

COURT OF ERRORS AND APPEALS.

STACY B. SHREVE, Appellant,

and

ELIZABETH S. SHREVE, SARAH B. SHREVE
and BARCLAY WHITE, Executors of James
Shreve, dec'd, Respondents,

} On Appeal.

BILL OF COMPLAINT. [Filed April 20, 1854.]

To His Honor BENJAMIN WILLIAMSON, *Esquire, Chancellor*
of the State of New Jersey and ordinary in the same.

Humbly complaining show unto your Honor, your Oratrices and Orator, Elizabeth S. Shreve, Sarah B. Shreve, Rebecca L. Shreve, Barclay White, and Beulah S. White, his wife, (late Beulah S. Shreve) which Elizabeth S. Shreve, Sarah B. Shreve, Rebecca L. Shreve and Beulah S. White, are devisees named in the will of their father James Shreve, late of the county of Burlington, deceased, and which Elizabeth S. Shreve and Sarah B. Shreve are the executrices, 10 and Barclay White is the executor, named in the last will and testament of the said James Shreve, deceased, that the said James Shreve, deceased, being in his life time possessed of a very considerable real and personal estate, and being of sound mind and memory, made his last will and testament in writing, signed, sealed, and published in the presence of three subscribing witnesses, and executed in due form of law, to pass real and personal estate bearing date on the twenty-third day of the eighth month, (commonly called August), in the year of our Lord one thousand eight hundred and fifty-20 two, and therein and thereby did order, give, bequeath, and devise as follows, viz:

"*Imprimis*—I authorize and direct my executors hereinafter named, to pay off and discharge all my just debts and funeral charges as soon as can conveniently be done after my decease.

"Secondly—I give and bequeath to my wife Elizabeth Shreve during her natural life, the sole and exclusive use of all my plate, books, household goods and furniture of every description; I also give and bequeath to my said wife, to be at her disposal absolutely, all the groceries, meat and provisions which may be in my house at the time of my decease.

"Thirdly—I give and bequeath to my daughter-in-law, Susan H. Shreve, widow of my son Stacy B. Shreve, deceased, the sole and exclusive use and occupancy, and all the rents, issues and profits of the farm or plantation formerly belonging to my cousin Stacy Biddle, deceased, including the small lot of land thereunto adjoining, which I purchased of Samuel Stockton, to be held, used, occupied and enjoyed by her from the time of my decease, until the twenty-fifth day of the third month, (March) immediately preceding the time of my grandson James Shreve's arriving to the age of twenty-one years. I also give and bequeath to my said daughter-in-law an annuity of one hundred dollars, to be paid to her by my grandson James Shreve or his heirs, out of the rents, issues, and profits of the last above mentioned farm, to be paid to her yearly and every year from the twenty-fifth day of the third month, (March) immediately preceding the arrival of my grandson James, to the age of twenty-one years, until the arrival of my grandson Stacy B. Shreve, to the age of twenty-one years. I further give and bequeath to the said Susan H. Shreve, an annuity of two hundred dollars per annum, to be paid to her yearly and every year during her natural life by my two grandsons or their heirs in equal proportions out of the rents, issues and profits of the farm last above mentioned, provided she shall remain the widow of my son Stacy B. Shreve, so that each of the above mentioned annuities shall fully cease and finally determine immediately upon the marriage of the said Susan H. Shreve,

all which legacies and bequests herein contained to the said Susan H. Shreve, I give and bequeath to her with the proviso and upon condition that she will within three months after my decease, execute and deliver to my executors a full and absolute release and discharge of all claims and demands she may have against me or my estate, the said release and discharge to be in writing under her hand and seal.

“Fourthly—I give and bequeath to my two grandsons, James Shreve and Stacy B. Shreve, only surviving children of my son Stacy B. Shreve, deceased, as joint tenants during¹⁰ their natural lives, the sole and exclusive use and occupancy, and all the rents, issues and profits of the aforesaid farm or plantation, formerly belonging to my cousin Stacy Biddle, deceased, including the land I purchased of George Hulme, Restore S. Lamb and Joseph K. Hulme, Commissioners, and the land I purchased of Samuel Stockton, containing together about two hundred and ten acres, more or less, being the same on which my son Stacy resided at the time of his death, situate on the road from the village of Wrightstown to Jobstown in the township of Springfield aforesaid, adjoining lands of²⁰ Thomas Newbold, Samuel I. Guant, and others, to be held, used, occupied and enjoyed by them or the survivor of them from the twenty-fifth day of the third month (March) immediately preceding my said grandson James arriving to the age of twenty-one years for and during their natural lives; and I direct that from the arrival of the said James to the age of twenty-one years he shall be entitled to the whole use and occupancy, and to all the rents, issues and profits of the said farm until his brother Stacy shall arrive to the age of twenty-one years, upon the said James or his heirs paying³⁰ the aforesaid annuity of one hundred dollars per annum to his mother; (in case she shall remain unmarried) and further, upon the said James paying to the legal guardian of his brother Stacy, the sum of one hundred dollars, yearly and every year during that time, to be expended towards the education³⁵ and support of the said Stacy B. Shreve during his minority, and to be in lieu and in full of the said Stacy’s moiety or

half part of the rents, issues and profits thereof for the time being; but upon the said Stacy B. Shreve arriving to the age of twenty-one years, then from and after that time the said James Shreve and Stacy B. Shreve shall be entitled to the use and occupancy, and all the rents, issues and profits of the said farm or plantation in equal proportions during their natural lives; and I also give and bequeath to the said James Shreve and Stacy B. Shreve, during their natural lives, the sole and exclusive use and occupancy, and all the
 10 rents, issues and profits of one-third part in value of all my out lands, consisting of sundry valuable tracts of pine wood land and cedar swamp including that given and devised to me by my father Joshua Shreve, deceased, and those I have since purchased, which one-third part, or the use, occupancy, rents, issues, and profits of the said third part of all my out lands of pine wood land and cedar swamp, I give and bequeath to them, subject to the same provisoes, restrictions, limitations and conditions in all respects that I have given them the use, occupancy, rents, issues, and profits of the
 20 farm as above expressed and herein contained.

“ And I direct that in case either or both my said grandsons shall die leaving a child or children, a grandchild or grand children, then upon the death of such grandson or grandsons, the title to one undivided moiety or half part of said plantation or farm, and the title to one undivided moiety or half part of one-third of my pine wood land and cedar swamp shall descend to the child or children, grandchild or grand children as the case may be, of such deceased grandson, according to the law of descent of the State of New Jersey.

30 “ And in case either of my said grandsons shall die without leaving any child or children, grandchild or grandchildren, then, and in that case, my surviving grandson or his child or children, grandchild or grandchildren, as the case may be, shall thereupon inherit and become entitled to the moiety or
 35 half part of the farm or plantation, and one moiety or half part of one-third of the said tracts of pine wood land and cedar swamp hereinbefore given and devised to such deceased

grandson, his child, children, grandchild or grandchildren; but in case it shall so happen that both my said grandsons shall die without leaving any child, or children, grandchild or grand children, then, and in that case, upon the death of my surviving grandson above named, the title to the whole of said farm or plantation, and to the aforesaid one-third part of my pine wood land and cedar swamp, shall thereupon descend to and become vested in my descendants and kindred as heirs at law, to be governed by the law of descent of New Jersey. All which use and occupancy, rents, issues and profits of said farm or plantation, pine wood land, and cedar swamp, I give and bequeath to the said James Shreve and Stacy B. Shreve or the survivor of them, their children or grand children, or heirs, subject to the payment of the aforesaid annuity of two hundred dollars per annum, to their mother Susan H. Shreve, from the time of the said Stacy B. Shreve's arriving to the age of twenty-one years, until her marriage or death as the case may be.

"Fifthly—I give and bequeath to my sister Rebecca Hulme, widow of Isaac Hulme, of Hulmesville, in the county of Bucks, and State of Pennsylvania, the annuity of forty dollars per annum, to be paid to her by my daughters, the survivors and survivor of them yearly and every year during her natural life.

