, I was.

Q. After your appointment as such administrator, what did you find to be the condition of the account of Ziba Osmun, who had been the acting executor of that estate? Was the estate indebted to him or was he indebted to the estate?

A. In his account I think he claimed the estate was indebted to him. 20

Q. What was the fact in regard to that?

A. Well, I was notified by one of the creditors to take exception to his account, and when it was finally decided by the Court, he was indebted to the estate some five hundred or six hundred dollars—I don't recollect the precise sum?

Q. Did he ever pay that?

A. Mrs. Osmun gave me a release for that amount.

Q. His wife?

A. Yes, sir; according to the will she was entitled to a legacy of \$1,000 and Mrs. Osmun gave me a release for that 30 amount and I gave Mrs. Osmun a receipt in full.

Q. Were proceedings taken by you for the purpose of making sale of the real estate of the deceased for the payment of debt?

A. There was; yes, sir.

Q. Do you recollect when that sale was made?

A. December 1st, 1879.

Q. Who became the purchaser at that sale of that part of the property called the Gazette Building?

A. Mrs. Porter, the defendant in this suit, Ruth P. C. Porter.

Q. Was she present at the sale?

A. She was not.

Q. Who acted for her?

10 A. Mr. S. Pierson Cook done the bidding—of the firm of Price & Cook, attorneys at Hackettstown.

Q. Who else bid on property beside Mr. Cook?

A. Mr. George W. Johnson, for one.

Q. Do you recollect what amount he bid?

A. I am not positive about it; I think it was \$3,150; I think that was the amount.

Q. How much then did Mrs. Porter bid by her attorney?

A. I can't tell without referring to my memorandum.

Q. Well, refer to your memorandum.

20 A. \$3,150.

Q. And was it struck off to her at that bid?

A. Yes, sir.

Q. After that did Mr. Cook say anything to you in regard to the claim of dower by Mrs. Elizabeth A. Osmun?

A. A few days after that he had some conversation with me in regard to it.

Q. What did he say?

A. I think he said to me that he would like me to notify him before I asked the Court to confirm the sale; that he was
30 going to object to the confirmation of the sale upon the ground that the widow had a dower right in the property, or words to that effect; that might not be the precise words, about the substance of that.

Q. Did he say anything about having heard of it on the day of the sale, or what did he say about that?

A. Well, I didn't like the proceedings much; I think I stated so to Mr. Cook; he said he had heard such a rumor on the day of the sale, but he supposed it was only for effect, and paid no attention to it.

Q. Did you notify him then when the sale was to be confirmed?

A. Yes, sir; I think I did.

Q. What took place on that day?

A. Well, the sale was confirmed at the forenoon session of the Court; I was not present at the time; I think Mr. Cook was not there; my attorney, Mr. Jeffrey, was there at the time, and presented the matter to the Court. When I arrived there I told him that Mr. Cook proposed to take objection to it, but he wasn't there; at the afternoon session of the Court I think Mr. Jeffrey stated to Mr. Cook if he had any objections to make, he could make them then; I think Mr. Cook's reply was, that he wouldn't make any objection there, but he would apply to the Chancellor. 10

Q. How were the conditions of sale signed; I mean the acknowledgment of the purchase?

A. The acknowledgment of the purchase was signed by Mrs. P. C. Porter, by her attorneys, Price & Cook, which signing was done by Mr. Cook.

Cross-examination by Mr. Harris—

20

Q. Were there not other bidders at the sale besides Mr. George W. Johnson and Messrs. Price & Cook?

A. I don't know whether there was any other bidders on this piece of property; I am not certain.

Q. Did you receive bids from others to the amount of \$2,500?

A. I don't know as I did.

Q. Didn't you receive a bid from a Mr. Douglass?

A. Not that I know of.

Q. Were there other persons there?

30

A. Oh, yes; there were a number of other persons there—merchants in town.

Q. Persons able to buy?

A. I presume so; you see there were two sales.

Q. I mean at this sale?

A. Yes, sir.

Q. Who bid on this lot that was sold—the vacant lot?

A. Mr. Johnson was one of the bidders.

Q. Wasn't there any one else?

A. I think there were other bidders.

Q. Before you sold this property you consulted with Mrs. Osmun, I presume?

A. I think not; I don't remember that I did.

Q. Had you no conversation with her about it—I mean young Mrs. Osmun?

A. I don't think that I ever had any conversation with her
10 about it; I have no recollection of anything of the kind.

Q. Didn't you have a number of consultations with her immediately after you took charge of the estate, or just previous to your doing so?

A. I don't think I had any conversation with her in regard to it previous to my appointment; I don't think as I had any conversation with her immediately after, particularly, only in regard to some papers she had in her hands that belonged to the estate; I went to her about these.

Q. What character of papers? We were taking the inven-
20 tory and she had some paper in her hands that belonged to the estate; I think they were some notes and accounts and bills that were made out; several hundred dollars worth of notes, were they not?

A. No, sir; there wasn't a very great amount.

[Mr. Harris desires to enter an objection to the evidence of the witness in reference to what Mr. Cook said to him after the sale, he not being present at the time such evidence was given.]

Q. You knew the financial condition of Mr. Geo. W. Johnson at the time of the sale, did you not?

A. I knew it from rumor.
30

Q. It was generally understood that he was insolvent, was it not?

A. Yes, sir.

Q. And that his property was in the hands of an assignee?

A. I don't know as to that, Mr. Harris.

Q. Well, he made an assignment, you knew that?

A. Mr. George Johnson?

Q. Yes, sir.

A. I knew William Johnson made an assignment; I didn't know George did.

Q. Didn't you know the firm made an assignment?

A. I don't remember.

Q. Don't you remember it now?

A. I don't remember the firm did; there was a change made in their property, I know.

Q. Were you aware that they had made a deed of trust for the benefit of their creditors?

A. Yes, sir, I had heard that.

10

Q. Did you consult with him prior to the sale of the property?

A. I might have had a conversation with him; I think I had.

Q. He representing his daughter?

A. As I met him on the street—[Interrupted.]

Q. He represented his daughter?

A. No, sir; he represented no one in particular.

Q. Well, at the sale, in reference to the sale?

A. I might, as I met him in the street; the subject often came up in regard to the sale; I don't remember any particular time or particular conversation any more than in a business way.

