

# In Chancery of New Jersey.

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Between

PETER HAULENBEEK and Wife,

*Comp'ts,*

*and*

WILLIAM CRONKRIGHT *et al.*,

*Def'ts..*

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*Master's Report.*

In pursuance of an order entered in the above cause, bearing date the fifth day of April, in the year of our Lord one thousand eight hundred and seventy-two, whereby it was referred to the undersigned, a master of this court, to ascertain and report the sum in gross to be paid to Elizabeth Cronkright, the widow of James Cronkright, deceased, in lieu of her dower, according to law and the rules and practice of this court, I, Frederic B. Ogden, master, as aforesaid, do report to his honor the Chancellor, that I have examined into the matters thereby referred to me, and do find that the net proceeds of the sale amount to \$58,107.85; that the rental value of the premises known as the homestead amounts to \$440; that the rental value of the premises known as the Cashman place amounts to \$522; that the rental value of the premises known as the Durando place amounts to \$305, making the whole rental value of all the property amount to \$1,267. I do also find that at the time of the sale of the property, the said widow was forty years of age, and in a

perfectly sound condition of health ; I do therefore report that the said widow is entitled to receive in lieu of her dower the sum of \$9,508.50.

All which is respectfully submitted.

Dated June 12th, 1872.

F. B. OGDEN.

*M. in C.*

*Elizabeth Cronkright*: I am the widow of James Cronkright, deceased ; I was born June 14th, 1831 ; I know of no  
10 hereditary disease which I have that might shorten my life ; I have had once a serious sickness ; so far as I know I have entirely recovered from its effects ; my father and mother are both alive, in good health ; they are both over seventy years of age ; I had this serious sickness three years ago this coming June ; Dr. Macomber, of Hackensack, was my physician ; the sickness was inflammation of the bowels.

*Charles D. Kellogg*: I live at Englewood ; I am a real estate agent ; I have for the last three years made a specialty of buying, selling, and letting real estate along the line of  
20 the Northern Railroad ; I know the property of James Cronkright, the homestead, the Cashman place and the Durando place ; in my estimation, I think the rental value of the homestead ought to bring in \$2,000, when put into repair ; I thought \$1,000 would be required to put the house and out buildings in repair ; I think with good usage, it would take about \$250 per year to keep it in good repair ; the Cashman place, I put the rental value at sixteen hundred dollars ; I think \$150 per year would be sufficient to keep it in repair ; I think \$1,000 would be necessary to put  
30 that house and out buildings in repair ; I thought the Durando place ought to bring a rental value of \$800 ; I was not able to get into the house and see the inside of it ; it has the appearance of being an old house with signs of being recently repaired ; the out buildings and fences seemed to have been put in order and needed no repairs ; I should say the first two houses would insure for one per cent. for three years, the other house I should rate at one and one-fourth for three years.

## Examined by Solicitor of complainants.

The rate of insurance of the homestead and Cashman place would be at the rate of forty cents per year; that rate could be at Niagara Insurance Company of which I was agent; the Merchants, I have no doubt, would take at same rate; I should say the Durando property would be fifty cents per year in either of those companies; I mean the rate on the long terms, for the out buildings would be the same as the houses; I think a slight advance would be made on the three year policies; judging from the experi- 10  
ence I have had in insuring similar places, I should say the homestead and out buildings should be insured for \$15,000; the Cashman place for \$12,000; the Durando place for \$7,500; I consider those amounts from seventy-five to eighty per cent. as to the value of the buildings; of the homestead, the walls are somewhat cracked, the house needs painting, the out buildings need painting and repairs; I went all through the house and examined the roofs of the house; on the homestead place, I think the barn needed over- 20  
hauling by a carpenter; the doors and flooring need over-  
hauling and some painting wanted; the timbers appeared sound; the walls in the homestead are cracked a good deal; I did not notice the gutters and leaders particularly; I thought if the property was in Englewood, I think there would be no difficulty to rent it for \$2,500; I made a difference of 20 per cent. on the difference of locality; I took the same basis for all the buildings; in making these calculations, I knew for what the property had been sold at the Master's sale; I examined the condition of the Cashman property, the roofs, &c.; I gave the gutters a cursory look; 30  
I have never rented any property in the locality of these premises; Englewood is six miles from English Neighborhood; the homestead and Cashman places are from one-quarter to three-eighths of a mile from the Ridgefield Station on the Northern Railroad; all the trains stop there but one; Englewood has 2,500 to 3,000 people.