"Sixthly—I give and bequeath to my four daughters, Elizabeth S. Shreve, Sarah B. Shreve, Beulah S. Shreve and Rebecca L. Shreve, and to the survivors and survivor of them, during their natural lives and the natural life of the survivor of them, the sole and exclusive use and occupancy, and all the rents, issues and profits of the farm or plantation on which I now reside, situate on both sides of the public road from Upper Springfield Meeting House to Jobstown in the township of Springfield aforesaid, adjoining lands of Caleb Newbold, Thomas Black, Joseph Newbold, and others, including the land I purchased of my brother Alexander Shreve, the land I purchased of the executors of Samuel Stockton, deceased, and the land I purchased of the execu-

tors of Stacy Stockton, deceased, containing together about three hundred and fifty acres, be the same more or less. I also give and bequeath to my four daughters aforesaid, and to the survivors and survivor of them, during their natural lives and the natural life of the survivor of them, the sole and exclusive use and occupancy, and all the rents, issues and profits of two-thirds of all my tracts of pine wood land and cedar swamp, including those devised to me by my father Joshua Shreve, deceased, and those purchased by me; and my will is, 10 and I hereby direct that in case either of my daughters shall die leaving a child or children, or a grandchild or grandchildren, such deceased daughter's share of the use and occupancy, and of the rents, issues and profits of the said farm or plantation, of the use, occupancy, rents, issues and profits of two-thirds of my pine wood land and cedar swamp, shall at her death become the property of her child, children, grandchild or grandchildren as the case may be, according to the law of descent in New Jersey; and my will is, and I hereby direct that at the death of the survivor of my four 20 daughters, the title to the whole of my aforesaid homestead farm on which I now reside, and the title to two-thirds of my pine wood land and cedar swamp shall descend to and become vested in my descendants and kindred as heirs, in like proportions and according to the laws of New Jersey, as if I had died at the time of her decease seized of the said land in fee simple and intestate. The aforesaid legacies to my daughters the survivors and survivor of them, I give subject to the payment of the annuity of forty dollars per annum to my sister Rebecca Hulme; at the decease of my wife 30 I give and bequeath all my plate, books, household goods, and furniture of every description, to be equally divided among such of my daughters as remain unmarried at that time.

“Seventhly—I give, devise, and bequeath to my four 35 daughters above named, and to their heirs and assigns forever, all the rest, residue and remainder of my estate where-soever the same may be found, to be equally divided amongst

them share and share alike, subject only to the payment of all just claims against me on note or book account, funeral charges, testamentary and incidental expenses and commissions.

“Eighthly—I appoint Joseph K. Hulme, Alexander Newbold and George Sykes, commissioners to make partition or pvision of my out lands of pine wood land and cedar swamp by assigning and setting off one-third part to my two grandsons and their heirs by metes and bounds, and the remaining two-thirds thereof, to my four daughters by metes and bounds, 10 and upon the report of the said commissioners being recorded in the book of divisions in the Clerk’s Office in Mount Holly, within two years after my decease, the said division to be as final and complete, and as valid and effectual in law between the said parties, as if the said commissioners had been appointed by the Orphans’ Court and proceeded by due course of law; and I further give my said grandsons the privilege of cutting and selling wood and timber at their discretion on the part or share assigned and set off to them; and to my daughters, the survivors and survivor of them the like privi- 20 ledge of cutting and selling the wood and timber at their discretion on the part or share of my out lands assigned and set off to them by the said commissioners.

“And lastly, I nominate and appoint my two daughters Elizabeth S. Shreve and Sarah B. Shreve, executrix, and Barclay White, executor, of this my last will and testament, enjoining it upon them to settle the business of my estate with as little delay as is practicable;”—as by the said last will and testament or a certified copy thereof now in the possession of your Oratrices and Orator, and ready to be pro- 30 duced as this Honorable Court may direct, will more fully and at large appear.

And your Oratrices and Orator further show unto your Honor that the said James Shreve died on or about the first day of October, in the same year of our Lord one thousand 35 eight hundred and fifty-two, so seized and possessed of the said real and personal estate without altering or revoking his

said last will and testament, and leaving at his death your Oratrices and Orator, and the said Susan H. Shreve, his daughter-in-law, and the said James Shreve and Stacy L. Shreve his grandsons, him surviving.

And your Oratrices and Orator further show unto your Honor, that afterwards, to wit, on the nineteenth day of the same month of October last aforesaid, the said last will and testament of the said James Shreve deceased, was duly proved by your Oratrices, Elizabeth S. Shreve and Sarah B. 10 Shreve, and your Orator, Barclay White, the executrices and executor named therein, and probate thereof granted to them by Benjamin Buckman, Esquire, Surrogate of the County of Burlington, and that they took upon themselves the burthen of the execution thereof, and the same was regularly recorded and entered in the Surrogate's Office of the said County of Burlington, and affiled of record in the Prerogative Office, at Trenton, agreeably to law.

And your Oratrices and Orator, executrices and executor as aforesaid, further show that after taking upon themselves 20 the burthen of the settlement of the estate of the said testator as aforesaid, to wit, on the twenty-sixth day of the same month of October last aforesaid, your Oratrices, Elizabeth S. Shreve and Sarah B. Shreve, and your Orator, Barclay White, made an inventory of all and singular the goods and chattels, rights and credits, moneys and effects of the said testator, and did call to their assistance Alexander Newbold and David S. Stockton, two reputable and disinterested free- 30 holders, in whose presence the said inventory was made out, and by whom the articles therein specified were appraised, which inventory and appraisement amounted in the whole to the sum of six thousand three hundred and ninety-five dollars and thirteen cents, and has by them been exhibited in the Registry of the Prerogative Court, in the Secretary's Office of this State, within the time limited by law, as by the 35 said inventory so exhibited and affiled in the Office of the Secretary of State, or an authenticated copy thereof, now in the possession of your Oratrices and Orator, and to which for

greater certainty they beg leave to refer, will more fully and at large appear.

And your Oratrices and Orator further show, that the plate, books, household goods and furniture bequeathed by the testator to his wife, Elizabeth Shreve, during her natural life, and after her death to such of his daughters as might remain unmarried at the time, and the groceries, meat and provisions bequeathed by him to his said wife absolutely, were included in the said inventory and appraisement of the estate of the said testator, and were appraised to be of the 10 value of eight hundred and seventy-seven dollars, and that your Oratrices and Orator, executrices and executor as aforesaid, have caused a public vendue to be made, and have sold and disposed of the testator's stock, farming utensils, grain, and other articles of personal property not specifically disposed of by his will, and that the estate of the said testator has sustained a loss by reason of the said articles of personal property not having brought at such sale as much as they were appraised at, to the amount of eight hundred and eight 20 dollars and fifty-nine cents, and by reason of which the real value of the personal estate of the said deceased amounted to the sum of five thousand five hundred and eighty-six dollars and fifty-four cents, instead of the sum of six thousand three hundred and ninety-five dollars and thirteen cents, as is set forth in the aforesaid inventory and appraisement, and that after deducting the further sum of eight hundred and seventy-seven dollars, the value of the plate, books, household goods and other articles so as aforesaid bequeathed to the wife of the testator for life, &c., from the amount of the said inventory, there remained in the hands of your Oratrices and 30 Orator, the executrices and executor as aforesaid, only the sum of four thousand seven hundred and nine dollars and fifty-four cents, with which to pay all the just claims against the testator on note or book account, the funeral charges, testamentary and incidental expenses and commissions as in 35 said will is directed.