Q. And he talked more because his daughter was interested in the matter?

A. I presume that was it; I presume that would be the inference.

Q. At the sale did you consult with him?

A. I don't think I consulted with him; I talked with him and with others.

30

Q. I want to know what you did with Mr. Johnson?

A. I might have requested him to bid more, as the property was worth more.

Q. Did you or not understand him to be bidding as her agent?

A. No, sir; I didn't know who he was bidding for.

Q. Has he told you since whom he was bidding for?

A. He signed the acknowledgment of the purchase, as agent of W. W. Gibbs.

Q. Of the lot which he purchased ?

A. Yes, sir.

Q. The condition of sale of the lot he had purchased ?

A. Yes, sir.

Q. Who is W. W. Gibbs ?

A. William W. Gibbs, a son-in-law, I presume ; I wasn't particularly anxious about that, I got the money—[Interrupted.]

Q. It isn't a question of anxiety ?

A. I merely state the fact that you may understand my
10 position.

Q. Where did Mr. Gibbs reside ?

A. I don't even know that, I think in New York ; he does business there, that is the way I understand it.

Q. Was the purchase-money paid to you, the part to be paid down ?

A. Yes, sir ; Mr. Johnson gave me a check I think signed by Mr. Gibbs ; I am not positive about that, but I think so.

Q. Is the estate settled ?

A. Yes, sir.

20 Q. Have you paid all the debts ?

A. I have paid all the debts that I know anything about, all the claims that were filed against the estate.

Q. You objected to Ziba Osmun's account ?

A. I did, at the instance of one of the creditors.

Q. You make no objection to Mrs. Osmun's, the defendant's, account ?

A. No, sir.

Redirect examination by Mr. Linn—

30 Q. Upon the final settlement of this estate, after the payment of all the debts and expenses, was anything left in your hands ?

A. There was between two and three hundred dollars, I think it was.

Q. What was done with that ?

A. I paid that on the legacy to Mrs. Ziba Osmun.

Before me, at Jersey City, the 8th day of January, 1881.

JOHN LINN, M. C. C.

George W. Johnson, a witness sworn by Mr. Linn by consent, is examined and testifies as follows :

Direct examination by Mr. Linn—

Q. Were you present at the sale made by Mr. Rice of the real estate of Eli W. Osmun, deceased ?

A. I was.

Q. Did you bid upon the property, any of it ?

A. I did.

Q. Did you bid upon the Gazette Building ?

A. I did.

10

Q. What amount did you bid upon that ?

A. \$3,150 was my bid.

Q. And the property was struck off to Mrs. Porter, for how much ?

A. \$3,151.

Q. For whom were you bidding ?

A. I was bidding as an agent for Mr. Gibbs, William W. Gibbs.

Q. In whose interest did he intend to buy the property ?

A. In the interest of Mrs. Osmun, the widow, Elizabeth A. Osmun.

Q. What incumbrances was that property sold subject to ?

[Objected to on the ground that it is not the best evidence.]

A. There was two mortgages on the property, and that was the principal thing against it, I believe.

[Defendant's counsel admits that the written condition of sale said nothing about the widow's dower.]

Q. Did you understand at the time that Mrs. Osmun had a title or dower in the property ?

A. I was not certain about it.

30

Q. Did you take that into consideration in making the bids that you made ?

A. My idea of that was, that in buying the property her whole interest would be in it, and it was not material to us about anything further than the claims that were received against the property.

Q. What was that property worth at the time—fairly ?

A. Well, it was difficult to tell ; probably \$12,000.

Q. Did you have any conversation with Mr. Cook, as the attorney of Mrs. Porter, in regard to the right of dower of Mrs. Osmun ?

A. I was present at a conversation of that kind, directed to Mrs. Osmun.

Q. When was that ?

A. It was a few days after the sale.

Q. What was said ?

10 A. Mr. Cook asked if she intended, or something to that effect, to claim a right of dower in the property, as he had understood she intended to do so, and he wished to know about it, as he wanted to take measures to object to the sale, or set aside the sale, or something to that effect, before the Chancellor ; he said that he supposed that she would insist upon it.

Q. What did she say ?

A. She said she would claim all the rights that she was entitled to in the property.

Q. Was that before the sale was confirmed ?

20 A. It was.

Q. How many days after the sale ?

A. I don't exactly remember, exactly, but I think it was some four or five days after the sale.

Cross examined by Mr. Harris—

Q. Wasn't it as much as three or four weeks, Mr. Johnson ?

A. I think not.

Q. Were the conditions of sale read over that day ?

A. They were.

Q. Did you see them ?

30 A. Yes, sir.

Q. And you signed them ?

A. Yes, sir.

Q. In the matter of your son-in-law's estate, you have assisted your daughter constantly and actively—have you not ?

A. Well, I suppose I have ; she is living with me.

Q. You were with her always when she consulted counsel at Belvidere and elsewhere, when she attended court at Belvidere, and when she came here—at all these places ?

A. Yes, sir.

Q. And you advised her in the matter, did you not?

A. Well, I never pressed any advice on her.

Q. Did you not advise her?

A. Well, I couldn't say that I did; I let her take her own course about her own business.

Q. You consulted her and she consulted with you about her own business?

A. We had consulted about it.

Q. It would be no more than natural that she would consult 10 her father?

A. But I never gave her any leading advice.

Q. When Mr. Cook come there you were not in the room, were you?

A. I think I was present.

Q. Did your daughter come out after you?

A. I don't remember whether she did or not; I was present at the conversation.

Q. Didn't she come and call you into the room and you go in and find Mr. Cook there? 20

A. It might have been; I am not certain about that.

Q. Had you consulted counsel in reference to the question as to her right to claim dower prior to the sale by Mr. Rice, the administrator?

A. I never had.

Q. You contemplated it, however, I understand you to say in your examination-in-chief?

A. Contemplated asking counsel? I contemplated her claiming dower. As I said, our principal idea was to buy the property, and that would merge all claims in her's. 30

Q. Then, by all claims you considered a claim for dower as embodied in them, did you?

A. We didn't give that any serious consideration, because our attention was mainly directed to the amount of money that was to be paid.

Q. You thought if she bought the property that would remove all questions about that? I understood you to say that in your examination-in-chief.

A. I don't think I did.

Q. Didn't you say so a while ago?

A. I don't remember that I did.

Q. I mean this morning, since you have been testifying?

A. Our leading idea was in buying the—[Interrupted.]

Q. Pay attention to the question.

A. —property to have all the rights in it—our attention was directed only to the amount of money that was to be paid; I don't think we had any serious consultation about that matter.

10 Q. But a mere informal one, it was mentioned, is that what you mean?

A. My only recollection about it is now, the general question of what we had to pay for the property; we didn't bring up the other question.

