

New Jersey Court of Errors and Appeals.

NOVEMBER TERM, 1885.

SAMUEL C. THORNTON,

Appellant,

and

ELLEN E. OGDEN,

Respondent.

} ON APPEAL
FROM DECRETAL
ORDER IN CHAN-
CERY.

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Brief of SAMUEL K. ROBBINS,
Sol'r for and of Counsel with Appellant.

STATEMENT.

This appeal is taken from a decretal order made in the Court of Chancery May 13th, 1885, on exceptions to the report made and account taken by S. Meredith Dickinson, Esq., one of the Special Masters of said Court, in pursuance of a decree on remittitur from this honorable Court.

The opinion of this Court, upon which the decree on remittitur was made, is reported in V Stewart, page 723.

Subsequent to this decision, to wit: July 12th, 1880,

a decree was made by this Court, and a decree on remittitur and order of reference thereupon made by the Court of Chancery, July 30th, 1880.

(Case pp. 84 to 86.)

The defendant afterwards applied to this Honorable Court to have these decrees amended so as to conform to its opinion, and an amendment thereof was ordered at March term, 1881.

10 (Case pp. 86-88.)

By the decree as amended it was ordered, that an account be taken, and that the defendant, Samuel C. Thornton, be charged in said account with one-third of the annual value of the property since the date of the first marriage of the complainant (February 7, 1861) till the death of her mother, (May 18, 1865,) and with one-half of the annual value of said property since the time of said death, and that the complainant, Ellen E. Ogden, be charged with one-half of the cost of such improve-
20 ments made by the defendant, Samuel C. Thornton, to the property as have added a permanent value to such property, with interest on such costs; and that the Master report and state the balance which upon such accounting appears by the evidence taken before him to be due from either party to the other.

(Case, pp. 86 to 88.)

Evidence had been taken before the Master by both parties before the amendments of the decree, and none was taken by either party afterwards.

30 (Case pp. 1 to 53.)

The Master, by his report, dated November 1st, 1881, certified and reported that there was due to the complainant from the defendant, on May 7th, 1881, for her share of the annual value of the property, up to that date,

\$3,131.22, and that there was nothing due from the complainant to the defendant for cost of permanent improvements.

(Case pp. 66 to 67.)

The amount thus reported by the Master as due to the complainant is by him explained to have been computed by taking as the annual rental value of the premises for the first period, the sum of \$400, and for the second period the sum of \$450, and deducting therefrom one-fourth for taxes, insurance and ordinary repairs.

(Vide "Mem." case, page 90, line 17 to 36.)

Exceptions were filed to this report November 7th, 1881.

(Case pp. 68 to 70.)

The conclusions of Vice Chancellor Van Fleet, upon the argument of these exceptions, were filed January 14th, 1885.

(Case pp. 71 to 73.)

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The Decretal Order, from which this appeal is taken, was thereupon made by the Court of Chancery on May 12th, 1885. It sustains the exceptions to the Master's report so far as they alleged that said report and account were erroneous in that they did not allow the defendant anything for the cost of improvements, and overruled all the other exceptions. The account was also restated by the Court of Chancery. By this decretal order and restated account the defendant is allowed as and for complainant's share of the cost of such improvements as have added to the permanent value of the property, \$700, as of January 1st, 1864, and \$300 as of January 1st, 1876; while the defendant, in addition to the amount charged him in the Master's account and report for complainant's share of the yearly value of the property, *is also charged*

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interest on such yearly sums as they accrue, making the amount due to the complainant \$3,023.81, with interest from May 7th, 1881, and \$3,751.13 on May 12th, 1885, the date of the order.

(Case, pp. 73 to 79.)

The grounds of this appeal from the decretal order are in substance as follows :

1. That the sums thereby allowed to the defendant, as
10 and for the complainant's share of the cost of such improvements as have added a permanent value to the property, are inadequate and are not ascertained from the evidence, or allowed with interest as they accrued, as directed by the amended decree.

2. That the annual sums thereby allowed to the complainant, for her share of the annual value of the premises, are unjust and larger in amount than the evidence warrants, and that the allowance of interest on them is contrary to the specific directions of this Honorable Court.

20 3. That the amounts thereby adjudged and decreed to be due to the complainant from the defendant on May 7th, 1881, with interest, and on May 12th, 1885, are much greater than the amounts shown by the evidence to be lawfully and justly due to the complainant.