And your Oratrices and Orator, executrices and executor

aforesaid further show that they have paid out and disbursed, in settling the just claims against the estate of the said testator, on note and book accounts, and for funeral charges, testamentary and incidental expenses, as aforesaid, as in his said will is mentioned and required, a large sum of money, to wit, the sum of three thousand nine hundred and nine dollars and seventy-five cents, and that there are large sums of money of the class and character aforesaid which were due and owing by the testator in his lifetime still due and unpaid, now amount-

10 ing, as near as they are capable of ascertaining and judging to about the sum of two thousand seven hundred dollars, besides the expenses and commissions for settling up the estate of said deceased and the accruing interest which are yet to be added, to pay and discharge which last named sum they have now only the sum of seven hundred and ninety-nine dollars and seventy-nine cents of the residue of the said personal estate left in their hands, which leaves the sum of about nineteen hundred dollars and twenty-five cents, with interest accruing and expenses, &c., still to be added which they are

20 without personal assets to pay.

And your Oratrices and Orator further show that the said testator in his lifetime gave to his daughter-in-law, Susan H. Shreve, named in the above recited will, a certain bond or obligation, dated on the first day of April, in the year of our Lord one thousand eight hundred and forty-five, in the penal sum of ten thousand dollars, conditioned for the payment of the sum of five thousand dollars in one year from the date thereof, with interest, which bond the said Susan H. Shreve still held against him at the time of his death.

30 And your Oratrices and Orator further show that the legacies and bequests given by the said testator to the said Susan H. Shreve, in his said will, were given with the proviso, and upon the condition, that she would, within three months after the decease of the testator, execute and deliver to his execu-

35 tors a full and absolute release and discharge, in writing, under her hand and seal, of all claims and demands she might have against him or his estate.

ducting the sum of one thousand dollars, claimed as a proper offset against said bond, (and that judgment should be entered in the Burlington County Circuit Court on the twenty-seventh day of December then next, in favor of the said Susan H. Shreve, and against your Oratrices and Orator, or executrices and executor, as aforesaid for that amount, with a stay of all proceedings thereon for the period of one year from the date of said agreement.

10 And your Oratrices and Orator further show that subsequently to the making of the said agreement and compromise between the parties, and before the lapse of time fixed by the said agreement of compromise for the fulfillment of the same had expired, and before the time fixed by law for the meeting of the December Term of the Circuit Court of the County of Burlington which was the next Court after the execution of the said agreement, to wit, on or about the
 20 day of December last aforesaid, the said Susan H. Shreve departed this life.

And your Oratrices and Orator, executrices and executor
 20 as aforesaid, further show that the said Susan H. Shreve, prior to her death, on or about the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and fifty-three, made and executed her last will and testament in writing and executed in due form of law to pass real and personal estate, bearing date the day and year last aforesaid, and thereby did, amongst other things, nominate, constitute and appoint Edward Bowne and Benajah B. Woodward the executors thereof, and that the said last will and testament of the said Susan H. Shreve, deceased, was afterwards, to
 30 wit, on the thirty-first day of December, in the same year last aforesaid, duly proved by the said Edward Bowne and Benajah B. Woodward, the executors therein named, before John F. Moore, Esquire, the Surrogate of the said County of Burlington, and that the said Edward Bowne and Benajah
 35 B. Woodward, the executors therein named, took upon themselves the burthen of the execution thereof.

And your Oratrices and Orator, executrices and executor

as aforesaid, further show that afterwards, on the said thirty-first day of December last aforesaid, the said Edward Bowne and Benajah B. Woodward, executors as aforesaid, having caused the death of the said Susan H. Shreve to be suggested upon the record in the above stated suit in the Circuit Court of the County of Burlington aforesaid, they, by motion on their behalf in the said Circuit Court, caused the said suit to be continued and revived in their names as plaintiffs therein, in pursuance of the statute in such case made and provided.

And your Oratrices and Orator, executrices and executor¹⁰ as aforesaid, further show that afterwards, on the same thirty-first day of December last aforesaid, your Oratrices and Orator, as executrices and executor as aforesaid, and the said Edward Bowne and Benajah B. Woodward, executors of the said Susan H. Shreve, deceased, as aforesaid, entered into an agreement, by which it was stipulated and agreed between them that the above mentioned agreement, made and entered into by and between your Oratrices and Orator, as executrices and executor as aforesaid, and the said Susan H. Shreve in her lifetime, should be fulfilled and carried into effect by your Ora-²⁰trices and Orator on the one part, and by the said Edward Bowne and Benajah B. Woodward, executors of the said Susan H. Shreve, deceased, on the other part, and your Oratrices and Orator further show that afterwards, on the same thirty-first day of December, your Oratrices and Orator, as executrices and executor, in pursuance of the said last mentioned agreement, by their attorney, signed a relicta, as executrices and executor as aforesaid, in favor of the said Edward Bowne and Benajah B. Woodward, executors as aforesaid, in the above mentioned suit, for the sum of six thousand six³⁰ hundred and twenty-one dollars and sixty-seven cents (being one thousand dollars less than the amount of principal and interest on the face of said bond), upon which relicta judgment was, in the Burlington Circuit aforesaid, afterwards, on the same thirty-first day of December last aforesaid, entered³⁵ in favor of the said Edward Bowne and Benajah B. Woodward, executors of the said Susan H. Shreve, deceased,

against your Oratrices and Orator, as executrices and executor aforesaid, for the sum of ten thousand dollars, being the penalty of the said bond, as aforesaid, given by the said James Shreve, deceased, in his lifetime, to the said Susan H. Shreve, deceased, in her lifetime.

- And your Oratrices and Orator further show unto your Honor, that a partition and division has been made of all the out lands and pine wood land and cedar swamp belonging to the said James Shreve, deceased, at the time of his death, by
- 10 Joseph K. Hulme, Alexander Newbold and George Sykes, the persons nominated and appointed by him in his said will as commissioners to divide the same, and that they the said commissioners so appointed have partitioned and set off to your Oratrices, Elizabeth S. Shreve, Sarah B. Shreve, Beulah S. White and Rebecca L. Shreve, certain parts and portions thereof in several lots or tracts, under the denomination of Lots Nos. 2, 4, 6 and 8, to be held by them in the manner and for the purposes as in said will is mentioned, and unto James Shreve and Stacy B. Shreve certain other parts and
- 20 portions thereof in several lots or tracts, under the denomination of Lots Nos. 1, 3, 5, 7 and 9, to be held by them in the manner as in said will is mentioned, as in and by the report of the said commissioners, made under their hands and seals, bearing date the first day of the third month (March) eighteen hundred and fifty-four, duly affiled of record and recorded in the Clerk's Office of the County of Burlington, at Mount Holly, in Book B of Divisions, page , or a certified copy thereof, in the possession of your Oratrices and Orator, will more fully appear.
- 30 And your Oratrices and Orator aforesaid, further show unto your Honor, that the residue of the estate of the said James Shreve, deceased, particularly referred to and mentioned in his said will, was bequeathed by him to his four daughters hereinbefore named, and to them their heirs and
- 35 assigns forever, subject only to the payment of all just claims against him on note or book account, funeral charges, testamentary and incidental expences and commissions, and was

as your Oratrices and Orator expressly charge, a particular fund created, designated and pointed out by the testator in his said will, out of which this class and description of claims against him, viz. on note, book account, and his funeral charges, his testamentary and incidental expences, and the commissions for settling his estate were to be paid.

And your Oratrices and Orator further show unto your Honor, and expressly charge, that all the other parts and portions of the estate, of the said James Shreve, deceased, given, bequeathed and devised by him in and by his said 10 will to the several legatees and devisees therein named, and the said several legatees and devisees, as far as they are entitled to any part or portion of the estate of the deceased, under his will aforesaid, are liable to be called upon to pay and contribute, a ratable share and proportion according to the respective value of such shares and proportions towards the payment, satisfaction and discharge of the debt due from the said testator at the time of his death, to the said Susan H. Shreve, upon the bond or obligation aforesaid, (upon which 20 bond or obligation since her death, judgment has been entered in favor of her executors as aforesaid,) and also towards liquidating, paying and discharging all the balance of the claims against the said testator on note or book account, his funeral charges, his testamentary and incidental expences, and the commissions of settling up his estate, which remain unsettled and unpaid after the whole amount of the "residue" of the testator's estate, particularly designated as such in his said will, has been exhausted for that purpose, of which your Oratrices and Orator charge there is now a large amount still due and unsettled, amounting as near as they 30 can ascertain, to the sum of two thousand seven hundred dollars, and which after deducting the sum of seven hundred and ninety-nine dollars and seventy-nine cents, still in their hands, yet leaves the sum of nineteen hundred dollars and twenty-one cents, with accruing interest and unsettled 35 expences and commissions, besides the amount due and payable to the executors of the said Susan H. Shreve, deceased,

arising under the bond and obligation aforesaid, still to be paid after the appropriation and payment by them of the whole amount of the said residue bequeathed by the said testator to his four daughters aforesaid, towards the payment and liquidation of said debts as aforesaid.

