

N. J. Court of Errors and Appeals.

Between

LYDIA EMERY, wife of Nicholas
Emery, by her next friend Wil-
son J. Hoffman, complainant,
and
ANDREW VANSYCKEL et al, defend-
ants,

*Bill for Injunc-
tion, &c.*

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### BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

*To His Honor Henry W. Green, Chancellor of the State of  
New Jersey.*

Humbly complaining, showeth unto your Honor your oratrix, Lydia, wife of Nicholas Emery, of the township of Clinton, county of Hunterdon, and State of New Jersey, (*nee* Lydia Apgar,) by her next friend Wilson J. Hoffman, of said county of Hunterdon, and State of New Jersey, that her father, George Apgar, late of the township of Clinton, said county of Hunterdon, having made his last will and testament, in the words following, to wit: "In the name of God, Amen. I, George Apgar, of the township of Clinton, county of Hunterdon, 10 and State of New Jersey, being weak in body but of sound and disposing mind and memory, (blessed be God for the same,) do make and publish this for my last will and testament. First, I do order and direct my just debts and funeral expenses to be paid by my executors hereinafter named, as soon after my decease as conveniently can be done.

"Second, I give unto my beloved wife, Ruhamah, an annuity of sixty dollars, to be paid to her by my executors, yearly and every year during her natural life, pro- 20  
vided she remains my widow, and not otherwise; and I

do order and direct my said executors, after my decease, to place out to interest, on good security, the sum of one thousand dollars, as a fund for the payment of the aforesaid annuity of sixty dollars, and at the death or marriage of my said wife, Ruhamah, it is my will, that the interest, if any remaining, and all the principal, shall revert to and become a part of the residue of my estate, to be disposed of as hereinafter mentioned. I also give unto my wife, Ruhamah, at my decease, the use and occupa-  
 10 tion of one-third part of my dwelling-house and kitchen where I now reside, she to make her own choice, to have and possess the same during her natural life, provided she remains my widow, and not otherwise. It is also my will, that my son-in-law, Nicholas Emery, and daughter, Lydia, shall provide her with board during the same period, and with firewood from off the farm, cut short for her fireplace or stove, if she desires it, free of all and every expense to her. I also give and bequeath to her forever, at my decease, one-third part of all my live stock,  
 20 and one-third part of all my household and kitchen furniture, she to take, as her first choice, if she desires it, the cupboard with its contents now standing in one of the lower rooms; and if at any time she should think proper to give up her part of the dwelling-house and kitchen, and take her board elsewhere, it is then my will that my executors shall pay annually out of my estate the expense of her board and lodging. And I do hereby make my real estate liable therefor so long as she remains my widow and no longer; the aforesaid bequests  
 30 are made to her in lieu of dower out of my estate.

“Third, I give and bequeath to my grandson and namesake, George Servis Emery, eldest child of my daughter Lydia, the sum of one thousand dollars, as a token of my affection for him, to be paid to him when he shall attain the age of twenty-five years; this I give to him over and above his equal share in all the rest and residue of my estate. Should he die before he attains the age of twenty-five years, and without lawful issue, the said legacy of one thousand dollars shall revert to and become  
 40 a part of the residue of my estate. Fourth, I give unto

my daughter Lydia, at my decease, all my books, and the remaining two-thirds of my household and kitchen furniture and live stock. I also give and bequeath to my daughter Lydia, for and during the term of her natural life, my farm on which I now reside, containing two hundred and sixty-eight acres, more or less, with the wood lot adjoining, together with all the rest and residue of my estate, both real and personal; and after her death I do give, devise and bequeath the same to her children, to be equally divided among them, share and share alike, when 10 her youngest child shall attain the age of twenty-one years. Subject, nevertheless, to the payment of the annuity of sixty dollars bequeathed to my wife, Ruhamah, and also the payment of the one thousand dollars bequeathed to my grandson George Servis Emery. And for the sure and certain payment of the said bequest, I do hereby charge and make liable the real estate bequeathed to my daughter, Lydia, and her children, for the payment thereof. Should any of my grandchildren die before the youngest child shall attain the age of twenty-one 20 years, and without lawful issue, it is my will that such share or shares shall descend to and be divided equally among the survivors, share and share alike. If my daughter Lydia should die before her youngest child attains the age of twenty-one years, it is then my will that her husband shall have the use, occupation and profits of my estate until the said youngest child of my daughter Lydia shall attain the age of twenty-one years as aforesaid. I do order and direct my executors to have the farm and buildings kept in good repair, and to see 30 that no unnecessary waste or destruction of timber be committed on my said farm or wood lot adjoining, and to carry this my last will and testament into effect, according to the true intent and meaning thereof.