(Vide Petition of Appeal—Case, pp. 81 to 83.)

ARGUMENT.

First—As to the allowance for permanent improvements.

30 By the decree of the Court of Chancery on remittitur as amended (Case, p. 87, l. 29–34), the language of which is identical with the opinion of this Court, (V Stew., p. 729), it is directed that the complainant be charged with

one-half the cost of such improvements as have added a permanent value to the property.

By the evidence, the defendant took title in 1858, and immediately began to improve the property, (Case, p. 43, l. 30-36.) Exhibits A and B, (Case, p. 54) contain estimates of the sums expended in improvements from 1858 to 1880, amounting altogether to \$7,793.00.

Exhibit A contains estimates made by Nathan H. Fowler, a carpenter and builder, well acquainted with the property, and the improvements therein specified are shown by his testimony (Case, p. 32, l. 32 to p. 33, l. 4); by the testimony of William Buzby, another carpenter and builder, (Case, p. 35, l. 20-35); by the testimony of Joseph Snyder, a contractor and builder, (Case, p. 37, l. 34 to p. 38, l. 18) and by the testimony of Samuel C. Thornton (Case, p. 43, l. 33 to 36) to have all been made by Dr. Thornton, to have all added a permanent value to the property, and to have cost as estimated. 10

Exhibit B contains estimates of improvements to the property, consisting mainly of the introduction of water and gas, and shown by the evidence of William Buzby, (p. 35, l. 35 to p. 36, l. 2); by the evidence of Joseph Snyder, (p. 38, l. 13 to 18); by the evidence of Thomas Gill, (p. 41, l. 2 to 4); by the evidence of John Worrell, a plumber and gas fitter, who did a large part of the work, (pp. 42 and 43) and by the evidence of Samuel C. Thornton, (p. 43, l. 33 to 35) to have all been made by Dr. Thornton, to have all added a permanent value to the property and to have cost substantially as estimated. 20

Exhibit D. In addition to this estimated cost of the permanent improvements to the property, there was offered in evidence an old ledger, having receipts pasted in it, and marked Exhibit D, which receipts cover a majority of the improvements specified in Exhibits A and B. 30
(Case, p. 44, l. 7 to 10, and p. 50, l. 26 to 30.)

Exhibit E was also offered in evidence, being a statement prepared from the receipts in Exhibit D, showing the cost of permanent improvements for which receipts had been taken.

(Case, p. 34, l. 22 to 31, and p. 44, l. 17 to 20.)

In addition to which the defendant testifies that one-third or one-fourth of the work was paid for by him in cash at the time, for which he took no receipts, and it will be observed that this testimony is corroborated by the evidence of John Worrell; that he did over six hundred dollar's worth of work for defendant in 1859, for a part of which he gave no receipt, (p. 42, l. 31 to 34); and by the fact that only \$81.16 appears by Exhibit E to have been receipted for by Worrell in that year.

The total amount of the cost of improvements which added a permanent value to the property, for which receipts were produced, as shown in Exhibit E, was \$5,617.40. Estimating that these receipts only show three-fourths of the actual cost, as testified by the defendant, we get as the total cost the sum of \$7,550, an amount corresponding very nearly with the estimates in Exhibits A and B.

No evidence whatever was offered by the complainant to rebut this evidence on behalf of the defendant.

Yet the Master ignored this evidence and reported that the defendant was *not entitled to anything* for complainant's share of the cost of improvements, seeking to defend his flagrant disregard of the decree and evidence by an argument annexed to his report which he designates as a "Mem," and which appropriately concludes with a reflection upon the tastes of "a large majority of the residents of Moorestown."

The Vice-Chancellor, after wrestling with the exceptions to this report for over ~~four~~^{three} years, arrives at the remarkable conclusion that the Master and the Court of

Errors are both wrong, the former for not having allowed anything, and the latter for having said one thing in its opinion and decree and meant another. After indulging in platitudes upon constitutional rights ~~arrived~~ ^{aimed} at a fair construction of the decree, he proceeds to give it a new construction, and then finds fault because the evidence had not been taken with his construction in view.