*Henry M. Willis:* I live in Englewood; I am a broker in real estate; I have given special attention to the buying and

selling of real estate along the Northern Railroad ; I know the Cronkright, Cashman and Durando places ; I have inspected those properties lately ; in my judgment the rental value of the homestead is \$2,000 per year ; for the benefit of the property something should be spent on it ; I thought about \$1,200 would put it in repair ; I think \$200 per year would keep it in good order after being repaired ; I thought the Cashman place would rent at \$1,700 per year ; I think it needs repairing for the benefit of the property ; I think it  
 10 needs the same as the other ; I think it needs a new roof ; I think \$150, year by year, would be enough to keep it in repair ; the Durando place ought to rent for \$900 per year ; taking an observation from the outside and looking through the windows, I think all it wanted was painting ; there ought to be about \$200 spent on it ; I should say \$75 a year would be needed to keep it in order ; I am familiar with the rates of insurance for that kind of property ; I would insure those three buildings at eighty cents for three years, or forty cents a year ; I would take out buildings and all at that  
 20 rate ; I would insure the homestead for \$12,000, the Cashman place for \$10,000 or \$11,000, and the Durando place for \$5,000 ; I should calculate these sums were about sixty-five per cent. of the value of the buildings.

Examined by A. I. S., Esq. :

It is pretty hard to rent farming land anywhere ; I based my calculation of the rental value of the places from the conveniences and privileges a man would receive from living there ; I saw the house and grounds adjoining the different places ; real estate, with the ground around these places, if  
 30 at Englewood, would rent well ; at seven per cent upon its value, a man would do well if he got it ; those places would rent for just as much with half the land around them, and they would sell for just as much in my judgment ; I examined the out buildings on the homestead in a casual way ; you could put a new roof on the Cashman house, and paint it, for \$325 ; I think if the Cashman place was at Englewood, it would rent for \$2,100 ; Mr. Voorhis requested me to look over these premises ; I did not go there with Mr. Kel-

logg; the Durando place shows signs of being recently repaired; I make the difference of keeping the places in repair from the character of the buildings.

*Stephen Martling*: I live at English Neighborhood, right adjoining the homestead property; I have lived in that neighborhood twenty-one years, about; I own real estate there; I am acquainted with the value of real estate in that neighborhood; I am acquainted with the three tracts belonging to the estate of James Cronkright, deceased; I have lately examined these premises; the average rent for the homestead property, in its present condition, would not exceed one thousand dollars; the present condition is bad; they need repairing. 10

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| The painting would cost.....           | \$600 00  |
| The mason work would cost.....         | 75 00     |
| Repairing gutters.....                 | 50 00     |
| Blinds .....                           | 10 00     |
| Repairing roof.....                    | 100 00    |
| Rebuilding fences about the house..... | 250 00    |
| Repairs of other fences.....           | 100 00 20 |
| Annual repairs.....                    | 200 00    |

By these annual repairs, I mean after these other repairs are put on.

|                                |          |
|--------------------------------|----------|
| Repairs of furnace.....        | \$325 00 |
| Stoop and railing repairs..... | 50 00    |

The out buildings, that is to say, the barn and carriage houses, are rotting down; to renew them will cost \$1,000; none of these carriage houses are needed, for the barn and carriage houses can be put into one building; I base the \$1,000 upon doing this; that would be the cheapest method 30 to put these buildings in good order; the painting of the outbuildings will cost \$500; the rental value of the Cashman place in its condition at the time of the sale, would be not less than \$1,000.

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|------------------------------------|----------|
| Painting necessary will cost.....  | \$600 00 |
| The carpenter work.....            | 75 00    |
| The mason work.....                | 75 00    |
| Repairing roof.....                | 80 00    |
| Repairing cistern.....             | 150 00   |
| Fencing about premises.....        | 250 00   |
| Other fences surrounding farm..... | 100 00   |

Annual repairs about \$200 after these improvements were made. Carpenter work of the outbuildings would cost 10 \$300; the painting of the outbuildings \$300. If these places were put in the condition indicated be me, the average rental of each would be \$1,500. I think the improvements mentioned by me are necessary to put them in tenantable order; I should think a furnance necessary for such a house as the homestead house. In the condition of the Durando place at the time of sale, it might let for \$400; that is the average rental value.