"Fifth, it is my will, that if my daughter Lydia should be dispossessed of the farm in any way or manner whatever, in her lifetime, then I do order and direct my executors, or the survivor of them, to take charge of her estate, both real and personal, and rent out the land to the best advantage, and pay over to her the rents and 40

interest money yearly and every year, and her receipt, and her's only, shall be sufficient for the same.

“Sixth, it is my will, that my black girl, Phillis, shall be free from slavery at my death. And I then give unto her her freedom, and her own bed, bedding, chest, and one cow, of the value of sixteen dollars. I also give to her the sum of twenty-four dollars a year so long as she will support herself without the assistance of this sum, and no longer, to be paid to her yearly and every year  
10 by my executors, half of the first yearly sum of twenty-four dollars to be paid her in two months, and the other half in one year after my decease, and twenty-four dollars at the end of each year afterwards; and for the certain payment thereof, my real estate is hereby charged and made liable.

“And lastly, I do constitute and appoint my son-in-law, Nicholas Emery, and William Alpaugh, son of my eldest sister, deceased, executors of this my last will and testament, hereby revoking all former wills and testaments  
20 by me at any time heretofore made.

“In witness whereof, I have hereunto set my hand and seal the twenty-seventh day of June, in the year of our Lord eighteen hundred and forty-six.”

Which said last will and testament, so made by him, he duly published, and in due form of law duly executed and attested, according to the provision of the statute in that behalf made and provided, bearing date the day and year above written, died on or about the twenty-ninth day of July, in the year of our Lord eighteen hundred  
30 and forty-six, seized and possessed of the farm, tract or parcel of land therein devised to your oratrix, Lydia Emery, wife of Nicholas Emery, now in the possession of your oratrix, situate, lying and being in said township of Clinton, without in anywise revoking or altering his said will, and leaving his said widow, Ruhamah, mother of your oratrix, him surviving, she still remaining his widow and residing on the premises so devised to your oratrix during her natural life, in the portions of the dwelling-house devised to her the said Ruhamah, and  
40 supported by your oratrix and her husband, Nicholas Emery, who also resides there, from the produce of the

said farm. That said will was duly proved, and recorded in volume eight of the record of wills for the county of Hunterdon, page one hundred and ninety-six, to which record your oratrix, for greater certainty, prays leave to refer, if shall be necessary so to do.

Your oratrix further shows unto your Honor, that in and by said last will and testament, it was the intention of the testator to create, and he did thereby create a separate estate in the said land so devised as aforesaid, in your oratrix, and in and by said will it was the inten- 10  
tion of the testator, and he did thereby impose a trust upon his executors therein named, to protect your oratrix in the enjoyment of her said separate estate so created, and to protect the said estate of your oratrix from any claims of Nicholas Emery, the husband of your oratrix, or of his creditors. And under said will it became the duty of the executors therein named, who proved the same, and took upon themselves the burthen of the administration of the said estate and of executing the trusts therein created and imposed, as trustees, to 20  
protect and defend your oratrix in the peaceable and quiet possession of the said farm so bequeathed to her as aforesaid, from any invasion of the husband of your oratrix, or any claims of his creditors.

Your oratrix further shows unto your Honor, that her mother, Ruhamah, the widow of the testator, is still living, remaining his widow, and requiring the filial care and protection of your oratrix, her daughter, in her declining years and under her infirmities incident to old age; that it was the intention of the testator, in and by 30  
his said last will and testament, to not only provide his widow with a home, but he intended to secure to her there at the home so provided, the care and attention which a daughter only would give. And your oratrix and her husband are to provide board for said Ruhamah, from the produce of the said farm, and the provision allowing her to remove from the premises, in case she should prefer to do so, only the more secures her comfort and kind care and attention there, which was the intent and meaning of the testator. And the said 40  
Ruhamah has the right to have and receive this board

and these attentions there from your oratrix, and is not, nor ought not to be compelled, by any cause or circumstance, subjected to receiving only such board and such care and attention as strangers, and those hostile to her, would give, upon the event of your oratrix being turned out of said premises by creditors of the husband of your oratrix, or those claiming under them. And in and by the said will, your oratrix shows unto your Honor, the said Ruhamah has the right that your oratrix and her  
 10 husband shall perform the duties in her favor imposed by the will upon your oratrix and her husband. And if your oratrix should be by any means dispossessed, it would not be in the power of this Honorable Court, or any other, to compel the incoming tenant to perform the terms of the tenure, which by the provisions of the will are, that said Ruhamah shall there have the daughter's care, attention, board and support; and the express terms of the will, as well as the spirit and intent thereof, would be defeated if your oratrix were dispossessed.