He says (Case p. 71) according to *my construction* of the decree, the complainant is only required to contribute to such improvements as have added to the permanent value of the property, *and her contribution in respect to them need only be to the extent that they actually increased the permanent value of the property.* Again (Case, p. 72). "The evidence in this respect is very meagre and unsatisfactory." "No evidence of market value of the property before or after improvements were made." Impossible in present condition of the proofs to do more than reach a probable or proximate result. "Anything like a certain and definite result is out of the question." He then concludes that defendant should be allowed \$1000 for the increased value which his improvements have added to complainant's moiety—\$700 as of January 1st, 1864, and \$300 as of January 1st, 1876.

The account was afterwards restated and a decretal order advised and made in conformity with these conclusions, *except* that in the latter the allowance to the defendant is said to be made for complainant's share of the *cost* of improvements, and not for *increased value.*

(Case, p. 77, l. 30 to 36.)

I respectfully submit

That the conclusion reached by the Vice Chancellor is unwarranted and unjustifiable guesswork.

That the decree needs no interpretation, but clearly and unequivocally directs the allowance of one-half the cost of such improvements as have added a permanent

value to the property, and not one-half the *increased value* which improvements have added, and that it admits of no such interpretation.

10 That is was the duty of the Master and the Court of Chancery to follow the plain direction of the decree, and allow one-half the *cost* of such improvements as were shown by the evidence to have added a permanent value to the property; that both erred in failing so to do, and that their deviation from that course could have been
 10 warranted only by an amendment of the decree by this Honorable Court, on application of the complainant.

20 That the fact that the defendant made these expenditures while he believed himself to be sole owner of the property, proves conclusively that they were made judiciously, and with the utmost good faith required of a trustee, and that this, together with the fact that the complainant had failed to assert any title or interest in the premises until long after most of the improvements were made was evidently considered by this Honorable Court when it formulated its opinion and decree.

20 Daniels' Chancery, V ed. No. 1242 and references.

That the evidence, while taken mainly with the intention of showing the cost of permanent improvements, rather than the increased value which they added to the property, does show a much greater increase in the permanent value of the complainant's moiety than the compensation allowed the defendant.

30 That it was impossible to establish by evidence taken in 1880 how much improvements made prior to 1865 increased the value of the property, and that the presumption is, it was increased to the full extent of the expenditure.

That by the evidence it is manifest that but for the moneys expended by the defendant in permanent improvements there would have been, on May 7th, 1881 nothing on the property worthy of the name of improve-

ments, and that its value would have been scarcely greater than the value of the lot.

That the receipts produced (Exhibit D) as scheduled in Exhibit E, (pp. 55 to 61) and sworn to have been taken upon the payment of a portion of the costs of the permanent improvements designated in Exhibits A and B (see evidence of deft. p. 44, l. 5 to 12) are, in the absence of any rebuttal testimony, *competent evidence* of such expenditures.

Daniels' Chancery, P. & P. * 1226. 10

Halstead v. Tyng, 2 Stew., 86, 89.

That proof of expenditures is admissible on an accounting, without the production of receipts, where loss or lapse of time prevents their production.

Daniels' Chancery, P. & P., * 1230 and references.

That the complainant should at least be charged from year to year with one-half the cost of permanent improvements, for which receipts were produced (Exhibit D) as per Exhibit E, with interest.

SECOND :

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As to the allowance for the yearly value of the property.

By the amended decree it was directed that the defendant be charged in the account with *one-third of the annual value* of the property since the date of the first marriage of the complainant till the death of her mother, and with *one-half* of the *annual value* of said property since the time of said death.

(Case, p. 87, l. 24 to 29.)

The date of complainant's first marriage seems to have been February 7th, 1861, while the death of her mother as agreed upon is May 18th, 1865. 30

The *annual value* of property is the *net amount* that can be realized from it yearly; usually the rent, less taxes, insurance and cost of ordinary repairs.

The testimony of the witnesses before the Master as to the amount of the *annual rental value* of this property is shown by the following tabulated statement thereof.

Evidence as to annual rental value.