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| The painting would cost.....               | \$600 00 |
| The carpenter work.....                    | 150 00   |
| 20 Painting carriage house and fences..... | 125 00   |
| Repairing and making other fences.....     | 20 00    |

This estimate is based upon the condition it was in at the time of sale. After these repairs are put on, the average annual repair would be about \$200. That house would rent quick for \$600 or \$700 after these repairs were made; providing this outlay was not made it would cost annually to keep the homestead in repair about \$300 per annum, the Cashman place \$250, the Durando place \$250; these estimates do not include insurance and taxes; the amounts 30 above given would not be any less. My impression is the Durando place always let for \$600; I have no personal knowledge of it.

*Samuel E. De Groot*: I reside at English Neighborhood, about half a mile north of the property of James Cronkright, deceased; I know these premises, and have examined them within a week; I was present at the sale but did not

examine the property critically then ; the homestead property in its present condition, I should judge would rent from \$800 to \$1,000 per annum ; the Cashman property I should put down to the same figure, from \$800 to \$1,000 ; the Durando property I should put down to \$500 ; these do not include insurance and taxes ; taking the homestead property as in the condition it was at time of sale, it would be difficult to estimate what it would cost to keep it in repair ; some of the out buildings are actually falling down now ; the barn roof is dished in and in a dilapidated state, and in the carriage house the posts on the southwest corner are all rotten ; I should say from three to five hundred dollars ; the Cashman place I would put at not less than \$200 nor more than \$300 ; the Durando property about \$150 ; it would cost \$2,585 to put the homestead in repair ; I arrived at that from observation and making out items ; it would cost \$2,050 to put the Cashman property in repair ; I arrived at that the same way ; it would cost \$900 to put the Durando property in repair ; that don't include the work already done ; I arrived at that the same way ; if put in repair the average rental value of the homestead property would be \$1,000 to \$1,200 ; Cashman property the same ; the Durando property \$650 ; I have lived in that neighborhood about fifty-two years ; I am somewhat acquainted with the rental value of property in that region.

*Peter Hall:* I live on the property known as the Cashman place ; I bought it from William Kronberg, who bought it at the sale ; I am a practical and theoretical builder and a mason by trade ; the tin roof I soldered all over ; it was never done before only in part, for this and a new roof on the bay window, and the leaders, part new and part repaired, has cost me \$84 ; I could have had that fixed up and put in repair as it then was, for about \$10 ; there was a cistern there but not large enough for my purpose, it leaked, to have repaired it would have cost perhaps \$8 or \$10 ; I built a new cistern there ; I pointed the house up inside ; I think my man was in the house about five days ; it cost about \$25 ; this pointing up will take care of itself at least five years ; it is not an annual repair ; it will cost me 37½ cents a foot

to put up the front fence including the painting and using up the old fence in the new ; I think it will then last fifteen years ; all the garden fences have got to be removed, they can't be repaired ; it will cost \$2.30 for each thirteen feet of the garden fence ; there is 1,300 feet, that is all the garden fences, and a line fence that will be the same as it is there now, they ought to stand fifteen years ; I have been extending the roof of the barn two feet from the main building, two feet from the north and south sides and the west end ;

10 put a new roof on the cow stable, which was not necessary ; I am putting new clapboards on where the others are unsound and are splitting all the sills that are unsound ; this will cost me \$400 about ; I am going to paint it, it was never painted before ; it was whitewashed before ; the posts I am putting in the front fence are round turned chestnut posts, and will cost \$1.00 apiece ; I place two in every thirteen feet ; posts of the same kind as were in that fence before, cost now forty cents apiece ; I don't know hardly where

20 take about one-half of what I am spending, would put it in repair for fifteen years.

Examined by Mr. Smith.