20 And your oratrix further shows unto your Honor, that sundry judgments having been obtained against Nicholas Emery, who is the husband of your oratrix, as follows: one in the Hunterdon County Circuit Court, by one Martin H. Duckworth; one in the same court, by one David L. Everitt, against Isaac Smith and the said Nicholas Emery; one in the same court, by one Andrew Vansyckel, against Jacob Emery and the said Nicholas Emery; and one in the Supreme Court of New Jersey, by the Hunterdon County Bank, against the said Nich-  
 30 olas Emery, Jacob Emery and John A. Anderson, executions were issued thereupon and placed in the hands of Robert Thatcher, Esquire, Sheriff of the county of Hunterdon, who, by virtue thereof, seized and levied upon all the right, title, interest and estate of the said Nicholas Emery in the tracts of land and premises so as aforesaid devised to your oratrix as her separate estate by the hereinbefore recited last will and testament of her father, George Apgar. And the said sheriff proceeded to advertise and sell the same; and upon selling the  
 40 same the said Andrew Vansyckel became the purchaser;

and the said sheriff, for the consideration of fifteen dollars, struck off and sold to the said Andrew Vansyckel all the right, title and interest of the said Nicholas Emery of, in and to two hundred and sixty-eight acres of land, being the farm on which the testator resided at the execution of said will, and thereby bequeathed as aforesaid. And for the further consideration of two dollars, the said sheriff sold to said Andrew Vansyckel all the right, title and interest of the said Nicholas Emery of, in and to twenty acres and thirty hundredths of an acre of land, 10 lying in said township of Clinton, being the wood lot mentioned in said will, and bequeathed as aforesaid, as the separate estate of your oratrix during her natural life. And the said sheriff made, executed and delivered to the said Andrew Vansyckel a deed for all the right, title, interest and estate of the said Nicholas Emery of, in and to all the aforesaid two tracts of land and premises, bearing date on or about the sixteenth day of June, in the year of our Lord one thousand eight hundred and sixty-two, recorded in volume one hundred and twenty- 20 six of the record of deeds in and for the county of Hunterdon, page (698) six hundred and ninety-eight, &c., to which record thereof your oratrix for greater certainty prays leave to refer, if it shall be necessary so to do.

And your oratrix further showeth unto your Honor, that the said Andrew Vansyckel has lately commenced an action in the Supreme Court of the State of New Jersey, of ejectment, his writ being tested the seventeenth day of June, in the year of our Lord eighteen hundred and sixty-two, against Nicholas Emery, the husband of 30 your oratrix, wherein and whereby the plaintiff demands of the defendant the possession of all those two certain tracts of land, with the appurtenances, situate in the township of Clinton, in said county of Hunterdon. The first tract adjoins lands of Morris Sharp, lands of Harrison Apgar and others, and contains two hundred and sixty-eight acres of land, more or less, being the same tract of land conveyed to George Apgar by John Allen and wife, by deed dated July 10, A. D. 1804.

The second tract adjoins the above described tract, 40

lands of Harrison Apgar and others, and contains twenty acres and thirty hundredths of an acre of land, being the same tract conveyed to George Apgar by Rena E. De Russey and wife, by deed recorded in the clerk's office of the county of Hunterdon, in volume fifty of deeds, pages 494, &c.

And your oratrix further showeth unto your Honor, that this action of ejectment is to recover the possession of the same premises so as aforesaid bequeathed by the  
 10 will of George Apgar, the father of your oratrix, to your oratrix as her separate estate during her natural life, as hereinbefore set out, and to his widow, Ruhamah, as mentioned and set out in said will; and the intent and object of the said Andrew Vansyckle is to turn your oratrix and her mother, Ruhamah, out of the possession thereof, by virtue of the said action, and to deprive your oratrix of her equitable rights therein.

And now so it is, may it please your Honor, that the said Andrew Vansyckle and Nicholas Emery, combining  
 20 and confederating together, to and with divers other persons as yet to your oratrix unknown, but whose names, when discovered, your oratrix prays may be inserted herein as defendants, and they made parties hereto, with proper and apt words to charge them how to injure and oppress your oratrix. The said confederates, respectively, sometimes pretend that the said testator did not make any such will, or if he did, that he revoked the same previous to his death; and at other times they pretend and give out in speeches that said will created no separate  
 30 estate in your oratrix, and that she has no equitable rights under or by virtue of it; and at other times they pretend and give out in speeches, that in and by said will no trust whatever was created, and the executors therein named were not thereby directed to protect the interest of your oratrix in the estate, and were not made trustees to look after said farm and keep it in repair, and to protect your oratrix in the possession thereof, and to protect the said farm from waste, and that if by any means your oratrix should be dispossessed thereof, they  
 40 were not as such trustees as aforesaid, to rent out the

same and pay over the proceeds to your oratrix, whose receipt, and whose only, should be a sufficient voucher. And at other times they give out in speeches and pretend that the said Nicholas Emery has some right or title to, or interest in the said farm and wood lot, and that the said testator, George Apgar, did not die seized and possessed thereof.