Q. You don't answer my question—was it not mentioned?

A. I couldn't say that it was.

Q. You had it in your minds, had you not?

A. I couldn't call it to my mind, the whole thing merged in what we had to pay and her buying it.

20 Q. In addition to her dower, did you contemplate she had some interest then that would not be sold?

A. We didn't think much about it, except the money we had to pay.

Q. You don't answer the question.

A. That is about all there was of it.

Q. When was the question of her having a right of dower first brought distinctly to your mind?

A. Well, after the sale, we had this talk with Mr. Cook, that was the most active—[Interrupted.]

30 Q. Do you mean to say that that was the first your daughter ever mentioned her having a right of dower in the property?

A. I don't say that was the first; we expected to buy the property; I think we had a conversation about it.

Q. Before the sale?

A. I think we had.

Q. Just state what these conversations were?

A. I think at that time Mr. Post, my son-in-law, was there, and we were talking and he said she had a right in it, but we thought if we bought it it would make no difference.

Q. You didn't consider the property worth any such sum as \$12,000?

A. Well, it cost \$16,000; it looks as if it ought to be—
[Interrupted.]

Q. Just answer the question; there is a difference in cost and value?

A. It is very difficult to get at what the property is worth.

Q. Don't you consider the amount bid on the day of the sale any criterion?

A. Of course; it is some slight indication. 10

Q. Were there no other bidders there besides yourself and the representative of Mrs. Porter?

A. I don't remember that anybody bid on the property but myself and Mr. Cook.

Q. Were there other bidders there?

A. Other men were there.

Q. Persons who bid on other property?

A. Yes, sir.

Q. At that sale?

A. At that sale. 20

Q. Who read the conditions of sale?

A. I don't remember.

Q. How many times were they read?

A. I think once.

Q. Did you listen attentively to them?

A. I suppose I did.

Q. How large is the lot on Moore and Munroe streets that you bought for \$500?

A. I think it is 114 feet front on Monroe street and 140 on the other street. 30

Q. It is two or three blocks distant from the Gazette Building, isn't it?

A. Yes, sir; it is three.

Q. Is it a one-third or one-fourth lot?

A. One-fourth, I think.

Q. [Witness shown paper.] Is that your signature "William W. Gibbs, per George W. Johnson, agent?"

A. Yes, sir; it is.

Q. And these are the conditions of sale?

A. I suppose they are; yes, sir.

[Above mentioned paper offered in evidence by defendant and marked Exhibit D 1.]

Q. Did you consult with Mr. Rice, prior to the sale, about that sale?

A. No, sir; I don't think we had any consultation.

Q. Well, did you have a talk with him about it? 'I don't mean by consultation sitting down and calling it a consultation.

10 Did you talk with him about it?

A. Yes, sir; we talked about it.

Q. About the terms of the sale?

A. I don't think we did.

Q. Mr. Johnson, repeat now the conversation which occurred between your daughter and Mr. Cook at your house?

A. As near as I can tell it, Mr. Cook called to inquire whether she intended to insist upon the right of dower in the property in the Gazette Building.

20 Q. You are stating your inferences, give what was said— give the conversation, that is the question.

A. He asked for that information.

Q. Tell what he said, as near as you can recollect.

A. That is what he said; I told you he called to ascertain whether she intended to insist upon her right of dower in the Gazette Building.

Q. Well, what further?

A. Her answer was that she would insist upon all the rights she had, and relinquish none.

Q. Go on.

30 A. His reply was that he expected she would, and that he proposed to go to the Chancellor and set aside the sale, or get an order from the Chancellor for the dower to be paid out of the money of the estate, or something to that effect; that was the substance of it.

Q. You don't pretend to give us, of course, the words he used?

A. As nearly as I can remember, I do.

Q. Do you pretend to give the words he used?

A. I do, as nearly as I can remember them.

Q. I will ask you another question. Are you positive that you remember it?

A. I am certain that I do remember the substance of it.

Q. Are you positive that you remember the words?

A. It may not be the exact wording, but it was the substance and, I think, the words.

Q. That is not an answer to the question as to your positiveness. Are you positive that you remember the words?

A. I tell you as nearly as I can.

10

Q. Do you swear positively that you remember the words, that is, the exact words?

A. To the best of my memory that was the exact wording.

Q. That is no answer.

A. It is as near as I can give.

Q. In your present state of mind?

A. I am positive that was the substance; I think the words.

Q. You don't give a direct answer.

A. I give it as direct as I can.

Q. Are you positive that you remember?

20

A. I wouldn't undertake to swear to anything positively, unless it was written down, to a verbatim conversation; I give it as truthfully as I can.

Q. Are you positive that you remember the exact words?

A. I am not positive; that is the substance; I think it is the wording.

Q. Do you mean by that that you are not positive? Why do you say you think?

A. It is what is on my mind; I tell you what is there.

Q. You are positive of the substance, are you positive you 30 have given the words?

A. I may miss a word.

Q. Then you are not positive; we are reduced down to what I asked you all the time?

A. Well, it is the fact, that is what it is; I can't do any better for you than that.

Q. Didn't Mr. Cook ask her whether she made any claim of dower?

A. That might have been the question.

Q. He didn't come there and admit at once that she had a right of dower, did he?

A. I don't know what his intention was.

Q. The way you put it was that he asked whether she intended to insist on her right of dower?

A. That is the way I understood it.

Q. Didn't he say that he had heard a rumor that she claimed a dower, and he came to inquire whether it was true?

10 A. Whether she would insist on it, it might have been that wording; I couldn't tell the exact wording of that.

Sworn to before me, at Jersey City, this 8th day of January, A. D. 1881.

JOHN LINN, *M. C. C.*

William W. Gibbs, a witness called by the complainant, being duly sworn by Mr. Linn by consent, was examined and testified as follows:

Q. Where do you reside, Mr. Gibbs?

A. In New York City.

20 Q. Are you in any way related to Mrs. Osmun, the complainant in this suit?

A. I am her brother-in-law.

Q. Have you taken any interest in this property in her behalf?

A. Yes, sir.

Q. Did you authorize Mr. Johnson to bid for you at the sale of this property when it was made by Mr. Rice?

A. Yes, sir.

30 Q. In whose interest was that purchase intended to be made?

A. Mrs. Osmun's.

Q. For the purpose of saving something for her?

A. Yes, sir.

Q. Were you aware when you had the property bid upon that if it was purchased her dower right would merge in the sale?

[Objected to as immaterial.]

A. Yes, sir, that her dower right would merge in the purchase; it was purchased entirely for her benefit.

Q. Did you limit Mr. Johnson in the amount that he should bid at that time?

A. No, sir.

Q. What was that property intrinsically worth at that time?

A. I think it was worth intrinsically \$10,000.

Q. If you had been present would you have bid more for it than he did? 10

A. Yes, sir.

[Objected to.]

Q. Are you willing now to take the property off of Mrs. Porter's hands, pay her purchase-money and the interest for the whole property?