And your Oratrices and Orator, executrices and executor, as aforesaid, further show to your Honor, that having, as is hereinbefore stated, paid out and disbursed, in settling the just claims against the estate of the said James Shreve, deceased, on note and book account, and for funeral charges, the testamentary and incidental expences aforesaid, the whole amount of the sum of four thousand seven hundred and nine dollars and fifty-four cents, except the sum of seven hundred and ninety-nine dollars and seventy-nine cents still in their hands as aforesaid, and that there are large sums of money still due and unpaid on account thereof, amounting as near as they are able to ascertain, to the sum of two thousand seven hundred dollars, (which they have only seven hundred and ninety-nine dollars and seventy-nine cents in their hands to pay,) besides the expences and commissions of settling up the estate of the said deceased, which are yet to be added, and also besides the amount which is due and payable as aforesaid, to the executors of the said Susan H. Shreve, deceased, on the bond whereon judgment has since been recovered, as aforesaid, and the interest accruing upon all of said sums, which said several sums your Oratrices and Orator, executrices and executor, as aforesaid, have no other effects than is above mentioned, and particularly designated by the last will of their testator for that purpose, to pay off and discharge; and your Oratrices and Orator, being desirous of paying off and discharging the balance of the said claims against the estate of their testator, on note and book account, and the charges and expences aforesaid, and the said debt so as aforesaid, payable to the executors of the said Susan H. Shreve, deceased, on their judgment so as aforesaid recovered, have frequently and in a friendly manner applied to the said James Shreve and Stacy Biddle Shreve, and requested them

to allow and pay unto your Oratrices and Orator, a just and equitable proportion of all such aforesaid sum or sums of money, (to be fixed, ascertained and equated according to the amount of the several shares, legacies, bequests, devises, interests and estates, so aforesaid, given, bequeathed and devised to them respectively,) as are requisite and necessary to enable your Oratrices and Orator to pay off and discharge the whole of the above mentioned claims, charges, expences and commissions aforesaid; and also the claim of the executors of the said Susan H. Shreve, deceased, above mentioned. 10

And your Oratrices and Orator well hoped, that such their just and reasonable request would have been complied with, as in justice and equity ought to have been done; but now so it is may it please your Honor, that the said James Shreve and Stacy Biddle Shreve, combining and confederating themselves with divers other persons, at present unknown to your Oratrices and Orator, but whose names, when discovered, your Oratrices and Orator pray may be inserted in this their bill of complaint, with apt and proper words to charge them as defendants hereto to injure and aggrieve your Oratrices and 20 Orator in the premises, not only refuse to pay such sum or sums in the just and equitable proportion aforesaid, as will be necessary to enable your Oratrices and Orator to pay off and discharge the residue of the claims, charges, expenses, and commissions aforesaid, and the aforesaid debt of the executors of the said Susan H. Shreve, deceased, or in any other manner to comply with such reasonable requests of your Oratrices and Orator, hereinbefore mentioned; but they, the said defendants, sometimes pretend and give out in speeches, that neither they nor the legacies, devises, estates, 30 or interests given or devised to them by the said James Shreve, deceased, are liable to be called upon to pay or contribute anything in any proportion, towards paying off and discharging the claims, charges, expenses, commissions, debt or debts aforesaid, as are hereinbefore particularly mentioned, 35 either as legatees or devisees, under the will of the said James Shreve, deceased, or otherwise in any manner or way

whatever, whereas your Oratrices and Orator expressly charge the contrary thereof to be true, and that they are respectively, as well as the estates or interests given and bequeathed or devised to them as aforesaid, liable to be called upon to pay and contribute their respective portions thereof, in a just and equitable proportion according to the several interests bequeathed or devised to them under the said will. All which actings, pretences and doings are contrary to equity and good conscience, and tend to the manifest wrong and injury
10 of your Oratrices and Orator.

In tender consideration whereof, and for as much as your Oratrices and Orator are without adequate remedy in the premises, by the strict rules of the common law, and can only have adequate relief in a Court of Equity, where matters of this nature are properly cognizable and relievable :

To the end, therefore, that the said defendants and their confederates, when discovered, may upon their several and respective oaths or affirmations, full, true, perfect and distinct answer make, to all and every the matters aforesaid,
20 and that as fully as if the same were herein again repeated, and they particularly interrogated thereto paragraph by paragraph.

And that an account may be taken of the testator's personal estate and effects, and of all the just claims which were or now are against the estate of the said testator, on note and book account, and for funeral charges, testamentary and incidental expenses and commissions, (your Oratrices and Orator, executrices and executor as aforesaid being ready, and hereby offering to account for all of the personal estate
30 that has been possessed by them) and also of the amount due and payable to the executors of the said Susan H. Shreve, deceased, on account of the debt due from the testator to her on the bond aforesaid given, in their respective lifetimes as aforesaid, and of the legacies and devises given and devised
35 by the said testator and to the several persons to whom they are given and devised, and of the relative value of such legacies and devises, to such legatees and devisees respect-

ively, and of the amounts paid by your Oratrices and Orator on account of the claims aforesaid, and of the residue of the said claims against said estate still due and unpaid, and what would be a fair, just and equitable proportion of such claims, charges, expenses, commissions and debts, which each of the legatees and devisees named in the will of the deceased, should pay, regard being had to the value of the several interests and estates which the said legatees and devisees take under the will of the said James Shreve, deceased, your Oratrices and Orator hereby tendering themselves ready and 10 willing to account out of the premises devised to them respectively for their just and equitable proportion thereof, according to the respective values of the legacies and devises they are respectively entitled to receive under the said will, and for the payment of which they admit the same to be liable.

And that the said James Shreve and Stacy B. Shreve, and their confederates, may be decreed to pay to your Oratrices and Orator such their just and equitable proportions (to be ascertained as aforesaid) of the sum or sums of money that 20 will be requisite and necessary to enable your Oratrices and Orator, executrices and executor aforesaid, to pay off and discharge their proportion so by them to be paid of the residue of the said claims on note or book account, the funeral charges, testamentary and incidental expenses and commissions. Also the said debt, so as aforesaid, payable to the executors of the said Susan H. Shreve, deceased, together with the costs and charges of your Oratrices and Orator in this behalf expended, by a short day to be appointed by this Honorable Court, or, if your Honor shall deem it more equi- 30 table and just, that the premises so as aforesaid bequeathed and devised to the said James Shreve and Stacy B. Shreve, with the appurtenances, or such part or parts thereof as may be sufficient for the purpose, may be sold to pay unto your Oratrices and Orator their proportion of said sum or sums of 35 money aforesaid, and your Oratrices' and Orator's costs and charges; and that the premises so as aforesaid given and

devised to your Oratrices, Elizabeth S. Shreve, Sarah B. Shreve, Rebecca L. Shreve and Beulah S. White, with the appurtenances, or such part or parts thereof as may be sufficient for the purpose, may be sold to furnish to and for the use of your Oratrices and Orator, executrices and executor as aforesaid, their proportion of the said sum or sums of money aforesaid, and that the out lands, pine wood land and cedar swamp devised to the respective parties above named, and which have since been divided and set off as aforesaid, 10 may be ordered to be sold, in the first instance, for that purpose; and that your Oratrices and Orator may have such further and other relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your Oratrices and Orator a writ or writs of subpoena of the State of New Jersey, to be directed to the said James Shreve, Stacy B. Shreve, and their confederates when discovered, therein and thereby commanding them and each 20 of them, at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor, in this Honorable Court, then and there to answer the premises, and to stand to, abide and perform such decree as to your Honor shall seem meet and agreeable to equity and good conscience. And your Oratrices and Orator, as in duty bound, will ever pray, &c.