Whereas, your oratrix expressly charges the truth to be to the contrary of all such speeches and pretences.

All which actings, doings and pretences of the said 10 confederates, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your oratrix.

In tender consideration whereof, and forasmuch as your oratrix is remediless in the premises, at and by the strict rules of the common law, and is only relievable in a court of equity where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the said Andrew Vansyckle 20 and Nicholas Emery, and their confederates, when discovered, may, respectively, full, true, direct and perfect answers make upon their respective corporal oaths, according to the best of their respective knowledge, information and belief, to all and singular the matters and charges aforesaid, and that as fully and particularly in every respect as if the same were here again repeated, and they thereunto particularly interrogated, and more especially that they may respectively set forth and discover, according to the best of their knowledge, remembrance, information and belief, whether the said testator, 30 George Apgar, duly made, executed and published such last will and testament in writing, of such tenor and date, and to such purport and effect as aforesaid, and thereby bequeathed to your oratrix, for the term of her natural life, the said farm and wood lot as aforesaid, or any other and what bequest, or any other and what last will, if any other, and what date, and to any other and what purport and effect particularly. And that they may produce the same or the probate thereof, to this honorable court, whenever and as often as there shall be occa- 40 sion; and whether by such will, or any other and what

will, the said testator appointed the said Nicholas Emery and William Alpaugh, or any others and what persons, executors of such last will and testament, and whether the testator departed this life on or about the first day of January, in the year of our Lord eighteen hundred and forty-seven, or at any other and what time, and whether he revoked, altered or annulled the said last will and testament before his death, or the provisions therein for the benefit of your oratrix, and when and before whom, and in what manner. And whether the said Nicholas Emery and William Alpaugh, or one, and which of them, proved the said will, and when, before whom, and in what manner. And whether they took upon themselves the burthen of the execution thereof. And that they set forth whether the said Andrew Vansyckel has not commenced an action of ejectment in the Supreme Court of New Jersey against the said Nicholas Emery, claiming the possession of the said farm and wood lot, and to recover the possession thereof; and whether it is not the purpose and object of said action, to turn your oratrix out of the possession thereof, and to deprive her and her children of all use and benefit thereof; and whether the said Andrew Vansyckel does not threaten and intend to prosecute the said action of ejectment to final judgment, as speedily as possible.

And that the said Andrew Vansyckel, his counsellors, attorneys, solicitors, officers or agents, may be restrained by an injunction issuing out of and under the seal of this honorable court, from proceeding further against Nicholas Emery, in the said action commenced against him in the Supreme Court of this State, and now pending (but not at issue) therein, for the recovery of the possession of said premises, with their appurtenances; and also from instituting or proceeding in any new or other action at law, for the recovery of the possession of said premises, or any part thereof. And that your oratrix 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.

40 May it please your Honor, the premises considered, to

grant unto your oratrix the State's writ of injunction, issuing out of and under the seal of this honorable court, directed to the said Andrew Vansyckel, his counsellors, attorneys, solicitors and agents, commanding them and each of them absolutely to desist and refrain from proceeding further against the said Nicholas Emery, in the said action commenced against him in the Supreme Court of this State, and now pending but not yet at issue therein, for the recovery of the possession of the said premises with their appurtenances. And also a writ or 10 writs of subpoena, of the State of New Jersey, to be directed to the said Andrew Vansyckel, Ruhamah Apgar, and Nicholas Emery and William Alpaugh, executors of the last will and testament of George Apgar, deceased, therein and thereby commanding them, and each 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, &c. And your 20 oratrix, as in duty bound, will ever pray, &c.

GEORGE A. ALLEN,

*Solicitor for and of counsel with Lydia Emery, by her next friend, Wilson J. Hoffman, complainant.*

New Jersey, ss.—Lydia Emery, the complainant in the foregoing bill named, being duly sworn on her oath saith, that the facts, matters and things therein set forth, so far as they relate to her own acts and deeds, are true, and so far as they relate to the acts and deeds of any other person or persons, she believes them to be true. 30

LYDIA EMERY.