		1st Period.		2d Period.	
		Lowest.	Highest.	Lowest.	Highest.
By Compt's. Witnesses.					
	William Collins,	\$500	\$500	\$500	\$500
	Samuel Stiles,			450	500
	Albert G. Jayne,	500	500	500	500
10	Caleb Poinsett,	400	500	400	500
	Charles F. Wells,	500	500	500	500
By Deft's Witnesses.					
	Clayton Lippincott,	250	250	300	300
	Isaac Collins,	250	260	325	325
	Joseph Lippincott,	250	250	350	350
	William H. Heulings,	250	250	300	300
	Reuben M. Stiles,			300	350
	Thomas Wilson,			350	350
	Jehu Jones,	300	300	300	300
	Nathan H. Fowler,	300	300	300	300
	William Buzby,	300	300	300	300
20	John W. Buzby,	300	300	300	300
	Joseph Snyder,	225	225	275	275
	Thomas Gill,	225	225	275	275
	Samuel C. Thornton,	225	225	250	250
		<hr/>	<hr/>	<hr/>	<hr/>
		\$4,775	\$4,885	\$6,275	\$6,475
			4,775		6,275
			<hr/>		<hr/>
No. of estimates 1st period, 30)		\$9,660		2d p'd, 36)	\$12,750
			<hr/>		<hr/>
Average,			\$322		\$354

Of the complainants witnesses,

30 All testified that they were *not familiar* with the property and had *not been on it for years*.

Four of them, Collins (p. 3, l. 15 to 18); Stiles (p. 8, l. 25 to 36); Jayne (p. 11, l. 19 to 25) and Harris (p. 18,

l. 16 to 20) testified that they were not on good terms with the defendant.

Only two of them, Collins and Stiles, profess to have any knowledge or experience in rental values, while Poinsett admits that he had no such knowledge, and questions the worth of his own judgment.

(Case, p. 13, l. 11 and 12, and l. 25 and 26.)

None of them have ever known a residence in Moorestown to be rented for any such sum as the figures they 10 named, except the furnished residence of Edward Harris.

All of them were deficient in one or more of the qualifications necessary to give force to their testimony.

Of the defendants witnesses,

All were property owners; nearly all were acquainted with rental values; all were well acquainted with this property and hence competent to judge about it. Twelve of them were unbiased and hence competent to give a fair and true judgment. Five of them were engaged in the renting of houses in Moorestown. Two of them, Clayton Lippincott and Joseph Lippincott, did an extensive business there in the renting of houses. One of them, Clayton Lippincott, had at that time been a Judge of the Court of Common Pleas of Burlington county for thirteen years, (Ev. p. 19, l. 20,) and his large experience and dealings with property in and about Moorestown, coupled with his well-known integrity and good judgment, made his testimony more valuable than that of all the complainant's witnesses combined. Most of them testify that it would require one-third or one-fourth of the rent for taxes, insurance 20 and ordinary repairs. These estimates vary comparatively little: For the first period the lowest is \$225; highest, \$300. For the second period the lowest is \$250; highest, \$350. Such an array of substantial, intelligent and 30

reputable witnesses is seldom found in one case. They possess the requisites necessary to develop the truth, viz: Knowledge of the rental value, knowledge of the property, and good unbiased judgment.

10 Upon this evidence the Master allowed as *occupation rent* for the first period \$400, and for the second period \$450, amounts \$100 in excess of the highest estimates made by the defendant's witnesses for those periods, and very little less than the highest estimates named by complainant's witnesses, giving as his reason for so doing, that in *his judgment* complainant's witnesses are entitled to as much credit as those for the defendant, and that none of them *seem* to have taken into consideration in forming their judgment that the property derived an additional value by reason of the use of the office connected with it by the defendant.

("Mem," Case, p. 90, l. 5-15.)

20 As to the rate of deduction from the rental value for taxes, insurance and ordinary repairs, viz: one-fourth, no particular exception has been taken, and it appears to be a fair rate of allowance.

I respectfully submit:

That, notwithstanding the general rule of non-interference with the judgment of the Master as to matters of fact, the Court of Chancery should not have sustained this allowance by the Master, and overruled the exception taken by the defendant thereto.

(Case, p. 69, l. 31 to p. 70, l. 3.)

30 Iszard v. Bodine, 1 Stock., 309.

Clark v. Count, 6 C. E. G., 322, 323.

That the conclusion of the Master upon the evidence as to yearly value, is plainly and clearly wrong and inexcusable.

That there is nothing in the evidence to warrant his *alleged discovery* that none of them had taken the rent of the office into consideration in making their estimates, but that on the contrary all or nearly all spoke of it, knew it was there, and presumably did consider it.