JNO. C. TEN EYCK,

Solicitor and of Counsel with Complainants.

A true copy.

DAN'L B. BODINE, *Clerk.*

IN CHANCERY OF NEW JERSEY.

Between ELIZABETH S. SHREVE, SARAH B. SHREVE, REBECCA L. SHREVE, BARCLAY WHITE and BEULAH S. WHITE, his Wife, (late Beulah S. Shreve,) the said ELIZABETH, SARAH and BARCLAY being Executors, and the said ELIZABETH, SARAH, REBECCA and BEULAH being devisees named in the Will of James Shreve, dec'd, complainants,

On Bill, &c.

and

JAMES SHREVE and STACY B. SHREVE, defendants.

The joint and several answer of James Shreve and Stacy B. Shreve, infants under the age of twenty-one years, by Edward Bowne and Benajah B. Woodward, their guardians, defendants, to the bill of complaint of Elizabeth S. Shreve, Sarah B. Shreve, Rebecca L. Shreve, and Barclay White and Beulah S. White, his wife, (which said Elizabeth S. Shreve, Sarah B. Shreve, Rebecca L. Shreve and Beulah S. White are devisees named in the will of James Shreve, deceased, and which said Elizabeth S. Shreve and Sarah B. Shreve, are executrices and Barclay White is executor of the last will and 10 testament of James Shreve, deceased,) complainants against the said James Shreve and Stacy B. Shreve, defendants.

These defendants now and at all times hereafter saving and reserving to themselves and each of them, all and all manner of benefit and advantage of exception to the many and manifold errors, untruths and insufficiencies in the complainants' said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, they answer and

say, that they admit that James Shreve, the testator mentioned in the said bill of complaint, was in his lifetime possessed of very considerable real and personal estate, and that being of sound mind and memory he made and published a last will and testament as stated in said bill or complaint, which these defendants believe to be of the date and as set forth in said bill of complaint, but for greater certainty these defendants pray leave to refer to the original, or a duly certified copy thereof, when produced.

- 10 And these defendants, further answering, say that they admit that the said James Shreve, without having altered or revoked his said last will and testament, died at or about the time stated in the said bill of complaint, being, at the time of his decease, still seized and possessed of said real and personal estate, and leaving him surviving the several persons stated in said bill of complaint; and that said last will and testament was afterwards, and at the time stated in said bill duly proved by the executrices and executor thereof who took upon themselves the burden of executing the same, and made and filed
- 20 an inventory as stated in said bill of complaint, to all which proceedings these defendants for greater certainty pray leave to refer.

And these defendants further answering say that they have no knowledge, save from the statements in said bill of complaint of the appraised value of the goods and chattels bequeathed by said testator to his wife for life, nor of their being included in said inventory, nor of any loss sustained by the sale of the personal property left by the said testator at the time of his decease for less than the appraised value

30 thereof in said inventory; nor of the occasion of such loss, if any such was sustained; nor of the amount of the personal estate applicable to the payment of the debts or claims against said estate, on note, book account, or otherwise; and these defendants cannot therefore answer as to the truth or falsity

35 of the statements in said bill of complaint touching said matters, and leave the said complainants to make such proof thereof as this honorable court shall require.

And these defendants further answering, say, that they have no knowledge what amount of moneys the said executrices and executor have paid on account of the debts and liabilities which were of said testator, nor how much they have still on hand, nor of the amount of such debts and liabilities still remaining, if any still remain to be paid; nor what will be the deficiency, if any, in the personal estate which was of said testator, to meet all his debts and liabilities, except from the statements in said bill of complaint, and cannot therefore answer in reference to them, and they leave the said complain- 10
ants to make such proof thereof as may be necessary.

And these defendants further answering, admit that the said testator, in his lifetime, gave to his daughter-in-law, Susan H. Shreve, the bond or obligation of the tenor and purport stated in said bill of complaint, and that said bond was held by her at his death.

And these defendants further in answering, admit that the legacies and bequests of said testator to his said daughter-in-law, Susan H. Shreve, were upon the condition that she would execute such release and discharge as is stated in said bill of 20
complaint, and that she neglected and refused to comply with said condition, whereby the said legacies and bequests became inoperative and void; and these defendants also admit that said Susan H. Shreve demanded of the executrices and executor of said testator the payment of the whole sum of money named in the condition of said bond, and instituted against them a suit which was prosecuted to judgment by her and the executors of her last will and testament in the manner, and substantially as stated in said bill of complaint, except that the one thousand dollars stated therein to have been deducted 30
from said bond as an offset was, in truth, deducted as a compromise to obtain said judgment without the delay and expense of litigation, but for greater certainty, these defendants pray leave to refer to the record and proceedings in said cause when produced or proved. 35

And these defendants further in answering, admit that a partition has been made of all the out lands and pine wood

land and cedar swamp which belonged to said James Shreve at the time of his decease, which these defendants believe is stated with substantial accuracy in said bill of complaint ; but these defendants, for greater certainty, pray leave to refer to said partition, when it, or a certified copy of the record thereof, shall be produced or proved before this honorable court.

And these defendants further answering, admit that the said testator devised and bequeathed to his four daughters all the residue of his estate not specifically disposed of by
10 said will, subject to the payment of all just claims against said testator on note or book account, funeral charges, testamentary and incidental expenses and commissions, but these defendants are advised and respectfully insist that the personal property of said testator is the proper legal and equitable fund to discharge the personal debts and liabilities of said testator, and that before these defendants or the real estate devised to them by said testator, can be called upon for the payment of any such debts, the whole personal estate of the said testator, including the goods and chattels specifically
20 devised by said testator to his wife as aforesaid, must be first applied to the payment of said debts and liabilities ; and also, that before these defendants or the said real estate so devised to them as aforesaid, can be called upon for the payment of any part of the said judgment recovered as aforesaid on the said bond of said testator to said Susan H. Shreve ; all the property which the said testator in and by his said will devised or bequeathed to said Susan H. Shreve, and which by reason of her neglecting and refusing to comply with the condition to which such devises and be-
30 quests were subject, lapsed into the residuary estate of said testator as aforesaid, should be first applied to the payment of said judgment ; and these defendants therefore deny that any portion of the real estate devised to them as aforesaid, is liable to pay any of the debts or other liabilities, 35 which were of said testator at the time of his decease, until all his personal property and said lapsed devises and bequests shall be first applied thereto as aforesaid.

And these defendants further answering, respectfully submit that before the said complainants or any of them can call upon these defendents or either of them, or upon the said real estate devised to them as aforesaid, they, as executors and devisees as aforesaid, must first faithfully and fully account for all the personal estate, which was of the said testator at the time of his decease, and also for the property real and personal which said testator devised and bequeathed to said Susan H. Shreve, upon condition as aforesaid, or the value thereof, and must first apply said personal estate and 10 said property devised and bequeathed to said Susan H. Shreve, as aforesaid, to the payment of said debts and liabilities as aforesaid, and must also apply toward the payment of said debts and liabilities, all the real estate which passed under the residuary clause of said will: and these defendants are ready and willing whenever such property shall be so applied to the payment of said debts and liabilities, to pay and satisfy their respective portions of any such debts and liabilities as may remain unpaid, or unsatisfied, if any shall then remain unpaid or unsatisfied. 20

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

All which matters and things these defendants are ready to aver, maintain and prove, as this honorable court shall direct, and they pray to be hence dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained. 30

JOHN R. SLACK,

Solicitor and of Counsel with Defendants.

New Jersey, ss.—Edward Bowne and Benajah B. Woodward, the guardians of the infant defendants within mentioned, alleging themselves conscientiously scrupulous of taking an 35 oath, and being duly affirmed according to law, on their solemn

affirmation say that the facts and allegations in the within answer set forth and contained, so far as they relate to the acts and deeds of these affirmants, are true, and so far as they relate to the acts and deeds of other persons, they believe them to be true, and further say not.