Sworn and subscribed, November 1st, 1862, before me,

JOHN S. BIRD, *M. C.*

State of New Jersey, Mercer county, ss.—George A. Allen, of full age, being duly sworn according to law, upon his oath deposeth and saith, that he has read the

will of George Apgar, deceased, on the records of the surrogate's office of the county of Hunterdon, and that the same is truly set out in the foregoing bill of complaint, as deponent verily believes. Deponent further saith, that he is acquainted with the parties named in the foregoing bill, and that Nicholas Emery, Lydia Emery, and their children, of whom there are several, are living on the farm and premises mentioned in said will, and in said bill set out and described, and that Ruhamah Apgar, widow of George Apgar, deceased, also resides there. Deponent has seen the records of the judgments mentioned and set out in said bill, and believes the same are truly set out therein. And deponent has also seen the deed as recorded in the clerk's office of the county of Hunterdon, from the sheriff of the county of Hunterdon to the said Andrew Vansyckel, for the said premises, and that said Andrew Vansyckel has commenced the suit in ejectment, mentioned and set out in the said bill of complaint.

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GEORGE A. ALLEN.

Sworn and subscribed, November 6th, A. D. 1862, before me,

HENRY W. GREEN, C.

Filed November 6, 1862.

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A N S W E R .

The answer of Andrew Vansyckel, one of the defendants to the bill of complaint of Lydia Emery, wife of Nicholas Emery, by her next friend Wilson J. Huffinan, complainant.

30 This defendant now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill contained, for answer thereunto, or unto so much and such parts thereof

as this defendant is advised is material for him to make answer unto, he answers and says, that he admits that the said George Apgar, father of said Lydia, departed this life on or about the time mentioned in the complainant's bill, having first duly made and executed his last will and testament, and that said last will and testament was duly admitted to probate, as in said bill is set forth; and this defendant further says that the said will is not accurately set forth and copied in the complainant's bill, and therefore prays that reference may be made to 10 the record thereof, for greater certainty; that portions of the said will copied in the second page of the complainant's bill, read in the said record as follows:

"I also give and bequeath to my daughter Lydia, for and during her natural life, my farm, &c., &c., together with all the rest and residue of my estate, both real and personal, &c.," "and for the sure and certain payment of the said bequests, I do hereby charge and make liable the real estate bequeathed to my daughter Lydia, &c."

And this defendant in further answering says, that the 20 said Ruhamah Apgar survived the testator, and that since his decease she has occupied, and still occupies that portion of the dwelling house set apart for her use by the said will, but this defendant insists that her right of possession and occupancy is restricted by the terms of said will to the portion of the dwelling house therein specified, and that it does not extend to any portion of the said farm or wood lot.

And this defendant in further answering denies that the said Lydia has ever since the death of the said testa- 30 tor been possessed of, or that she is now possessed of the said farm or wood lot, but says that the said Nicholas Emery is now in possession, and ever since the death of the said testator has been in possession of both the said farm and wood lot, and that although the said Lydia has always lived with her said husband Nicholas, upon the said farm, it has been the possession of the said Nicholas, and not the possession of the said Lydia, and the said Nicholas has always received and appropriated to his own use the rents, issues and profits thereof. 40

And this defendant in further answering denies, that in and by the said last will and testament it was the intention of the testator to create, or that he did thereby create a separate estate in the said lands so devised, in the said Lydia; and this defendant denies that in and by the said last will and testament, it was the intention of the testator to impose, or that he did impose a trust upon his executors therein named, to protect the said Lydia in the enjoyment of a separate estate,  
 10 in said lands, or to protect the said lands from any claims of the said Nicholas or his creditors; and this defendant denies that it was the intention of the testator, or that under the said will it became, or now is the duty of the executors therein named, to protect and defend the said Lydia in the peaceable and quiet possession of the said lands, free from any invasion of the said Nicholas, or his creditors; but on the contrary this defendant says, that under and by virtue of said last will and testament, it is clear that the said Lydia took at least a life estate  
 20 in the said lands, and thereby the said Nicholas Emery, who intermarried with the said Lydia prior to the passage of the act of 1852, for the better securing the property of married women, acquired a freehold estate in the said lands in which his said wife took said life estate, and became entitled to the profits thereof during the marriage, and that the said Nicholas had thereby the right to sell such estate or charge it to the extent of his said interest therein.

And this defendant in further answering denies that  
 30 it was the intention of the testator, in and by his said last will and testament, to secure to his widow Ruhamah for her lifetime, the care or attention of the said Lydia, or to make the said Ruhamah in anywise dependent upon the said Lydia, but on the contrary the testator with extreme care has sought to make the said Ruhamah entirely independent of the said Lydia, and her said husband, not only by giving to the said Ruhamah a portion of the house to be under her own control, with furniture and such live stock as she needed, and an  
 40 annuity of sixty dollars, but also by giving her the right

in express terms, of removing from the said farm, and having her board elsewhere at the expense of his estate; and the said testator was the more careful to make these provisions to secure the comfort of his wife, and to make her independent of the said Lydia, and her husband, because the very language of his said will shows that he looked to the contingency of the said Lydia being dispossessed of the said lands without her own consent.