That the office is valuable to the defendant only as an enlargement of the dwelling of which it forms part, and that to allow for it a rent out of proportion to the rent of the balance of the premises amounts to putting a tax upon his professional skill to the extent of the excess. 10

That the truth as to the rental was established by the testimony of the defendant's witnesses—and that the annual sum allowed the complainant should not be greater than her share of the highest amounts testified to by them, to wit: for the first period \$300, and the second period \$350, with which sums the average of all the testimony so nearly corresponds, to wit: for the first period \$322, and the second period \$354, deducting from the amount determined upon as the rental value at least one-fourth for taxes, insurance and repairs. 20

As to interest on the yearly value,

Neither the opinion of this Court nor the decrees direct the allowance of interest to the complainant on her share of the yearly value.

Thornton vs. Ogden, 5 Stew., 723 to 729.

Case, p. 85, l. 27 to 31, and page 87, l. 25 to 30.

The allowance of interest to the defendant, on the complainant's share of the cost of improvements, is particularly mentioned in the opinion of this Court. It was *omitted*, however, from the first decree made, but afterwards inserted, on application of the defendant. 30

No application was made by the complainant to this Court for the amendment of this decree so as to allow her interest on her share of the yearly value until the conclusions of the Vice Chancellor were filed.

No such alteration was made in the decree when the matter of interest was brought to the attention of this Court by the defendant, nor has any been made in it since that time. The Master did not allow the complainant interest in his report and account, nor did the complainant except thereto.

10 The Vice Chancellor states in his conclusions that the rule seems to be that the Master is not to compute interest, but that it is understood that the question of interest is reserved for the further consideration of the Court.

(Case, p. 72, l. 36 ; p. 73, l. 4.)

How, then, let me inquire, was the Master to "state the *balance* which upon such accounting appears by the evidence to be due from either party to the other," as by the amended decree in this case he is directed ?

(Case, p. 88, l. 12 to 15.)

20 The Vice Chancellor makes the charge of *mala fides* against the defendant, and then "*seems to be clear*" that the defendant must account for interest. After several ineffectual attempts made by the complainant to this Honorable Court, at the suggestion of the Vice Chancellor, for a construction of its meaning as to interest or amendment of the decree, a decretal order was advised, in which interest was *allowed without being mentioned*. The account, as restated, shows interest to have been added, as does also the sum decreed to be due to the complainant from the defendant, but it is not mentioned in words in the order.

30 *I respectfully submit,*

That the allowance of interest to the complainant was unwarranted, and not in conformity with the true meaning of this Court, or the decrees.

That this Honorable Court absolved the defendant from

the charge of *mala fides* by its opinion when it said: "It is not necessary to impute bad faith or fraudulent purpose to the defendant; it is sufficient to say that in this matter he has not exhibited that *uberrima fides* that the rules of equity require," (V. Stew. 729), and that the allowance of interest on that ground is therefore untenable.

That this Honorable Court further absolved the defendant from such aspersions when it ordered that he be compensated for improvements, an order seldom or never 10 made, except where an *innocent person* has made them, supposing himself to be absolute owner.

Story's Eq. Jurisprudence, 12th Ed., Vol. 2, § 799a and § 1237.

Putnam vs. Richie, 6 Paige, 390, 405.

Greene vs. Biddle, 1 Wheat., 1.

That the supine negligence of the complainant in asserting her claim to the property (over fifteen years) was the probable and sufficient reason why interest was not allowed her.

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LASTLY,

As to the sum decreed to be due to the complainant from the defendant.

While it necessarily follows that if the decretal order is erroneous in the particulars above mentioned, the amount thereby decreed to be due to the complainant from the defendant on May 7th, 1881, is excessive, I think it *can be clearly demonstrated from the amount itself that injustice has been done to the defendant.*

By the *original decree* made in the Court of Chancery in 30 this cause (Ogden vs. Thornton, 3 Stew., 569,) which decree was afterwards reversed by this Court (Thornton vs. Ogden, 5 Stew., 723), the defendant was ordered to pay to the complainant the sum of \$3,000, with lawful interest from February 1st, 1861, without costs.

His Honor the Chief Justice in delivering the opinion of this Court, reversing that decree, said: "It is not improbable that this decree would approximate to an equitable adjustment," (5 Stew., 726), and the decree of reversal ordering this account to be taken allowed costs below to the complainant.