As near as I can get at it ; figure up the cost of these improvements and where I say it will last fifteen years, I divide by fifteen ; the items I have given would be the whole cost for putting in repair for fifteen years, except the painting ; the 1,300 feet of fence above spoken of does not include all the fencing around the property ; the only line fence I have to put up besides what is

30 above referred to, is about fifteen panel, which will cost \$1 a panel, and last fifteen years ; front fence was a round picket, with square box posts ; I think the posts were pine ; I think it costs a cent a foot to paint the tin roof ; that is the usual price ; I paid for painting the house and roof \$176, that is the labor ; the house needed painting ; a tin roof needs painting about once in four or five years ; a house of that color needs painting every six or seven years ; the paint already on the ground has cost \$160.70 ; we expect to have

enough to paint the barn ; it is Averill's patent paint ; it costs more than white lead ; I suppose fifteen per cent. more ; it costs \$2.10 per gallon, it usually sells for \$2.25 ; I had a man inside the house repairing about five days ; nothing was done outside ; this painting does not include inside the house ; it needs painting.

*J. Nelson Luckey* : I reside at English Neighborhood, about half a mile from the property of James Cronkright ; I am a real estate agent and lawyer ; I am acquainted with the rental value of real estate in that neighborhood ; I have resided there one year ; I own real estate there ; I know these three pieces referred to ; I examined them particularly this week and last week both ; I looked over them carefully ; I think it would be very difficult to let the homestead at all in its present condition ; in my judgment it would not rent for \$500 ; the roof leaks, and the walls will be tumbling down and in a few years could not let at all ; the land don't rent for much, the building is the main thing ; the Cashman house would let for more, because the roof is better ; I think it would let for \$700 in its condition at the time of the sale ; the Durando place would rent from \$400 to \$500 in its condition at the time of the sale ; these valuations do not include insurance or taxes. I should think it would cost to keep the homestead property \$250 to \$300 per year in the condition it is now. It would take about \$250 per year to keep the Cashman place in repair, and the Durando place about the same. I have estimated what it would cost to put those places in good tenantable repair. I have heard Mr. Martling's testimony ; I agree with him pretty much. To put the homestead in proper order would cost \$3,470.

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| Painting the house.....  | \$650 00 |
| "    outbuildings.....   | 300 00   |
| Repairs to the house to all but roof.....  | 320 00   |
| Repairing the roof.....  | 150 00   |
| Furnace .....  | 300 00   |
| To rebuild carriage house and barn together suitable to the place, and taking down those that are there..... | 1,200 00 |

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| Front yard fence and side fences for the house.... | 250 00 |
| Field and line fences.....                         | 300 00 |

I consider these improvements necessary to put the property in proper condition to rent for a term of years; these estimates are based on actual observation and experience. After the improvements have been made the rental value would be from \$1,200 to \$1,500 per year. To put the Cashman place in proper condition to rent, it would cost about \$2,530.

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|----|---|----------|
| 10 | Painting the house.....                     | \$650 00 |
|    | Painting outbuildings.....                  | 300 00   |
|    | Cistern .....                               | 200 00   |
|    | Carpenter work.....                         | 100 00   |
|    | Mending the roof.....                       | 80 00    |
|    | Repairing outbuildings.....                 | 300 00   |
|    | Fence in front of house, side, gardens..... | 250 00   |
|    | Field and line fences.....                  | 300 00   |

After these repairs I think it would rent from \$1,200 to \$1,500, and cost about \$250 to keep it in repairs for a term  
20 of years. To put the Durando place in repair would cost \$1,150.

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|  | Painting the house.....  | \$650 00 |
|  | Painting the fences in front of the house, and the carriage house..... | 200 00   |
|  | Repairs to the house in addition to what has been done .....           | 150 00   |
|  | Repairs to the fences.....   | 150 00   |

It would cost about \$250 to keep it in repair per annum. I am in the habit of renting real estate on the Northern  
30 road; I own four houses near the property, and rent three of them.

Examined by Mr. Voorhis:

The highest rent I get for property along the Northern

road is \$900; the house is my own; it is new where I live; it is the house I now live in; I let it furnished at the rate of \$900, for the winter months; I never let it unfurnished; I have let houses for others beside myself along the Northern road; I have let some houses for David McDonald; I have no houses to let along the Northern road except at Fairview; I have let a house for Mr. McDonald to Mrs. Clark at \$300, and a house to another person at \$250 or \$300; McDonald made the arrangement finally; he asked \$300; these are the only houses I have let at Fairview except my own; I have some to let, but they don't rent; I have owned my houses a little over a year; I have a house of Mr. Day's at New Durham for sale; I sold his house last year; without referring to my books, those are the only names that I recollect of property I have for sale within ten miles of these premises; my business is real estate, and I have been admitted to practice law in New York; I estimated the cistern would cost just what Mr. Hall, who has bought the place, told me what it would cost to build it; he is building one; all I know about the roof of the homestead leaked is from what parties in the house told me; I did not see the furnace in the house; what is left of the Dr. Marsh property is building lots; that is about thirty acres; the rest is salt meadow.