And this defendant in further answering says, that not only the annuity of sixty dollars given by the said testator's will to Ruhamah, but also her right to board and firewood at the expense of his estate, is made a charge upon the said homestead farm, that the said farm is a very large and productive one, and will annually yield many hundred dollars over and above an ample support for Ruhamah, and this defendant could not, nor does he desire by said proceedings in ejectment, to possess himself of the said lands free of any of the charges imposed upon them by the said will, but he seeks merely to be put in possession of such estate in the premises as passed to him under and by virtue of his purchase under the judgment in the complainant's bill mentioned, subject to all such charges and burdens as may be imposed thereon by the said will. 10 20

And this defendant in further answering says, that the rights and privileges secured by the said will to Ruhamah Apgar in no wise conflict with the life estate given by the will to Lydia, but that they are perfectly consistent with each other, and the said life estate at the death of the testator became fully vested in the said Lydia, and thereby the said Nicholas acquired an estate in said lands which was subject to judgment and execution, and that the pretence of the said Lydia, that the said Ruhamah needs her kind care and attention is false, and made for the purpose of protecting the interest of said Nicholas Emery in the said lands from seizure by his creditors. 30

And this defendant in further answering says, that it will be time enough for this defendant to answer more fully in this respect, when the said Ruhamah shall file 40

her bill in this honorable court, seeking its aid to protect her in the enjoyment of the kind care and attention of Lydia Emery and her said husband.

And this defendant in further answering says, that on or about the twenty-first day of June, in the year of our Lord, one thousand eight hundred and sixty-one, one Martin H. Duckworth recovered a judgment in the Hunterdon County Circuit Court, for the sum of fourteen hundred and sixty-eight dollars and thirty cents,  
 10 against the said Nicholas Emery, which judgment was duly assigned by the said Martin H. Duckworth to this defendant, and that afterwards, to wit: on or about the thirty-first day of August in the same year last aforesaid, one David L. Everitt recovered a judgment against the said Nicholas Emery and one Israel Smith, for the sum of one hundred and forty-three dollars and ninety-one cents, in the said Circuit Court, and that afterwards, to wit: on or about the tenth day of October, in the year last aforesaid, the Hunterdon County Bank recovered a  
 20 judgment against the said Nicholas Emery, Jacob Emery, and John A. Anderson, in the Supreme Court of New Jersey, for the sum of three hundred and forty-eight dollars and seventy-three cents; and that afterwards, to wit: on or about the sixth day of December, in the year last aforesaid, this defendant recovered a judgment in the Hunterdon County Circuit Court against the said Nicholas Emery, Jacob Emery and Charles Emery, for the sum of seven hundred and eighty-one  
 30 dollars and eighty-four cents, and that executions were issued in due form of law upon the said several judgments, by virtue of which Robert Thatcher, Esq., then Sheriff of the county of Hunterdon, seized and levied upon all the right, title, interest and estate of the said Nicholas Emery in all the lands in the said testator's will mentioned, and the same as in the complainant's bill is set forth, was duly advertised according to law, and sold and conveyed by the said Sheriff in due form of law, to this defendant by deed bearing date on or about  
 40 the sixteenth day of June, in the year of our Lord, one thousand eight hundred and sixty-two.

And this defendant in further answering says, that on the seventeenth day of June, in the year of our Lord, one thousand eight hundred and sixty-two, he commenced an action of ejectment against the said Nicholas Emery in the Supreme Court of Judicature of New Jersey, to recover possession of the estate and interest of said Nicholas Emery in the said lands; that the summons in ejectment was returnable on the twenty-eighth day of the same month of June, and was duly served on the said Nicholas Emery, and that the plaintiff's declaration 10 in ejectment was duly filed on the said return day.

And this defendant in further answering says, that soon after he had filed his said declaration in ejectment, the said Ruhamah Apgar and Lydia Emery, applied to the Honorable George H. Brown, one of the Justices of the Supreme Court of this State, to be admitted as defendants, to said action of ejectment, brought by this defendant against said Nicholas Emery, and that in the month of August, last past, (1862) the said Justice delivered his opinion that the said Ruhamah and Lydia 20 should be admitted as defendants, and thereupon the said Ruhamah and Lydia caused a rule to be entered in the minutes of said Supreme Court, admitting them to defend said action of ejectment, to which rule this defendant for greater certainty asks leave to refer, if it be necessary so to do; and this defendant further says that the said Ruhamah and Lydia having by their own act, and upon their own application, been admitted as defendants in said action of ejectment, they have thereby elected the forum in which they will have their respective 30 rights in the premises determined, and are estopped from seeking the aid of this honorable court, and more especially should the said Lydia be estopped from setting up in her said bill, as a ground for enjoining the said action of ejectment, the rights of said Ruhamah, (which would be burdens to the said Lydia, and which Lydia cannot complain if she is relieved from,) while the said Ruhamah is still content to contest her rights in and by the said action of ejectment.