A. Yes, sir.

[Objected to.]

Q. In the interest of Mrs. Osmun?

A. Yes, sir; and make her entirely whole.

Q. And pay her the cash for the whole amount which she 20 has invested?

A. Yes, sir.

Q. Do you offer to do that now in behalf of Mrs. Osmun?

A. I do; yes, sir.

Q. And will do it any time, when she may be willing to do it?

A. Yes, sir.

Q. You are well acquainted with this property?

A. Yes, sir.

Cross-examination by Mr. Harris— 30

Q. What is your occupation, Mr. Gibbs?

A. I am in the business of manufacturing gas works for towns and cities.

Q. Where is your place of business?

A. Room 60, Coal and Iron Exchange, New York; my residence is in New York; my family are at present at Hacketts-town.

Sworn to before me this 8th day of January, 1881.

JOHN LINN, M. C. C.

Testimony of witnesses taken in the above-stated cause this 21st day of November, A. D. 1881, at the Warren House, in the town of Hackettstown, New Jersey, in the presence of Mr. Babbitt, attorney for the complainant, and Mr. Harris, attorney for the defendant, before Caleb H. Valentine, one of the Masters and Examiners of this court.

EXHIBIT D 2.

Exemplified copy of the will of Eli W. Osmun, deceased, offered in evidence on the part of the defendant, and marked
10 D 2.

EXHIBIT D 3.

Exhibit D 3, notice demanding dower, signed by Elizabeth A. Osmun, by her attorneys, Linn & Babbitt, addressed to defendant. Dated March 16th, 1880.

EXHIBIT D 4.

Administrator's deed, Joseph K. Rice, C. C. T. A., to Ruth P. C. Porter. Dated January 2d, 1880. Duly acknowledged before Robert L. Garrison. Marked Exhibit D 4.

EXHIBIT D 5.

20 Mortgage, Eli W. Osmun and wife to Thomas Shields, Jr. \$3,500. Dated April 1st, 1873. Duly acknowledged by Eli W. Osmun and wife before R. S. Price, Commissioner of Deeds, and recorded April 8th, 1874. Marked Exhibit D 5.

EXHIBIT D 6.

Bond secured by last-mentioned mortgage, made by Eli W. Osmun, dated April 1st, 1873. Marked Exhibit D 6.

EXHIBIT D 7.

Assignment of last-mentioned bond and mortgage to John C. Welch, dated July 9th, 1875. Duly acknowledged. Marked
30 Exhibit D 7.

EXHIBIT D 8.

Assignment of said last-mentioned bond and mortgage from John C. Welsh to Ruth P. C. Porter, dated May 3d, 1880. Duly acknowledged. Marked Exhibit D 8.

EXHIBIT D 9.

Bond, Eli W. Osmun to Jacob R. Davis, conditioned for the payment of \$1,500, dated April 3d, 1874. Marked Exhibit D 9.

EXHIBIT D 10.

Mortgage of Eli W. Osmun and wife to Jacob R. Davis, 10 April 3d, 1874. Duly acknowledged before Caleb H. Valentine, Master in Chancery, by said Osmun and wife, duly recorded, for the sum of \$1,500, securing last-mentioned bond. Marked Exhibit D 10.

EXHIBIT D 11.

Assignment of said last-mentioned bond and mortgage from Jacob R. Davis to Ruth P. C. Porter, dated March 24th, 1880. Duly acknowledged before Daniel B. Harvey, Master in Chancery. Marked Exhibit D 11.

EXHIBIT D 12.

20

Exemplified copy of the final separate account of Ziba Osmun, executor of Eli W. Osmun, deceased, as originally filed, and as subsequently stated and allowed. Marked D 12.

William L. Douglas, a witness produced on the part of the defendant, being duly sworn, says :

I reside in the town of Hackettstown, for the past four or five years; I am in the mercantile business; I attended the sale of the Hackettstown Gazette Building made by Joseph K. Rice, C. T. A., of Eli Osmun, deceased, and bid upon the property, I think, and think I went there for that purpose; I cannot say 30 how much I bid; I have no means of knowing how much I

bid; my bid was over and above the mortgages; the idea that the bidding was over and above the mortgage was made known by the crier; I did not hear of any other claim or incumbrance spoken of; I saw Mr. George W. Johnson there; he bid upon the property; he bid above my bid; I heard the condition of sale read there; I don't remember whether Mr. Rice or Mr. Bryan read the conditions of sale.

WM. L. DOUGLAS.

Sworn and subscribed before me, this 21st day of November,
10 1881.

C. H. VALENTINE,
Master in Chancery.

Ziba Osmun, witness on the part of defendant, being duly sworn, says:

I reside in Hackettstown; I am the father of Eli W. Osmun, deceased; I am one of the executors of his will; Elizabeth A. Osmun, his widow, acted with me as co-executor; I can't tell exactly how long I acted, probably about six or eight months; he died in November, 1877; I don't know long I acted up to
20 the time Mr. Rice was appointed.

Q. Up to the time of Mr. Rice's appointment, who carried on the management and publication of the Gazette?

A. Mrs. Osmun and myself.

Q. As excutors?

A. Yes.

Q. You had a note discounted in that time, did you not?

A. Yes.

Q. Individually?

A. No, she with me.

30 Q. Was the building repaired?

A. Yes, the building was repaired.

Q. By whom?

A. By Mrs. Osmun and me together.

Q. As executors?

A. Yes.

Q. At about what cost?

A. I could not tell exactly, somewhere near \$500, awning and all.

Q. Did you not purchase supplies for the printing office from the proceeds of the estate?

A. We did.

Q. Did you pay running expenses, wages, etc., from the proceeds of the estate?

A. We did.

Q. Was Mrs. Osmun in the office during any part of the 10 time?

A. She was, most of the time.

Q. Did she or not receive any part of the proceeds?

A. I paid her some money.

Q. Did you take her receipt therefor?

A. I did.

Q. Have you them with you?

A. Yes, sir.

Q. [Exhibit D 13. Witness produces a book which purports to be a receipt book, which is marked Exhibit D 13. Page 54½, 20 amount \$25 being shown, witness is asked]—Is that the signature of Elizabeth A. Osmun?

A. Yes, sir.

Q. [Page 73½ being shown witness, dated January 5th, 1877]—Is that the signature of Elizabeth A. Osmun and Shields and Carr?

A. Yes.

Q. \$27.44.

A. Yes.

Q. Is the date a mistake?

30

A. Yes, I think.

Q. Why is it signed by two persons?

A. She got goods there.

Q. [Page 93½ being shown witness, dated February 8th, 1887]—Is that the signature of Elizabeth A. Osmun?

A. It is.

Q. \$25.00?

A. It is.

Q. [Page 106½, receipt for \$40, March 6th, 1878, being shown, the witness is asked]—Is that the signature of Elizabeth A. Osmun?