Examined by Mr. Kronberg:

The house I rent for \$900 is in perfect order, with all the modern improvements; the McDonald house has not the modern improvements; I have a house with all the modern improvements about 350 feet from the depot to let for \$600, but it don't seem to let; this house is on the west side of the railroad; it is the Marsh cottage.

*Thomas N. Dale*: I am a mason, and live at Englewood; I have been at work on the homestead since it was sold; the work I have done there as a mason has cost very little money; I fixed up the stone wall and repaired the old cistern; fixed the chimneys and pointed up the cracks in the house, and I am doing other work, not repairs; what I did

as repairs amounted to \$76.97; I can't see that the out-buildings need any repairs of any account; I am a practical builder; no other repairs are necessary.

Examined by Mr. Smith.

I suppose the principal work to be done there is carpenter work; but there is not a great deal to be done; that \$76.97 included the whole cost of materials and all; I build and do mason work, both; I build houses right through from the beginning.

- 10 *John V. H. Terhune*: I am the assessor of Ridgefield Township; I was assessor in the old township of Hackensack three years, and this makes the second year in Ridgefield, which is a part of the old township of Hackensack; the property of James Cronkright has been assessed by me for taxes during the last five years, except one year when I was not assessor; I have the valuation of the Cronkright property for the last year, but it has been pretty much the same every year; last year, on the homestead, twenty-three acres, valuation \$12,000; on the Cashman lot, nineteen  
20 acres, \$10,000; on the Durando property, twenty-six acres, \$11,000; the taxes last year were about one per cent.; I think one per cent. on the valuation would be a fair sum to calculate the tax for a series of years; take the homestead with nine acres, I would value it at \$10,000; take the Cashman place with seven acres, I value at \$8,000; and the Durando place, with four acres, I value at \$6,000.



to be five hundred and thirty-two dollars, whereas the rental value thereof, in truth and fact, is far in excess of said amount, and should have been reported as, at least, fourteen hundred and seventy-five dollars.

### THIRD EXCEPTION.

For that, whereas, the said master has by his said report stated the rental value of the premises known as the Durando place, to be three hundred and five dollars, when in truth and fact, the same exceeds five hundred and fifty-five dollars.

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### FOURTH EXCEPTION.

For that, whereas, the said master reports that the defendant, Elizabeth Cronkright, is entitled to receive \$9,508.50, in lieu of her dower, when she is, in fact, fairly and equitably entitled to receive, in lieu of said dower, nearly, if not quite, fourteen thousand dollars.

In which said several matters and respects hereinabove particularized, this exceptant excepts to the said report, and humbly conceives that the master hath erred, and that the said report is wrong, unjust and inequitable, and therefore  
20 prays that the said report, so far as regards the several particulars above specified, may be disallowed and rejected and set aside, and a new report be ordered to be taken, or that the said report may be corrected in the said several particulars, and prays the judgment of the court thereupon.

CHAS. H. VOORHIS,

*Sol. and of Counsel with Elizabeth Cronkright,  
Exceptant.*

## OPINION.

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Between

PETER HAULENBEEK and Wife,

*Comp'ts,*

*and*

WILLIAM CRONKRIGHT *et al.*,

*Def'ts..*

} *Opinion.*

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This cause was argued upon the exceptions of Elizabeth Cronkright, widow of James Cronkright, deceased, to the report of the special master as to the gross sum to be paid to her in lieu of her dower in the lands of which her late husband died seized, sold by order of the court in a suit for 10 partition.

Mr. W. B. WILLIAMS, for exceptant.

Mr. B. WILLIAMSON and Mr. W. S. WHITEHEAD, for the heirs-at-law.

THE CHANCELLOR.