And this defendant further answering says, that 40

William Alpaugh, one of the executors named in the said will of George Apgar, dec'd, has never taken upon himself the administration of said estate, or had any connection therewith, but that the said will was admitted to probate, and letters testamentary issued to said Nicholas Emery, the other executor, alone.

And this defendant further answering says, that ever since the death of the said testator, the said Nicholas Emery, with the full and free assent of the said Lydia,  
 10 has occupied the said lands and premises, and appropriated the whole of the very large products thereof to his own individual purposes, and that the fact that the said Nicholas had a valuable estate and interest in the said lands, induced not only this defendant, but also the other plaintiffs in the aforesaid executions to give the said Nicholas credit.

And this defendant further answering says, that on or about the twentieth day of June, in the year of our Lord, one thousand eight hundred and sixty-two, and before  
 20 either of the hereinbefore mentioned judgments were recovered, the said Nicholas Emery confessed a judgment in the Hunterdon County Circuit Court, to one John C. Welch, for the sum of two thousand two hundred dollars, and that at a sale made by virtue of an execution issued upon the said last mentioned judgment, the whole of the personal property of the said Nicholas Emery was sold, and a very large portion thereof was fraudulently secured by the said Nicholas Emery, in the name of his said wife Lydia, so as to protect it from his  
 30 creditors; and that afterwards, the said Nicholas Emery by his deed bearing date the twenty-seventh day of August, in the year of our Lord, one thousand eight hundred and sixty-one, conveyed all his right, title and estate in the aforesaid lands to his son George Servis Emery, for the pretended sum of three hundred dollars; and this defendant says that no consideration whatever passed from the said George Servis Emery, to the said Nicholas, for the said conveyance, as this defendant believes, but that it was made by the said Nicholas to  
 40 protect his said estate in the said lands from his creditors, and that it was done with the full assent of said Lydia.

And this defendant further answering says, that all the pretences of the complainant's bill are set up at the instance of the said Nicholas Emery, and that the bill itself is filed at his request, and for no other purpose than to aid him in depriving his creditors of their just claims, and to protect his estate in the aforesaid lands from seizure for his debts; but this defendant submits to this honorable court, that the estate of the said Nicholas Emery in said lands and premises was upon the death of the said testator, a vested estate, and that by virtue of 10 said sheriff's sale and conveyance to this defendant, the estate of said Nicholas Emery in the said lands and premises became vested in this defendant, and that it cannot be divested by this honorable court.

And this defendant denies all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing, material for this defendant 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 this 20 defendant; all which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays that he may be hence dismissed with all reasonable costs and charges in this behalf most wrongfully sustained.

B. VANSYCKEL,

*Solicitor and of Counsel with said defendant.*

State of New Jersey, Hunterdon county, ss.—Andrew Vansyckel the above named defendant, being duly sworn, on his oath says, that the matters and things set forth in 30 the above answer so far as relates to his own acts, are true, and so far as it relates to the acts of others, he believes them to be true.

ANDREW VANSICKLE.

Sworn and subscribed before me, December 10th, A. D., 1862.

C. BARTLES, *M. C.*

Filed December 12th, 1862.

## CHANCELLOR'S OPINION.

The bill is filed on behalf of the wife of Nicholas Emery, to protect her interest in certain real estate devised to her by her father, George Apgar, deceased, against the claim of a purchaser of the real estate under executions, against her husband. The testator died on the 29th of July, 1846, seized of the land so devised to the complainant, and of which, as the bill alleges, she is now in possession. The bill charges that judgments at  
 10 law have been recovered against the said Nicholas Emery, and executions issued thereon, and that by virtue thereof the right, title, interest and estate of the said Nicholas Emery in the lands devised to the complainant, were levied upon, sold and conveyed to Andrew Vansyckel, the defendant, by deed dated the 16th of June, 1862; and that an action of ejectment has been commenced in the Supreme Court against the said Nicholas Emery, for the recovery of the possession of the said premises. The prayer of the bill is, that the plaintiff in  
 20 ejectment be enjoined against proceeding further in his action for the recovery of the said premises, and from instituting any new action for that purpose.