EDWARD BOWNE,
BENAJAH B. WOODWARD,

Affirmed and subscribed this 20th day of July, A. D. 1854,
before me one of the Masters of the Court of Chancery of
10 New Jersey. PHILIP F. SLACK, M. C. C.

IN CHANCERY OF NEW JERSEY.

Between the EXECUTRICES and EXECUTOR of
James Shreve, deceased, and others, complain-
ants,

and

JAMES SHREVE and STACY BIDDLE SHREVE, de-
fendants.

} Decree.

This cause coming on to be heard at a regular term of the Court of Chancery of New Jersey, at Trenton, on the sixth day of February, in the year of our Lord one thousand eight hundred and fifty-five, in the presence of the counsel, respectively, and the pleading, exhibits and proofs, having been duly read and the arguments of Counsel on both sides being heard and considered, and the Chancellor having taken time to advise thereon, and now on this fifteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, it satisfactorily appearing to the Court, as well by the pleadings as the proofs in this cause, that James Shreve, deceased, in and by his last will and testament, bear-

ing date the twenty-third day of August, A. D., eighteen hundred and fifty-two, did first order and direct his executors therein named to pay off and discharge all his just debts, and did give to his wife Elizabeth Shreve, during her natural life, the sole and exclusive use of all his plate, books, household goods and furniture, and to her his said wife, absolutely all the groceries, meat and provisions, in his house at the time of his death. And did devise to his daughter-in-law, Susan H. Shreve, the sole and exclusive use and occupancy, and all the rents, issues and profits of the Biddle farm, and 10 a small lot thereto adjoining, to be held, used and occupied by her from the time of the testators decease, until the twenty-fifth day of March, immediately preceding the time when his grandson James Shreve, should arrive at the age of twenty-one years, (with an annuity or annuities payable to her thereafter, by his grandsons James and Stacy Biddle Shreve) with the proviso and upon condition that the said Susan H. Shreve, should within three months after his decease, execute and deliver to his executors, a full and absolute release and discharge (under her hand and seal) of all 20 claims and demands she might have against his estate. And did also devise to his two grandsons, James Shreve and Stacy Biddle Shreve, from the said twenty-fifth day of March immediately preceding his grandson James arriving to the age of twenty-one years, (subject to the payment of certain annuities to their Mother, the said Susan H. Shreve) the said Biddle farm, as joint tenants, with remainder to their issue in fee, and in default of issue to the right heirs of the testator. And did also devise to his said grandsons, one-third part of his pine lands and cedar swamp. And did also de- 30 vise to his four daughters, Elizabeth S. Shreve, Sarah B. Shreve, Rebecca L. Shreve, and Beulah Shreve, (who has since intermarried with Barclay White) his homestead farm and two-thirds of his pine lands and cedar swamps, with an estate similar in character to that devised to his grandsons; 35 and did also bequeath to his said four daughters and to their heirs and assigns forever, all the rest, residue and remainder,

of his estate wheresoever the same might be found, to be equally divided amongst them share and share alike, subject only to the payment of all just claims against the testator on note or book account, funeral charges, testamentary and incidental expenses and commissions.

And it further appearing that the testator left one speciality debt, which was bond debt, due to his daughter-in-law, Susan H. Shreve, the principal of which was \$5,000, (and the amount due upon which on the thirty-first day of December, A. D., eighteen hundred and fifty-three, was \$6,621 67) upon which day judgment was entered thereon for that sum, by the executors of the said Susan H. Shreve, (who in the mean time had died), against the executors of the said James Shreve, deceased.

And it further appearing, that the said Susan H. Shreve, in her lifetime, refused to comply with the proviso upon which the devise was made to her, of the Biddle farm, under the will of the testator, and that the devise to her therefore, does not take effect, and this debt which she refused to release must be paid out of the estate of the testator.

And it further appearing, that the other debts of the testator were considerable, and that all of the personal estate which passed under the residuary clause of the said will has been appropriated to pay the simple contract debts, and that there was a deficiency to pay debts alone, irrespective of testamentary and incidental expenses and commissions, at the time the bill was filed in this case, of about nineteen hundred dollars, and that there is no other personal estate of the testator unapplied, except the specific legacies which he bequeathed to his widow, and which including groceries, meat and provisions were valued and appraised at eight hundred and seventy-seven dollars, and the Chancellor, being of the opinion, that the estate in the Biddle farm, up to the twenty-fifth day of March, immediately preceding the time when the testator's grandson James, shall arrive at the age of twenty-one years, (upon the refusal of the said Susan H. Shreve to release and discharge all claims and demands she

had against the estate of the testator,) passed by the residuary clause of the will by which the testator gave to his four daughters and to their heirs and assigns forever, all the rest, residue and remainder of his estates, wheresoever the same might be found, to be divided equally amongst them, share and share alike, subject only to the payment of all just claims against the testator on note or book account, funeral charges, testamentary and incidental expenses and commissions; and the Chancellor being also of opinion, that the residuary estate bequeathed by the testator to his four daughters, was meant and intended to be given to them subject only to the payment of the simple contract debts, and the charges expenses and commissions aforesaid, and to be exonerated from the burthen which otherwise it must have borne as a common fund of other debts, and that if it is not exonerated from the payment of the specialty debt aforesaid, the intention of the testator will be defeated, and further, that as to the simple contract debts so aforesaid, the interest of the residuary devisees in the Biddle farm, must contribute *pro rata* with the other specific devisees, to pay the simple contract debts, &c., (the testator having charged his whole estate with the payment of his debts,) but as to the specialty debt, it is not liable to contribution; and that the said complainants are entitled to relief in the premises against the said defendants, James Shreve and Stacy Biddle Shreve. It is now, on this said fifteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, at Trenton aforesaid, by his Honor Benjamin Williamson, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, doth order, adjudge and decree, that the residuary personal estate of the said James Shreve, deceased, be first appropriated to pay the just claims against the testator on note or book account, the funeral charges, testamentary and incidental expenses and commissions, that the specific legacies and devises contribute *pro rata*, to make up any deficiency that may be required to pay these debts,

charges, expenses, commissions and costs, and that as to the specialty debts, the specific devisees, (excepting that interest in the Biddle farm which fell into the residue,) first contribute *pro rata* to pay the specialty debts, the residuary devisees of the interest in the Biddle farm, being liable only in the event of a deficiency of all other property, to pay the specialty debts.

And it is further ordered, that it be referred to John L. N. Stratton, Esquire, one of the Masters of this Court, to take
 10 an account of the testator's personal estate and effects, and of all the just claims which now are and were against the estate of the said testator at the time of his death, on note or book account, and of the funeral charges, testamentary and incidental expenses and commissions, and also of the amounts paid by the complainants on account of the claims, debts and expenses aforesaid, and of the residue of the said claims against said estate, and the charges, expenses and commissions aforesaid, still unpaid, and also of the amount
 20 due and payable to the executors of the said Susan H. Shreve, deceased, on account of their specialty debt on which judgment has been recovered, as is hereinbefore stated, and of the several specific legacies and devises given and devised by the said testator to several legatees and devisees to whom they are given and devised, and of the relative values of such specific legacies and devises to such legatees and devisees respectively; and what would be a fair, just and equitable proportion of such claims against the testator, on note or book account, funeral charges, expenses and commissions as aforesaid, which the specific legacies and devises should con-
 30 tribute *pro rata* to make up any deficiency required to pay these debts, after the residuary personal estate of the said testator has been appropriated for that purpose, and what amount the specific devisees should contribute *pro rata* to pay the specialty debts of the said testator.

35 And it is further ordered, adjudged and decreed, that the said complainants may be at liberty to apply to this Court

for further directions and relief as the equity of the case may require.

B. WILLIAMSON, *C.*

A true copy,

W. M. BABBITT, *Clerk.*

IN CHANCERY OF NEW JERSEY.