A. Yes, sir.

Q. [Page 19½, receipt dated April 20th, 1878, for \$25, being shown, witness is asked]—Is that the signature of Elizabeth A. Osmun?

A. Yes, sir.

Q. [Shown receipts: page 120, May 3d, 1878, \$33.03; page 10 121, July 8th, 1878, \$15.22; page 122, July 18th, 1878, \$2; page 124, August 26th, 1878, \$25; page 126, September 19th, 1878, \$5; page 127, \$37, July 19th, 1878, is asked]—In whose handwriting is the signatures?

A. They are in hers.

Q. Who is Andrew A. Neal?

A. He is a hand who works in the office.

Q. These receipts contained in this book purporting to be signed by him, are they signed in his own proper handwriting?

A. They are.

20 Q. Who is W. C. Niper?

A. The foreman in the office at that time.

Q. Were the receipts purporting to be signed by him, signed by him?

A. Yes, sir.

Q. Same question Mr. Chas. Rittenhouse?

A. He was a hand who worked in the office and receipts bearing his named were signed by him.

Q. You paid the several parties who signed the receipts in that book the several amounts of money they received?

30 A. Yes, sir.

Q. You bought all necessary supplies and equipments for publishing a newspaper and conducted the business of publishing a newspaper, as executors, did you not?

A. I cannot answer that question exactly because she kept the books inside.

Q. Mr. Osmun, were the sums of money which you have produced Mrs. E. A. Osmun's receipts for, paid to her as wages or as a legatee under her husband's will?

A. I could not say which it was; there was nothing said about that.

Q. Was there or not any bargain made by which she was to receive wages?

A. There was none that I know of.

Q. For whose use were these sums paid her?

A. To her own, I suppose.

Q. Do you recollect advertising the real estate for sale?

A. Yes, sir.

Q. Was that a joint or individual act? 10

[Question objected to by Mr. Babbitt.]

A. Joint.

Q. Before advertising did you or not consult Mrs. Osmun, your co-executor?

A. I think I did.

Q. [Witness being shown printed poster dated September 14th, 1878, is asked]—Is that your advertisement of sale?

A. Yes, sir.

Q. Where was it printed?

A. At the Gazette office. 20

Q. Have you posted them in the town of Hackettstown, did you not?

A. Yes, sir.

Q. Have you any doubt as to whether Mrs. Osmun was consulted by you before her name was placed at that advertisement?

A. I do not think there was.

Q. Was what?

A. About her consenting to have her name put there.

Exhibit D 14, Poster, was offered in evidence and was 30 objected to by Mr. Babbitt on the ground of incompetency and not the best evidence, and because it does not appear that the same was signed by Mrs. Osmun, or by her authority or with her knowledge. Exhibit marked D 14.

Witness being cross-examined—

Q. When was the Gazette office—the business—sold out?

- A. I think about the 15th of March, 1878; I took possession I think on the 16th.
- Q. Was it sold out by the executors?
- A. Yes, sir.
- Q. And bought by whom?
- A. Margaret Titman.
- Q. For you?
- A. For me to run the business.
- Q. Who is Margaret Titman?
- 10 A. She is my wife's sister.
- Q. You have run the business since March 16th, 1878, for Mrs. Titman, or rather for yourself, and pay Mrs. Titman the interest for her money?
- A. Yes, sir.
- Q. How much money do you pay her interest on?
- A. \$6,000.
- Q. And whatever you make over and above is yours?
- A. Yes, sir.
- Q. Since March 15th, 1878, the business of publishing the
- 20 Gazette has not been carried on by the executors?
- A. No, sir.
- Q. All the interest which the estate of your son had in the paper called the Gazette, and the stock and fixtures, ceased on March 15th, 1878?
- A. Yes, sir.
- Q. What part did Mrs. Osmun take in the management of the Gazette from the death of your son to March 15th, 1878?
- A. Keeping the books; getting out copy and writing articles, and reading proof, etc.
- 30 Q. What did she do in connection with the Gazette after March 15th, 1878?
- A. She was fixing up books and making out bills.
- Q. For how long?
- A. Can't say how long; runs in my mind somewhere in the neighborhood of five or six months. She was fixing up the estate books.
- Q. You have testified in your direct examination that you had a note discounted at the bank; who wrote that note?

A I forget now by whom, whether in the bank by Mr. Cole or by William Osmun.

Q. Who was present when the note was written?

A. I can't tell, exactly; I think I was.

Q. Was the note handed to you before it was discounted?

A. It was.

Q. What did you do with it?

A. I put it in the bank, I think.

Q. Where did you sign it?

A. At the bank, in the directors' room, I think.

10

Q. When did Mrs. Osmun sign it?

A. Down at her house, I think.

Q. Who took it to her?

A. Charlie Slator, at my direction.

Q. Have you that note?

A. I have not.

Q. Will you produce it?

A. I will.

Q. Do you know the date of it—how soon after the date of the death of your son was it?

20

A. Shortly after—can't tell exactly.

Q. When was the building repaired?

A. The same season, after the 16th of March.

Q. Did you put the cost of repairing the building and putting up the awning in your account?

A. Yes, sir.

Q. The running expenses, also?

A. Yes, sir.

Q. Did you also claim compensation for services in running the business?

30

A. I did, sir.

Q. Were the services which were rendered by Mrs. Osmun of such a character that you would have been compelled to employ some one else if she had not performed them?

A. Yes, sir.

Q. Who wrote out the original form from which this poster was printed?

A. I think my foreman did it, at my direction.

Q. Who put them up?

A. I think the boys in the office, at my direction.

Q. Who signed your name and Mrs. Osmun's name to it?

A. I think I did.

Q. Did you sell?

A. No, sir.

Q. Why not?

A. We understood there was a mortgage on it, and we could not get it bid up to the amount of the mortgage.

10 Q. Did you offer it?

A. Yes, sir; at the Gazette Building.

Q. Who was present?

A. William Cramer was there as auctioneer; Robert Price and several others, and it was bid up to \$900.

Q. How many posters were put up?

A. I don't know how many were put up; twenty-five were struck off.

Q. Can you swear positively that Mrs. Osmun had knowledge of or consented to this advertisement?

20 A. That is just what I wanted to straighten a while ago; I am not positive whether I said anything to her or not; I think I did say something; I am not positive.