The supplement to the partition act, passed in February, 1855, authorizes the court in which the partition proceedings are had, to determine whether any existing estate of dower or curtesy in the premises ordered to be sold, ought to be excepted from the sale, or whether the same should be sold. 20 It also directs, upon such sale, that the court shall direct the payment of such sum in gross, out of the proceeds of the sale of the premises, to the person entitled to such estate in dower or by the curtesy, as shall be deemed a just and reasonable satisfaction for such estate or interest.

The estate or interest of a widow in lands in which she is entitled to dower, is the right to have one-third set off to her by metes and bounds, and to enjoy the same for her natural life. Like all other tenants for life, she is not entitled to commit or suffer waste, and must keep the premises set off to her in repair. The duty imposed upon the court by the statute is, to determine in each case what is a just and reasonable compensation in money for this estate, when sold by its order. The sale in partition proceedings is not  
 10 for the benefit of the dowress, nor are the partition proceedings for her benefit; she cannot institute them. They are instituted by one or more of the tenants in common for a partition of the estate among them, and when the partition can be made, the dowress retains her estate in the premises as it was before. If dower has not been assigned, she retains the right to have it assigned. If an assignment has been made, she retains the part set off to her unaffected by the partition. If partition can be and is made, the dowress is not a necessary party to a partition suit in equity.

20 When a sale is made, the dowress is entitled, by the statute, to a just and reasonable satisfaction for her estate. This means full compensation for the loss which she sustains by having her estate taken from her by the decree of the court. The value of her estate must be computed from the use and profits she was entitled to derive from it, if not sold. The value of a life estate in land must be computed on different principles from the value of the fee. In both cases the actual present income or profit must enter into the calculation. But in calculating the value of the fee, the future rise in  
 30 value, in very many cases, is an important element in the calculation. Lots entirely unproductive, or nearly so, very often are certain to double in value in ten years, from their situation and the probable approach of improvements. This is the inducement of capitalists to purchase and hold lands in the vicinity of cities, which not only produce no income, but are subject to constant taxes and frequent assessments. Such lands are especially of little value when set off to a dowress. Then, the uncertain duration of her estate: Neither she nor her lessees or assigns could venture to improve  
 40 them to any extent, even if the property should come into

requisition during her life. To the owner of the fee, such unproductive lands are often a much more productive investment than could be had at compound interest.

Where one person owns a life estate, or an estate for years, and the reversion belongs to another, the owner of the reversion is entitled to all the benefit to accrue from the rise in value of the property before the falling in of the precedent estate. It would be unjust to take away or diminish this right by regulation made for the more convenient and profitable partition of lands, or for their sale, when necessary. It would be giving the property of one person to another. To reserve an outstanding estate in dower or by curtesy, on a sale of lands in partition proceedings, is in most cases very injurious to the sale, generally much more so than the value of the outstanding estate. Few will buy a dwelling house of which one-third or every story might be set off to a dowress. In a manufacturing establishment it would be yet more detrimental to the sale; and even in a farm, very objectionable to one purchasing for his own use. The power to sell such estate with the property is a wise provision. But it was not intended, nor can it justly be used, to give to the dowress or tenant by curtesy a greater share of the proceeds of sale than the value of the estate taken away. 10 20

The statute does not provide that the gross value shall be calculated upon one-third of the interest of the net proceeds of sale, or that the interest of one-third of the net proceeds shall be paid her for life, as was provided in the twenty-third section of the partition act, to induce her to consent to release her dower. But it directs the court to determine what shall be a reasonable sum in gross to be paid to her; or in case she does not elect to accept a sum in gross, what shall be a just and reasonable sum to be invested for her. These provisions show clearly that it was not intended that the interest of one-third of the net proceeds was to be paid her, or a sum in gross computed from the interest of such one-third. 30

In the provisions for the sale of estates by dower and curtesy in sales of lands of infants, by order of this court, similar provisions are made for ascertaining the value in gross of such estates, and for providing a sum to be invested for the life of the tenant. 40

These values must be ascertained in each case by the judgment of the court, and the Court of Chancery has adopted rules to be applied in cases of sales of infants' lands to ascertain the value of such estates in dower or by curtesy. These rules, by reason of their generality, may, if strictly applied, in some cases work injustice ; but it is, in practice, impossible to determine each individual case without some general rules for guidance.