Between ELIZABETH S. SHREVE and
others, Executors of James Shreve,
deceased, complainants,

and

STACY BIDDLE SHREVE, who hath
survived James Shreve, Jr., de-
ceased, defendant.

On Bill for Relief.

Master's Report.

In pursuance of an order of this Court, entered in the above cause, bearing date the fifteenth day of May, in the year of our Lord, one thousand eight hundred and fifty-five, by which it was referred to me to examine and report upon certain things in said order specified, I do report that in the presence of the parties and their Counsel respectively, I proceeded to examine and inquire into the matters so referred to me, and that I do find,

First—The whole amount of the inventory and appraisement of the personal estate whereof the said James Shreve 10 was possessed at the time of his death, was the sum of six thousand three hundred and ninety-five dollars and thirteen cents, (\$6,395 13.)

Second—That the household goods, plate, &c., specifically bequeathed by the testator to his widow during her life, and at her death to the testator's unmarried daughters, were

appraised at the sum of seven hundred and eighty-nine dollars, (\$789.)

Third—That the meats, groceries and provisions in the house at the time of his death, and which were given absolutely by the testator to his widow, were appraised at eighty-eight dollars, (\$88.)

Fourth—That the amount realized from a sale of the personal property not specifically bequeathed, purse collections, &c., fell short of its appraised value five hundred and sixteen
10 dollars and eighteen cents, (\$516 18,) leaving the sum of five thousand and one dollars and ninety-five cents, (\$5,001 95) as the whole amount of the personal property not specifically bequeathed, wherewith to pay the simple contract debts left by testator, with funeral, testamentary and incidental expenses and commissions.

Fifth—That I have taken an account of the claims against the testator “on note, book account, funeral charges, testamentary and incidental expenses and commissions,” and from
20 an examination of the vouchers produced by the executors of the said James Shreve, which I have severally marked as exhibits in this cause, I find that they have paid in discharge of his debts on note, book account, funeral and incidental expenses, the sum of six thousand and ninety-seven dollars and eighty-two cents, (\$6,097 82,) which payments were made between the first day of October, A. D. eighteen hundred and fifty-two, and the eighth day of March, eighteen hundred and sixty-two, inclusive, that there is still outstanding and unpaid, against his estate, a promissory note, given by the
30 testator to the township of Springfield, for the sum of twenty-four hundred dollars, (\$2,400,) that commissions at the rate of eight per cent, (which I respectfully recommend should be allowed to the executors, upon the settlement of the estate,) would amount to the sum of five hundred and ten dollars, (\$510,) making the whole amount of debts due “on note,
35 book account, funeral and incidental expenses and commissions,” nine thousand and seven dollars and eighty-two cents, (\$9,007 82,) showing the simple contract debts, funeral and

incidental expenses and commissions, have exceeded the amount realized from a sale, &c., of the personal property not specifically bequeathed by the sum of four thousand and five dollars and eighty-seven cents, (\$4,005 87).

Sixth—And I do further report, that the specific legacies and devises which are to contribute to the payment “*pro rata*” of the deficiency arising from the simple contract debts, &c., are the plate, household goods, &c., specifically bequeathed to the daughters of the testator, after the death of his widow, and which were appraised at seven hundred and eighty-nine dollars, (\$789.) The interest of the residuary 10 legatees in “the Biddle Farm,” said interest being the rent thereof from testator’s death to the twenty-fifth day of March next preceding the time when James Shreve, the grandson of testator, would attain the age of twenty-one years, and covering a period of six years, at a yearly rental of seven hundred and twenty-five dollars, (\$725,) amounting in the aggregate to the sum of four thousand and three hundred and fifty dollars, (\$4,350.) “The Biddle Farm,” specifically devised by the testator to his two grandsons, and worth, according to the testimony taken in the cause, the sum of eighteen thousand nine hundred dollars, (\$18,900.) “The Homestead Farm,” specifically devised to the daughters of the testator, and according to the evidence, worth the sum of thirty-two thousand two hundred and fifty dollars, (\$32,250,) and the outlands, one-third thereof in value, the testator devised to his two grandsons, and the remaining two-thirds to his daughters, (no evidence, however, of the value of these out lands were produced before the Master.)

Seventh—And I do further report, that the *pro rata* proportions of said deficiency which should be paid on account 30 of the plate, furniture, &c., is fifty-six dollars and fifteen cents, (\$56 15,) and on account of the rental of “The Biddle Farm” received by the residuary legatees, is three hundred and nine dollars and fifty-seven cents, (\$309 57,) and on account of the specific devise to testator’s grandsons, one thousand three hundred and forty-five dollars and four cents,

(\$1,345 04,) and on account of the specific devise to testator's daughters, two thousand two hundred and ninety-five dollars and eleven cents, (\$2,295 11.)

Eighth—And I do further report, that there is a specialty debt due from the estate of James Shreve, deceased, to the estate of Susan H. Shreve, deceased, and for which the executors of the said Susan H. Shreve recovered a judgment against the executors of the said James Shreve, upon the twenty-seventh day of December, in the year of our Lord 10 one thousand eight hundred and fifty-three, for the sum of six thousand six hundred and fifty-four dollars and sixty-four cents, (\$6,654 64,) including costs of suit, which, together with the interest, amounts to the sum of nine thousand nine hundred and forty-eight dollars and sixty-eight cents, \$9,448 68.)

Ninth—And I do further report, that the *pro rata* proportions which should be paid on the said specialty debt, by the specific devise to the testator's grandsons, is three thousand six hundred and seventy-six dollars and five cents, (\$3,676 06,) 20 and by the specific devise to the testator's daughters, is six thousand two hundred and seventy-two dollars and sixty-three cents, (\$6,272 63,) and these specific devises are alone liable for the payment of said specialty debt.

All of which is respectfully submitted,

JOHN L. N. STRATTON, M. C. C.

Dated March 27, 1862.

SCHEDULE A.

Amount of inventory and appraisement of the personal property of James Shreve, deceased,		\$6,395 13
Household goods, &c., specifically bequeathed,	\$789 00	
Provisions, groceries, &c., do.	88 00	
Amount realized from sale of personal property, purse collections, &c.,	5,001 95	
	<hr/>	5,878 95 10
Loss on personal property,		\$516 18
JOHN L. N. STRATTON, <i>M. C. C.</i>		
March 27, 1862.		

SCHEDULE B.

Amount of simple contract debts, due on note, book account, funeral, testamentary and incidental expenses paid by executors, between the 1st day of October, A. D. 1852, and the eighth day of March, A. D. 1862, inclusive,		\$6,097 82
Amount due township Springfield, on promissory note,	2,400 00	
Commission at 8 per cent.,	510 00	
	<hr/>	\$9,007 82
Amount of personal property not specifically bequeathed,	5,001 95	
	<hr/>	

	Deficiency to be paid by specific leg- acies and devises, as follows, viz.,		\$4,005 95
	Household goods, &c.	\$789 56 15	
	Rental of Biddle farm,	4,350 319 57	
	Specific devise to grand- son of Biddle farm,	18,900 1,345 04	
	Specific devise of home- stead to daughters,	32,250 2,295 11	
10		<u>\$56,289 4,005 87</u>	<u>4,005 87</u>

Equal to about 7 1-9th per cent.

JOHN L. N. STRATTON, *M. C. C.*

March 27, 1862.

SCHEDULE C.

	Amount of judgment obtained by executors of Susan H. Shreve, <i>vs.</i> executors of James Shreve on bond, December 27, 1853,		\$6,621 67
	Costs of suit,		32 97
20			<u>\$6,654 64</u>
	Interest from December 27, 1853, to March 27, 1862, 8 yrs. 3 mos.		3,294 04
	Amount to be paid by specific devises,		\$9,948 68
	Devise to grandsons,	\$18,900 3,376 05	
	“ daughters,	32,250 6,272 63	
		<u> </u>	<u>\$9,948 68</u>

This is nearly 19½ per cent.