Redirect examination—

Q. Did she object to the sale?

A. I could not say whether she did or not.

Q. Do you employ any book-keeper now in the Gazette office?

A. No, sir.

Q. You are not a practical printer yourself, are you?

30 A. No, sir.

Q. How did Mrs. Titman, who bought the Gazette newspaper, pay for it?

A. Paid with notes she had against the estate.

Q. How much was paid by her for the Gazette?

A. \$6,000.

Recross-examination—

Q. Who were your counsel in the matter of settlement of your account before the Orphans' Court?

A. Price and Cook and Valentine.

ZIBA OSMUN.

Sworn and subscribed before me, this 21st day of November, A. D. 1881.

C. H. VALENTINE,
Master in Chancery.

S. P. Cook, a witness produced on the part of the defendant, 10
being duly sworn, on his oath says :

I am an attorney-at-law and reside in the town of Hackettstown, and bid for Mrs. Porter upon the Gazette Building, December 1st, 1879.

Q. [Being shown Exhibits D 10, D 5, is asked]—Do you know what Mrs. Porter paid for those mortgages? State amount of principal and interest?

A. D 10, \$1,809.75.

Witness here taken sick and examination adjourned.

Ziba Osmun, being recalled and examined by Mr. Babbitt, is 20
asked :

Q. Are you acquainted with the Gazette Building?

A. Yes, sir.

Q. Were you the builder of the building?

A. I superintended it.

Q. What was the cost of the building and lot?

A. \$16,444.

[Answer objected to by Mr. Harris on the ground that he does not disclose the sources of his information.]

Q. You testified that you did not know on what account the 30
moneys paid by you to Mrs. Osmun were paid. Was not a conversation had between you and Mrs. Osmun in which she claimed that she should receive compensation for her services?

[Question objected to by Mr. Harris because witness has been off the stand and his examination closed.]

A. She said she ought to be paid for her services for to support two children.

Q. About how long after her husband's death?

[Objected to on the same ground.]

A. A month or so; can't tell exactly.

Examined by Mr. Harris—

Q. With whom have you talked about your testimony since
10 you left the witness stand at the Warren House?

A. No one but Mr. Johnson, who asked me to come down to Mr. Valentine's office as Mr. Babbitt wanted to ask me some questions.

Q. Did Mr. Johnson say anything to you about the conversation with Mrs. Osmun?

A. No, sir.

Q. Did you talk with him at the Warren House in regard to it?

A. No, sir.

20 Q. Was the Gazette Building built by contract or by the day?

A. By the day.

Q. When was it built?

A. I can't remember exactly, somewhere about 1872 or 1873.

ZIBA OSMUN.

Sworn and subscribed before me, this 21st day of November,
A. D. 1881.

C. H. VALENTINE,
Master in Chancery.

30

Examination was then adjourned until September 11th, 1882,
at 10 o'clock, at same place.

Pursuant to adjournment, examination resumed in presence of John Linn, of Linn & Babbitt, counsel for complainant, and Henry S. Harris, counsel for defendant.

Examination of *Silas P. Cook*, being resumed, says—

Mrs. Porter first paid \$385 accrued interest on January 13th, 1880, and afterward paid the principal and interest, amounting to \$2,040.67, to Mr. John C. Welsh, who held the mortgage by assignment from Thomas Shields, Jr. I was present at the sale of the Hackettstown Gazette newspaper. It was about a year and seven or eight months before the sale of the Gazette Building. I think about six months after Mr. Osmun's death, I am not positive, however. At the time of that sale I can't positively say where he resided. My office is four doors from the Gazette Building. I attended the sale and made a small bid on the property. The paper was sold, but can't positively say whether it was struck off while I was present. I think Ziba Osmun was a bidder; don't think he bid for himself. Can't say who else bid. I do not remember whether George W. Johnson, Mrs. Osmun's father, was present or not. The sale was made by the executor and executrix of Eli W. Osmun. The complainant in this case being the executrix, and Ziba Osmun, referred to as bidding, being the executor. It was not knocked down to Osmun. I presume he bid for Mrs. Titman and Mrs. White—they were the purchasers. I don't know that the executors had any counsel at that time. I visited Mrs. Osmun after the sale of the building. I called on Mrs. Osmun and told her I had heard it rumored that she intended to make a claim against the property that had just been sold—that I wanted to know if that was true. She left the room, and after being absent some few minutes, returned, followed by her father. She answered me that she intended to claim whatever rights she might have. She did not answer my question until she returned. When she said she intended to claim whatever rights she might have; I told her that I would file a bill in chancery immediately for quieting the title. I bid at the sale of the building for Mrs. Porter. There was no representation made there of any claim of Mrs. Osmun's in the property. There was no statement made by any one that the estate was insolvent. Mr. Johnson, Mrs. Osmun's father, was there and bid on the property. During the time of Mr. Osmun's death, and the sale of the building, I know that an

awning was placed in front of the building, the whole length of it. I can't testify as to the exact amount of repairs and alterations done inside of the building, but I know there were some made. At the time of the sale of the building I knew how the paper, which had been previously sold, had been paid for. While acting as attorney for Ziba Osmun I saw the notice which had been held by Mrs. Titman and Mrs. White against Eli W. Osmun. I have also a number of times seen the note which Mrs. Titman and Mrs. White gave for the difference between
10 the amount of their notes and the purchase-money of the Hackettstown Gazette. I had been informed by him that they had received those notes for the purchase of the paper, and I know that Mr. Osmun afterwards turned in the note upon which there was a balance due (that is the Mrs. White and Titman note of nearly \$250,) remaining unpaid to the administrator with the will annexed, Joseph K. Rice, as part of the assets in hand. The seeing the notes was before the sale of the building. Concerning the management of the paper, from the death of
20 Eli W. Osmun until the sale, I know that Mrs. Osmun and Ziba Osmun were both in the habit of transacting business relating to the paper, and I know that Mrs. Osmun had considerable to do with the keeping the books, making out the bills and collecting the same. Ziba Osmun is not a man of education, of hardly an ordinary education, and at the time of his son's death was entirely unacquainted, as an editor, publisher or practical printer, with the management of a newspaper; I don't know that he had any particular business previous to taking charge of the paper. Was at one time said to be speculating in a small way as huckster. I don't remember who
30 closed the sale of the newspaper.

Lease from Ziba Osmun and Elizabeth A. Osmun, executors to Isaac Katz, dated March 25th, 1878, for five years, which I have marked Exhibit D 15 on the part of the defendant.

Lease from same to same, dated December 19th, 1877, for one year, with privilege of three years, which I have marked Exhibit 16 on the part of the defendant.

The testimony of the subscribing witnesses to the above leases waived.

During the time the paper was printed by the executors a quantity of new type was purchased by them for the paper.