The computation from the income only would be most  
 10 just, if the income could be assumed to be fixed and permanent, and without change in the probable life of the life tenant. But in the position of real estate in New Jersey, which has for some time been constantly increasing in value and productiveness, and which will, with great probability, continue so to increase, it was thought, on adopting these rules, that a strict adherence to present income alone would be unjust to the tenant by dower or curtesy. In most or nearly all cases of such sales, the interest of the proceeds much exceeds the real income. The interest on the proceeds  
 20 was therefore made the basis of the computation of the limit of the value to be allowed ; and upon ascertaining the value from the actual net income, in case of dower, one-half, and of curtesy one-fourth of the excess of the value, calculated from the proceeds of sale, is directed to be added to the net income. The reason for restricting the value from the income, which might seem most just, was both, because, in many cases, a temporary or accidental increase in actual income might be made the basis, and because (especially in the case  
 30 of infants where the witnesses are often produced by those whose interests are adverse to them,) the yearly value is a matter of judgment and often of imagination, and witnesses can be selected whose opinions are well known to be always for the highest values. The difference in favor of dower was grounded in part on the rule of law which always favors dower, and in part on the fact that in the majority of cases the dowress is the mother of the infants or tenants in common, and any allowance to her will result for their benefit and contribute to their support.

It must be admitted that to a certain extent these rules  
 40 are arbitrary, as all rules in law and equity, and in legisla-

tion where the adoption of rules is required to meet some emergency, and must be, in their origin, although founded on the best reasoning of the jurist or law-giver.

Rules 130 and 131, adopted originally for sales of infants' lands, are by rule 141 applied to sales of lands in partition proceedings, and they are the rules of this court, authorized by statute, and as such are, until changed, the binding law of the court.

The special master to whom it was referred to ascertain the gross value of the dower of the widow, has in all things computed it according to the rules. But in ascertaining it, the yearly income, insurance, taxes, and repairs had to be ascertained by evidence. The exceptant maintains that the master's report is against the clear weight and effect of the testimony. It is a proper ground of exception that the master, in his conclusions as to matter of fact, has made a report contrary to the evidence. 10

The conclusions of a master, who has examined and seen the witnesses are always regarded in equity as entitled to great respect, and where there is conflicting evidence, and his conclusions are clearly supported by competent witnesses who are unimpeached, his report will not be set aside because there is conflicting testimony, unless the weight of such testimony, on account of the great number of the witnesses and the nature of their evidence, is such as to make it clear that the master has erred. The premises here are three valuable residences in the English neighborhood, in Bergen county, on the Bergen turnpike, each with a number of acres of land attached, such as to entitle them to be called farms. But their chief value is as country residences. 20

Two witnesses, produced by the exceptant, state that in their opinion two of these places would rent for \$2,000 each, and the third for \$800 or \$900. The master has, in his calculation taken the annual value of the first two at \$900 each, and that of the third at \$600. 30

These witnesses are real estate agents, residing at Englewood, six miles distant from this property. One of them has been concerned in letting houses, as well as selling real estate. But it does not appear that either of them had anything to do with the property in this vicinity, or anywhere 40

near it, such as to give them any knowledge of rents there. The value of the evidence of such agents as experts, if they can at all be admitted as experts, must altogether depend upon their knowledge of rents in the vicinity of the property.

The testimony of an agent, thoroughly acquainted with the yearly value of houses in the city of New York, would be of little value as regards houses in a country village. And the master may have rightly concluded that the evidence of  
 10 agents who formed their opinions from the flourishing and wealthy town of Englewood, was of little value as to houses situate in a more rural and agricultural part of the county of Bergen.

The other witnesses are two inhabitants of the English neighborhood, who have lived on their own farms for fifty and twenty years, respectively, in the vicinity of this property; one of them on a farm adjoining it, and who naturally, for years, would know the rents received for every house of any importance in the neighborhood. Of their credibility  
 20 the master was the most proper judge. The third witness for the heirs or tenants in common is a resident in the neighborhood, who has been engaged as a real estate agent in the letting and sale of property in the vicinity.

The report of the master is warranted and sustained by the testimony of these three witnesses. I cannot, under any rule that should govern in such exceptions, determine that the master has erred. On the contrary, my own conclusions from the evidence, if it was my duty to determine the matter originally, would be much the same as those of the  
 30 master.