By the reversed decree the amount that would have been due the complainant on May 7th, 1881, is \$6,963.25, which sum would have been in full of all her claim upon the property, or the defendant. By the decretal order, from which this appeal is taken, the sum adjudged to be due to the complainant at that date (May 7th, 1881) is \$3,023.80, while the complainant still has a half interest in the property. Taking \$10,000 as the value of the property at that time, as is testified by the defendant, (Case, p. 48, l. 3 to 4,) and the only estimate as to its value, and adding one-half of this value (which is presumably a moderate estimate) to the sum allowed to the complainant, we get as the total value of complainant's interest at that date, the sum of \$8,023.80, or *a sum over one thousand dollars and over fifteen per cent. in excess* of the sum to which he would have been entitled by the reversed decree which this Court seemed to think approximated an equitable adjustment; in addition to which the defendant has had to pay the costs of the complainant, and still has to account to her for one-half the value of the property from May 7th, 1881, enhanced as it is in value by his large expenditures in improvements, for which it is apparent no adequate allowance has been made.

If the property was actually worth more than \$10,000 at that time, as it is probable it was and is, the greater and more inequitable this divergence becomes.

The annual value of property such as this is no criterion as to its intrinsic or market value, and few residences in a country town worth \$10,000 and upwards

can be rented to any advantage, or with anything like the return of a fair percentage upon the investment.

If the first decree of the Court of Chancery approximated an equitable adjustment, it is apparent that this decretal order is wide of the mark.

In conclusion I respectfully submit :

That the decretal order should be set aside with costs.

That the account should be again restated by or under the direction of this Honorable Court, and the complainant allowed therein as and for her share of the annual value of the property from February 7th, 1861, to May 18th, 1865, at a rate not greater than \$75 per year, (being one-third of an annual rental of \$300, less one-fourth for taxes, insurance and repairs,) and as and for her share of the annual value thereof from May 18th, 1865, to May 7th, 1881, at a rate not greater than \$131.25 per year, (being one-half of an annual rental of \$350, less one-fourth for taxes, insurance and repairs,) and that the complainant should be charged therein, as and for her share of the cost of improvements, which have added a permanent value to the property, *at least* one-half of such cost for which receipts were produced, as per Exhibit E of the defendant, with interest on such cost, and that a decree should be made for the balance found to be due from either party to the other on such restated account, with interest from May 7th, 1881.

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IN CHANCERY OF NEW JERSEY.

Between

ELLEN E. OGDEN,

Complainant,

and

SAMUEL C. THORNTON,

Defendant.)

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Examination of witnesses in the above stated cause, 20 taken at the William Penn Hotel, at Moorestown, Burlington county, New Jersey, on the third day of December, eighteen hundred and eighty, before S. Meredith Dickinson, one of the Masters and Examiners of the Court of Chancery, in the presence of J. Augustus Fay, Jr., of counsel with the complainant, and of Frederick Voorhees, Esq., of counsel with the defendant.

It is agreed between the counsel of the respective parties that the date of the death of Mary Thornton is May 18th, 1865.

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TESTIMONY.

WILLIAM COLLINS, a witness produced on behalf of the complainant, alleging himself to be conscientiously scrupulous of taking an oath, and being by me duly affirmed according to law, saith :

I reside at Moorestown, and have resided there for forty-two years; I was acquainted—well acquainted—with Dr. S. C. Thornton, Sr., in his lifetime; I know where his homestead is situate; in the past twenty-five years I have been in the business of surveying, conveyancing and settling estates once in a while; I have had some experience in selling and renting real estate; I have known the
 10 property now occupied by the defendant since February, 1861, by living in the town and passing it almost daily; the property consists of a frame dwelling, three stories high, 18 x 48 feet, and a dining-room and kitchen attached in the rear, 18 x 21 feet; there is also attached to the east side an office and shed, 12 x 36 feet; this description of the buildings is taken from a survey made by me June 12th, 1857; there is also a piazza 12 x 26 feet; barn, 22 x 32; wagon-house, 12 x 25—all by the same survey; there have been no additions made since that I can testify to, but I have no doubt there have been.

20 Ques. Have you formed any judgment as to what would be the average rental value of the property, as you knew it from your survey, with a tract of about six acres of ground, for the past twenty years?

Ans. That is a pretty hard question to answer, but I judge that about \$500 a year would be a fair average rental. I am familiar with the boundaries of the Thornton homestead; in my estimate of the rental value I include that whole property.