On being cross-examined, says—

The firm of Price & Cook acted as proctors for Ziba Osmun, on his being cited to account before the Orphans' Court of Warren county; we only acted as counsel for him—not for the executors. We did not act as counsel for Ziba Osmun in any other matters prior to this suit, to the best of my recollection. 10
I attended this sale and bid upon the property after consultation with Mrs. Porter, she having money to invest and I acting as agent in the investment thereof.

Q. Did you act as counsel and attorney of Mrs. Porter in the transaction of this whole business until the sale had been confirmed by the court and the deed delivered to her?

A. I acted as her purchasing agent up to the time of my hearing rumors of Mrs. Osmun's pretending to claim against the property; after that as attorney, with Mr. Harris as counsel. 20

And being recross-examined, says—

I had not heard these rumors prior to the sale; I had no intimation or knowledge whatever of any such claim, and got none at the sale—not until afterwards.

S. PIERSON COOK.

Sworn on the 21st day of November, A. D. 1881, and subscribed September 11th, 1882.

C. H. VALENTINE,
Master in Chancery.

It is stated by counsel for Mrs. Porter, and admitted by 30
counsel for complainant by consent, without calling her to prove it, that she had no knowledge or intimation of any claim of dower on the part of Mrs. Osmun until a few days after the sale, when Mr. Cook informed her of the rumors.

OPINION.

[Filed December 30th, 1884.]

THE CHANCELLOR.—The complainant, Elizabeth A. Osmun, widow of Eli W. Osmun, deceased, files her bill for dower in real property—a house and lot called the Hackettstown Gazette property, in Hackettstown, of which her husband died seized. By his will, after directing that his debts be paid, he gave to his mother \$1,000 and a house and lot in Willow Grove street, in Hackettstown, for life, with limitations over to his father if
10 he should survive her, and remainder to his own children in fee, and then gave the “balance and residue” of his estate to his wife, declaring that that gift to her was in lieu of dower. He died November 19th, 1877. The complainant, supposing that the residue would be of very considerable value, did not decline to accept the provision in lieu of her dower. In the settlement of the estate it became necessary, in order to pay the debts, to sell all the real estate not specifically devised, and there is no balance or residue for her. She, in fact, receives
20 nothing under the will. She and her husband’s father were appointed executors. Both proved the will and they nominally acted together (but the business seems to have been done by him, she being unacquainted with such matters), until they were both discharged on their own petition, on the 18th of February, 1879, and an administrator with the will annexed appointed. She, on the 7th day of October, 1878, filed a petition against her co-executor, alleging that he had had all of the funds of the estate and she none; that he was, as she had been informed, using the funds for his private purposes; that he was insolvent; that he had advertised the real estate
30 for sale in his and her names but without her consent; and that the estate was in danger of being wasted in his hands, and she, therefore, prayed that he might be required to give security.

Under the petition he was cited to account. In December term, 1878, they were, on their own petition, both discharged as before mentioned. The complainant accounted. There was

a balance of \$49.80 against her, which she paid to the administrator. Her co-executor also accounted and there was a balance against him of \$636.02, which he paid to the administrator. On the final settlement by the latter there was a balance in favor of the estate of between \$200 and \$300, which was paid over to the testator's mother on account of her legacy. The property in which the complainant claims dower was sold by the administrator under the order of the Orphans' Court of Warren county, to the defendant, December 1st, 1879, for \$3,151, subject to two mortgages thereon. The defendant 10 insists that the complainant is barred of any claim of dower in it, because she did not decline to receive the gift of residue in the will in lieu of dower; and also because there was, as the defendant alleges, a balance or residue of the estate which was wasted by the mismanagement of the executors, or one of them. As to the first defense: It is provided by statute that if a husband devise to his wife, by will duly executed to pass real estate, any lands or real estate for her life or otherwise, and without expressing whether such devise is intended to be in lieu or bar of dower or not, and she survives 20 him, she shall not be entitled to dower in any land or real estate devised by him, unless she shall in writing dissent to receive the lands or real estate so devised to her in satisfaction and bar of her right of dower in the other lands and real estate devised in and by the will, and file the dissent with the surrogate of the county in which she resides, or in which the lands or real estate devised to her shall be situated, within six months after the probate of the will, and in that case she shall be considered as renouncing the benefit of the devise to her. *Rev. p. 322, § 16.* It has been held that in such case, although 30 the widow has not expressed her dissent within the time limited, if she be subsequently evicted from the devised premises without her fault, by title paramount, or legal sale for the testator's debts, she will not be barred of her dower. *Thompson v. Egbert, 2 Harr. 459.*

It will be seen that what the statute deals with is the right of dower *in other lands devised by the will*. It was held in the case just cited that it would not be lost by failure to dis-

sent within the specified time if it should afterwards turn out that the provision made in lieu of dower had failed.

The ground of the decision is that it must be held that the testator did not intend that under such circumstances the widow should be barred of her dower. That is, that it must be held that he intended that she should have the land devised to her in lieu of her dower, and that in consideration of receiving that provision she should be barred, and that it cannot be supposed that he intended that she should lose her dower if
10 that provision should fail without fault on her part, by the successful assertion of paramount title, or through sale for the payment of his debts. In the case in hand the question is not whether the widow shall have her dower *in any other land devised*, but whether she shall have it in *the very land devised to her in lieu of dower* when that land is sold away to pay his debts.

There is obviously no ground for denying her right.

The second ground of defense is that the complainant and her co-executor, or one of them, has wasted the estate. There
20 is no evidence to support this charge. Both executors have accounted and their accounts have been duly passed, with the result before mentioned in reference to the balances thereupon, which, as before stated, they have paid. The sale was, as already stated, made by the administrator under an order of the Orphans' Court. The purchaser had notice, in fact, before the sale was confirmed, of the existence of the complainant's claim of dower. Her attorney, who attended the sale and bought the property for her, called upon the complainant in reference to
30 it, and, according to his own testimony, on her saying that she intended to claim whatever rights she might have in the property, threatened to file a bill in this Court immediately to quiet the title. According to Mr. Johnson's testimony, he said that if she claimed dower he proposed to go to the Chancellor and get the sale set aside, or get an order from the Chancellor for the payment of her dower out of the money of the estate.

The administrator testifies that the attorney asked him to notify him of the time when he was going to ask the Orphans' Court to confirm the sale, so that he might have an oppor-

tunity to object to the confirmation on the ground that the widow had a dower right in the property. But the purchaser neither opposed the confirmation (although she had opportunity to do so) nor took any proceedings in this Court.