The exceptions must be overruled.

## DECREE.

IN CHANCERY OF NEW JERSEY.

Between

PETER HAULENBEEK, AND ELLEN A., HIS  
WIFE,

*Compl'ts,*

and

WILLIAM CRONKRIGHT AND OTHERS,

*Def'ts.*

*On Master's Report on Exceptions of Elizabeth Cronkright.*

This cause coming on to be heard upon exceptions to the master's report in the presence of B. Williamson and Wm. Silas Whitehead, of counsel with the complainants, and 10  
Washington B. Williams, of counsel with the defendant, Elizabeth Cronkright, and the report in this cause made in pursuance of a decretal order of this court by Frederic B. Ogden, Esquire, one of the masters of this court, bearing date on the twelfth day of June, in the year of our Lord one thousand eight hundred and seventy-two, and the exceptions taken thereto by the defendant being produced and read, and it appearing to the satisfaction of the Chancellor that all the exceptions taken by the defendant to the said report of the said master are erroneous and without founda- 20  
tion. It is now, on this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and seventy-three, ordered, adjudged and decreed that the said master's report, and all the matters and things therein contained, do stand ratified and confirmed by the order, authority and decree of this court, and that the exceptions of the defendant be, and they hereby are, severally overruled and disallowed with costs.

A. O. ZABRISKIE, C.

A true copy.

H. S. LITTLE, *Clk.*

## APPEAL.

IN CHANCERY OF NEW JERSEY.

Between

PETER HAULENBEEK AND ELLEN A., HIS  
WIFE,

and

WILLIAM CRONKRIGHT AND OTHERS,

*Def'ts.**Compl'ts.**On Bill, &c.**Appeal.*

The defendant, Elizabeth Cronkright, hereby appeals from  
 10 the whole and every part of the order or decree made in this  
 court in the above stated cause, on the twenty-sixth day of  
 March, in the year eighteen hundred and seventy-three,  
 which overrules the exceptions taken by said Elizabeth  
 Cronkright, to the report made on the twelfth day of June,  
 eighteen hundred and seventy-two, by Frederic B. Ogden,  
 Esquire, one of the masters of this court, and disallows said  
 exceptions; and which order or decree adjudges that said  
 master's report and all the matters and things therein con-  
 20 tained, do stand ratified and confirmed by the order, authority  
 and decree of said court, to the Court of Errors and Appeals  
 in the last resort in all causes of law.

Dated March 28, 1873.

CHAS. H. VOORHIS,

*Sol. of, and of Counsel with Elizabeth Cronkright.*

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

CHAS. H. VOORHIS,

*Of Counsel with Elizabeth Cronkright.*



And your petitioner humbly appeals from the whole of said order or decree on the ground that the same is erroneous, for that the said exceptions ought not to have been overruled, and the master's report ought not to have been confirmed, but ought to have been set aside or modified and corrected, and your petitioner allowed a reasonable sum in gross for her dower instead of the small amount allowed by said report.

Your petitioner, therefore, prays that the said decree may  
10 be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

Dated June 16, 1873.

CHAS. H. VOORHIS,  
*Solicitor of, and of Counsel with Appellant.*

## ANSWER.

N. J. COURT OF ERRORS AND APPEALS.

Between

ELIZABETH CRONKRIGHT,  
*Appellant,*

and

PETER HAULENBEEK AND WIFE,  
*Respondents.*

*Answer.*

The answer of Peter Haulenbeek and wife, respondents to the petition of Elizabeth Cronkright, appellant.

These respondents not confessing all or any of the matters 10 to be true as in and by the said petition of appeal are mentioned and set forth, for answer thereunto say, that such decree as is complained of was made by the Court of Chancery, as in the said petition and appeal is mentioned and set forth, but as to the date, substance, and extent thereof, these respondents humbly crave leave to refer thereunto, when the same shall be produced, and these respondents humbly conceive and are advised that said decree is agreeable to equity and justice, and, therefore, humbly hope that the same may be affirmed, and said appeal may 20 be dismissed this honorable court with costs.

Dated October 9, 1873.

B. WILLIAMSON,  
*Sol'r and Counsel of Respondent.*