The first ground upon which the injunction is sought to be sustained is, that by the terms of the devise and the true construction of the will of the said George Apgar, the land was devised to the complainant for her sole and separate use, and that the husband has no interest or estate therein, which can be the subject of levy and sale at law, or by virtue of which she can be disturbed  
 30 in the possession and enjoyment of her estate. If this be so, it is obvious that the complainant has a valid and complete defence at law where the action is now depending. It appears by the answer that she has been admitted as a defendant to defend the action of ejectment in her own name. The defence, therefore, upon this ground is as available at law as in equity. It appears to me that if the fifth clause of the will be available for the

protection of the rights of the wife at the present stage of the controversy, it must be on the ground that it manifests an intent on the part of the testator that she should take the land for her sole and separate use, and that the husband has no estate therein. If the clause be susceptible of any other construction in favor of the complainant, I think it affords no ground for interfering with the investigation and determination of the legal rights of the parties in a court of law.

The second ground for the continuance of the injunction is, that the intention of the testator in regard to the provisions made for his widow, the mother of the complainant, cannot be carried into effect, if the complainant is removed from the premises. The bill alleges that the widow is aged and infirm, and requires the care and protection of the complainant; that it was the design of the testator not only to provide for his widow a home upon the farm, but to secure to her *at that home* the care and attention which a daughter only would bestow, and that the widow has a right to have her board and to receive this care upon the farm and from the complainant, and not elsewhere, or at the hands of strangers. So far as these considerations may serve to establish any *legal* right in the widow, they are available only in her behalf and at her instance. The complainant cannot, by her bill, enforce the legal or equitable rights of another. They can strengthen the case of the complainant only so far as they may serve to indicate the intention of the testator, as to the character of the estate which his daughter should take in the land devised. In this view it involves simply a question of legal title. It raises no equity in favor of the daughter.

The injunction was granted under an apprehension that the terms of the will, which are peculiar, and to some extent conflicting, created a trust in favor of the complainant, aside from the legal estate devised, which it was the peculiar province and duty of this court to protect, and in regard to which the rights of the complainant might be prejudiced by a recovery at law. I think this was a misapprehension of the case. There can be

no advantage derived from holding the case till a final hearing.

The injunction must be dissolved and the bill dismissed.

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DECREE.

This cause coming on to be heard before the Chancellor, in the presence of G. A. Allen, of counsel with the complainant, and of B. Vansyckle, of counsel with the defendant, Andrew Vansyckle, and the bill and answer  
 10 having been read, and the arguments of counsel heard thereon, and the court having taken time to consider the same, and the Chancellor now being of the opinion that the complainant is not entitled to the relief prayed in her said bill of complaint—

It is, on this fourth day of February, in the year of our Lord one thousand eight hundred and sixty-three, ordered, adjudged and decreed, that the injunction heretofore issued in this cause be dissolved, and that the complainant's bill of complaint be dismissed with costs; and  
 20 that upon service upon the complainant of a copy of this decree, and of the taxed bill of the costs of the said defendant, Andrew Vansyckle, and upon demand and non payment of the said costs, the said defendant be at liberty to apply for execution therefor, according to the practice of this court.

HENRY W. GREEN, C.

Filed February 4th, 1863.

## PETITION OF APPEAL.

Between

LYDIA EMERY, by her next friend,  
Wilson J. Hoffman, Appellant,  
and  
ANDREW VANSYCKEL, et al., Appel-  
lees.

On bill, &c.  
Petition of Appeal.

*To the honorable the Court of Appeals in the last resort in all  
causes of law.*

The humble petition of Lydia Emery, the appellant 10  
in the above stated cause, by her next friend, Wilson J.  
Hoffman, respectfully shows, that your petitioner finds  
herself aggrieved by a decree made in the Court of  
Chancery, by his Honor Henry W. Green, Chancellor of  
New Jersey, bearing date the fourth day of February, in  
the year of our Lord eighteen hundred and sixty-three,  
wherein the said Lydia Emery, by her next friend, Wil-  
son J. Hoffman, was complainant, and the said Andrew  
Vansyckel, and Ruhamah Apgar, and Nicholas Emery,  
and William Alpaugh, executors of the last will and tes- 20  
tament of George Apgar, deceased, were defendants, in  
this respect, to wit: that the said decree adjudges that  
the injunction theretofore issued in said cause be dis-  
solved, and that the complainant's bill of complaint be  
dismissed with costs.

And your petitioner humbly appeals from said decree  
upon the ground that the same is erroneous.

Your petitioner, therefore, prays that the said decree  
of the said Chancellor may be reversed, set aside and for  
nothing holden; and that your petitioner may have 30  
such relief in the premises as to this honorable court  
shall seem meet.

G. A. ALLEN,

*Solicitor and of counsel with appellant.*

M. BEASLEY,

*Of counsel with appellant.*

Dated June 29th, 1863.