The property, according to the evidence, is and was when the sale took place, worth about \$10,000. It was struck off to the defendant at \$3,151, the complainant's father having bid \$3,050. It consists of two parcels, one fifty feet wide and the other five. The former parcel was subject to two mortgages (both given by the testator and the complainant), one for of principal and the other apparently now for \$2,000 of principal, although the answer says that \$1,600 of principal have been paid upon it (it was originally for \$3,500); altogether \$3,500 of principal. There does not appear to have been any incumbrance on the five feet. The defendant has obtained an assignment of those mortgages with the intention (according to her answer) of keeping them alive for the purpose of protecting her title against the complainant's claim. 10

No offer to redeem was made before the suit was brought, but in the course of the testimony an offer was made on behalf of the complainant to take the property off the defendant's hands at the price she paid for it, of course including what she paid for the mortgages, with interest, after a proper accounting in respect to the rents. 20

The sale took place, as before stated, December 1st, 1879. It was confirmed on the twenty-second of that month, and the conveyance by the administrator to the defendant was made January 2d, 1880. The bill was filed April 23d, 1880. One of the mortgages was acquired by the defendant March 25th, 1880, before the beginning of the suit, and the other May 3d, 1880, after the filing of the bill and after the service of the subpoena to answer. 30

The complainant is entitled to dower in the property from the date of the administrator's deed, but must contribute her due proportion to the payment of the mortgage incumbrances, which will be a sum of money bearing the same proportion to the amount of those incumbrances that the value of her life estate in one-third of the property bears to the value of the whole property. *Chiswell v. Morris*, 1 *McCart*. 101.

I am unable to find any evidence that the complainant made any demand of her dower before bringing suit. She alleges in her bill that she made one, but the defendant denies it. The latter, however, has put in as an exhibit on her part (but without any proof whatever in reference to it) what purports to be a written demand of dower by the complainant. It is a simple demand of dower in the property, not accompanied by any offer to contribute to the discharge of the mortgages.

Each party will pay her own costs.

- 10 I, George S. Duryee, Clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, do hereby certify that the foregoing is a true copy of the opinion in the cause wherein Elizabeth A. Osmun is complainant, and Ruth P. C. Porter is defendant, now on the files of my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said Court, at Trenton, this
 [SEAL.] fifth day of January, A. D. eighteen hundred and eighty-five.

G. S. DURYEE, *Clerk.*

20

DECREE.

[Filed August 25th, 1885.]

- This cause coming on to be heard before the Chancellor at the October Term of this Court, eighteen hundred and eighty-four, in the presence of John Linn, of counsel with the complainant, and J. G. Shipman, of counsel with the defendant, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the
 30 Court that the said complainant is entitled to dower in the property mentioned in said bill of complaint, known as the

Hackettstown Gazette Building, of which her husband died seized, from the date of the administrator's deed, January second, eighteen hundred and eighty, but that she should contribute her due proportion to the payment of the mortgage incumbrances thereon, which will be a sum of money bearing the same proportion to the amount of those incumbrances that the value of her life estate in one-third of the property bears to the value of the whole property,

It is, on this 10th day of August, eighteen hundred and eighty-five, by Theodore Runyon, Chancellor of the State of 10
New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby order, adjudge and decree that the said complainant is entitled to her dower in the property known as the Hackettstown Gazette Building, of which her husband, Eli W. Osmun, deceased, died seized, situate in Hackettstown, in the county of Warren, in this State, and particularly mentioned in said bill of complaint, from the second day of January, eighteen hundred and eighty, subject to the payment of her due proportion of the mortgage incumbrances thereon. 20

And it is further ordered, adjudged and decreed that it be referred to John A. Blair, Esq., one of the Special Masters of this Court, to ascertain and report the amount of the mortgage incumbrance upon said property on said second day of January, eighteen hundred and eighty, also the value of said property at that date, also the value of the life estate of said complainant in the one-third of said property, also what sum of money will bear the same proportion to the amount of said incumbrances that the value of said life estate in the one-third of said property bears to the value of the whole property, also 30
that he ascertain and report the amount of the rents and income which have been received from said property, or which might reasonably have been received for said property by said defendant from said second day of January, eighteen hundred and eighty, also the amount expended in necessary repairs and for insurance upon the same, to the end that this Court may make such further order and decree in the premises as to the Chancellor may seem equitable and just.

And the said Master is directed to make his report with all convenient speed, and all further equity is reserved until the coming in of said report.

THEODORE RUNYON, C.

A true copy.

G. S. DURYEE, *Clerk.*

PETITION OF APPEAL.

[Filed November 17th, 1885.]

10 *To the Honorable the Court of Errors and Appeals in the last resort in all causes :*

The humble petition of Ruth P. C. Porter, the appellant in the above-stated cause, respectfully shows that your petitioner finds herself aggrieved by a decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date on the tenth day of August, eighteen hundred and eighty-five, and filed in said court on the twenty-fifth day of August, A. D. eighteen hundred and eighty-five, wherein the said Elizabeth A. Osmun was complainant and your petitioner was defendant, in this respect, to wit: That the said
20 decree adjudges that the said Elizabeth A. Osmun was entitled to her dower in the property known as the Hackettstown Gazette Building, of which her husband, Eli W. Osmun, deceased, died seized, situate in the county of Warren, in this State, and particularly mentioned in said bill of complaint, from the second day of January, eighteen hundred and eighty, subject to the payment of her due proportion of the mortgage incumbrances thereon; and in which it was further adjudged and decreed that it should be referred to one of the special masters of this court to ascertain and report the amount of the mort-
30 gage incumbrances upon said property on said second day of January, A. D. eighteen hundred and eighty, also the value of the said property at the said date, also the value of the life estate of said complainant in the one-third of said property,

also what sum of monegy will bear the same proportion to the amount of said incumbrances that the value of said life estate in the one-third of said property bears to the value of the whole property, and also that he ascertain and report the amount of the rents and income which have been received from said property or which might reasonably have been received for said property, by your petitioner, from said second day of January, eighteen hundred and eighty, also the amount expended in necessary repairs and for insurance upon the same.

And your petitioner humbly appeals from that part of the 10
decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said Elizabeth A. Osmun was not entitled to dower in the premises aforesaid, subject to the payment of her due proportion of the insurance upon it, and it should not have been referred to a special master to take the account as specified and set forth in the said decree. Your petitioner therefore prays that the decree aforesaid, as above specified and set forth, may be reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court 20
shall seem meet.

J. G. SHIPMAN & SON,
Solicitor for and of Counsel with Appellant.

ANSWER OF RESPONDENT.

[Filed December 28th, 1885.]

The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits that a decree was on the tenth of August last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in
10 the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and she prays that the same may be affirmed, with costs to be adjudged to this respondent.

JNO. LINN,
Solicitor and Counsel of Respondent.