JOHN L. N. STRATTON, *M. C. C.*

30 March 27, 1862.

A true copy.

BARKER GUMMERE, *Clerk.*

IN CHANCERY.

STACY B. SHREVE, defendant, }
and } On Interlocutory Decree.
JAMES SHREVE'S EXECUTORS, com- }
plainants. } Exceptions to Report of
Master Stratton.

Exceptions taken by the defendant in this cause to the report made thereon on the twenty-seventh day of March, eighteen hundred and sixty-two, by John L. N. Stratton, Esquire, one of the Masters of this court, to whom the cause stands referred by the decretal order made in this cause bearing date the fifteenth day of May, eighteen hundred and fifty-five, touching the matters therein referred to him.

First exception—For that the said Master has allowed to the said complainants as executors of James Shreve, deceased, 10 the sum of five hundred and ten dollars as commissions on the amount of the personal estate, viz: \$6,395 13, the same being at the rate of eight per cent, which is more than should have been allowed, and entirely disproportionate to the trouble and risk of settling the said personal estate.

Second exception—For that in and by the will of the said James Shreve, deceased, he gave to his grandsons, James Shreve and Stacy B. Shreve, one-third part of his pine land and cedar swamp, and to his four daughters, he gave two-20 thirds of his said pine land and cedar swamp, which being specific devises are liable to contribute *pro rata* with other specific devises to the payment of the simple contract debts of the testator, and also of the speciality debts, according to the interlocutory decree of this Court; but the said Master has failed to make any report of the value of the said pine land and cedar swamp, or either of them, and has not charged

them or any of them with any contribution whatever towards the payment of any of the debts, but has reported that no evidence of the value of these lands was produced before him, which report this exceptant alleges is wholly insufficient, and operates to the prejudice of this exceptant.

Third exception—For that according to the will of the said testator and the said interlocutory decree, the household goods specifically bequeathed, were liable to contribute to the payment of the simple contract debts, and also of the specialty debts, but the master has, in making his report omitted to charge the said household goods with any portion of the specialty debts; in which particular this exceptant alleges the said report to be erroneous.

In all which several matters above specified, this exceptant excepts to the said report and humbly conceives that the said master has erred and that the said report is wrong, unjust and inequitable and does not conform to the decretal order, and therefore prays that the said report, so far as regards the several particulars above specified may be disallowed, re-
20 jected and set aside, or that the said report may be corrected in the said several particulars, and prays the judgment of this Court thereupon.

JOHN R. SLACK, *Sol.*,
and of Counsel with Exceptant.

These exceptions having been heard, it was ordered by the Chancellor, on the 24th December, 1862;

1. That the first exception be over-ruled.
2. That the second exception be allowed, and that the pine land and cedar swamp should contribute with other de-
30 vises and legacies towards payment of the debts and expenses, *pro rata*, as declared in the interlocutory decree in this cause; and the parties having mutually agreed upon the value of the said pine land and cedar swamp for the purpose of such contribution, as follows, to wit: that the cedar swamp shall
35 be valued at \$1,500; that the said pine lands shall be valued at the average valuation of fifty dollars per acre, making the

sum of \$13,250, from which is to be deducted the one-ninth part thereof, for a recovery had to that amount by Richard W. Earle, leaving a balance of \$11,777 78; and that the contribution as between the said daughters and the said grandsons of the testator, shall be according to the proportion of their interests therein, that is, two-thirds to the said daughters, and one-third to the said grandsons to be applied in the manner and for the purpose declared in the interlocutory decree; and that the Master's report be corrected in the said particulars. 10

3. That the third exception be allowed and that the household goods bequeathed specifically to the widow, should contribute to the payment of the specialty debts, as well as to the simple contract debts, and that the report be corrected in that particular.

(Pro ut the said order.)

To avoid the expense of a second reference to the Master, the parties agreed to the following corrected statement, to wit:

EXECUTORS of JAMES SHREVE, deceased, complainants, and STACY B. SHREVE, defendant.	}	On Bill. Corrected statement.
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Sum needed to pay balance of simple contract debt, as per 20
Master's report, \$4,005 87

This is to be paid by contribution from the
following, viz.:

Widow's legacy,	\$789 00	contributes	\$45 43
Rental of Biddle farm,	4,350 00	"	250 50
Biddle farm,	18,900 00	"	1,088 30
Grandson's pine land,	3,925 93	"	226 08
Do. cedar swamp,	500 00	"	28 79
Homestead farm,	32,250 00	"	1,857 06
Daughters' pine land,	7,851 86	"	452 13 ³⁰
Do. cedar swamp,	1,000 00	"	57 58
			\$4,005 87

Specialty debts, as per report:—

Judgment by Executors of Susan H. Shreve,
against Executors of James Shreve, re-
covered 27 December, 1853, for \$6,621 67,
debt, \$32 97 costs, the whole amount
being \$6,654 64

To be paid by contribution, as follows, to
wit:

10	Widow's legacy,	\$789 00	contributes	\$80 51
	Biddle farm,	18,900 00	"	1,928 53
	Grandson's pine land,	3,925 93	"	400 60
	Do. cedar swamp,	500 00	"	51 02
	Homestead farm,	32,250 00	"	3,290 74
	Daughters' pine land,	7,851 86	"	801 20
	Do. cedar swamp,	1,000 00	"	102 04
				<hr/> \$6,654 64 <hr/>

20 The sums so contributed are to bear interest severally from the date of said judgment, viz., 27 December, 1853, to the time of payment.

The final decree in this cause was made on the 24th December, 1862, and filed 11th February, 1863.

It sets out the interlocutory decree, the reference to a Master and the Master's report, the exceptions taken to the report, and the subsequent agreement of the parties, made in writing and filed, specifying the amount to be paid and contributed by the said specific legacies and devises for the purpose of paying and satisfying the sums due as aforesaid, on note, book account, simple contract debts, funeral and incidental expenses and commissions, and also to pay the said specialty debt, and then orders the money to be contributed and paid in the proportions agreed upon and set forth in said
30
35 corrected statement.

The final decree merely carries out the principles of the interlocutory decree, and of the agreement of the parties,

based on that decree. And it is not considered necessary to set it forth at length.

A notice of appeal was filed on the 9th March, 1863.

On the 30th March, 1863, the following petition of appeal was filed :

COURT OF ERRORS AND APPEALS.

<p>Between STACY B. SHREVE, appellant, and ELIZABETH S. SHREVE, SARAH B. SHREVE and BARCLAY WHITE, executor of JAMES SHREVE, de- ceased, respondents.</p>	}	<p>On Appeal. Petition of Appeal.</p>
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To the Honorable the Court of Errors and Appeals, in all causes as heretofore :—

The humble petition of Stacy B. Shreve, appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court 10 of Chancery, by the Honorable Henry W. Green, Chancellor of the State of New Jersey, bearing date the twenty-fourth day of December, eighteen hundred and sixty-two, wherein the said Elizabeth S. Shreve, and others, executors of James Shreve, deceased, were complainants, and the said Stacy B. Shreve was defendant, in this respect, to wit, that the said Chancellor directed and decreed that all the interest to the farm called the Biddle farm, which, by said testator, in his will, had been given to Susan H. Shreve, his daughter-in-law, on a certain condition, which she refused to accept, thereupon 20 fell into the residue of the estate of the said testator, and passed by the residuary clause of the will to the testator's daughters, and that the same was not liable to contribute to the payment of the specialty debts of the testator.

And also, in this, that the said Chancellor, in said decree, has decreed the debts of said testator to be charged and paid

in a mode not warranted by the sound and just construction of the will of said testator, nor by law.

And your petitioner humbly appeals from all those parts of the decree which decrees as aforesaid, upon the ground that the same is erroneous, and he therefore prays that the said decree may be, in the particulars aforesaid, reversed, set aside and for nothing held.

And that he may have such relief in the premises as to this Honorable Court may seem meet.

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JOHN R. SLACK,
Solicitor of Appellant.

Counsel to be at liberty to refer to the original papers, not printed, as fully as occasion may require.