Being cross-examined, says:

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I am now engaged in renting properties to a certain extent; I believe I have but three properties I am agent for; they are all in Moorestown; the highest rental I am now receiving for any one of them is \$144 per year; I have never rented a house in Moorestown as high as \$400 a year; nor for \$300; I know of no dwelling-house here

now renting as high as \$500 a year; houses of that character are generally occupied by their owners. (Counsel objects to the last clause of the answer as no answer to the question, and volunteered.) I do not know of any house in Moorestown now renting for \$400 a year. (Mr. Fay suggests that it be added—"of his own knowledge.") I know of one house that rents for \$300 a year; that is the only one I know of that rents for that amount; I gage the rental value of the Thornton property by the size of the property—by the location; I cannot say when I was over or on the Thornton property; I was there the last time when the barn was burned; I should judge that was about the neighborhood of twenty years ago; I don't know that I have been on it since; I speak to Dr. Thornton, but he does not speak to me. 10

Ques. There has been no social intercourse between you for some time past, has there?

Ans. There has not; I am a property-holder; I live in my own house; at the present time I think the Thornton property would rent for \$500 a year at least; I know the Dr. Spencer place at Moorestown; I do not know what it sold for a few years ago; I cannot say that it did not sell for \$14,000; I do not know anything about it; I do not know how many acres of land there are to the Spencer property; I cannot answer whether or not there are twelve or fourteen acres to it, although I surveyed it once; I suppose I have the notes of that survey, but I have not got them here; I do not know what that property rents for. 20

Ques. Don't you know that it was rented, some four or five years ago, all furnished, at \$400 a year? 30

Ans. I do not know anything at all about it.

Ques. In your judgment it would rent for as much as the Thornton property, would it not?

Ans. I should suppose there would be but very little difference in the rental.

Ques. Would you be willing to take either of the properties above named for three years, unfurnished, at \$1,500, and take the chances of renting the same?

Ans. I would not, for I am not in that business.

Ques. Would you take them for \$1,200?

Ans. I would not take them at all.

Ques. Would you not take them for \$100 for the three 10 years, with privilege of renting them?

Ans. I have answered the question; I would not take them at all; I make my estimate partly from my own ideas and partly from comparison; I know nothing of the improvements put on the property since the fire, except that I have seen the barn that replaced the old one; I do not know that I have seen the carriage-house; I have seen a building there, but I did not know it was a carriage-house—thought it was a barn; I do not know of any other building there, except the barn and house, at 20 this time; I do not know that any addition has been put to the house for the last twenty years; my survey was made June 12th, 1857; I cannot tell when the barn was burned.

Ques. Do you know of any other property in Moorestown, with only a house and barn erected on it, and six acres of land, that will rent for \$500 per year?

Ans. I know of a double house, just below where I live, without any barn; each end of that house rented, until very recently, at \$20 a month; I mean to say, the whole property rented for \$480 a year; one end rents for 30 \$20 a month now; the other end is now occupied by the owner; that property, about two years ago, rented for \$600 a year—when it was first built; that property consists of two dwelling-houses built together.

Ques. What is the annual amount of the taxes assessed on the Dr. Thornton property?

(Counsel for complainant objects to this question be-

cause it is not a proper subject matter of cross-examination, and because it is taking parol evidence of a matter which is of public record.)

Ans. I have no means of knowing—therefore I cannot answer.

Ques. What amount per year would be required to keep the property properly insured?

(Counsel interposes objection to this question, as not a proper subject of cross-examination.) 10

Ans. I cannot say, unless I know what amount of insurance is to be put on the buildings.

Ques. Suppose they were insured for \$4,000?

Ans. It would cost, in Mercer County Insurance Co., about \$11.20 a year, allowing that there would be one assessment in ten years on the note.

Ques. How much, in your opinion, will it require per year to keep Thornton property in ordinary repair?

(Counsel objects to question for same reason as above.) 20

Ans. For a term of ten years, I suppose \$50 a year would keep it in ordinary repair.

On re-examination-in-chief.

Ques. Did you, in 1857, insure the Thornton property?

Ans. (I wish here to correct my testimony: it would cost \$8.50, not \$11.20, for insurance per year upon \$4,000.) I did, for \$2,775; that was a low insurance for the property; I mean a low valuation; I know the Harris property in Moorestown; that property is located very similar to the Thornton property, being adjoining; that property has been rented at some time during the past few years, but I do not know for what amount; I am acquainted with Alfred H. Burr's property; it would

rent for about two-thirds as much as the Thornton property, I suppose ; there is very little ground to that ; I am acquainted with William Buzby's property ; that is a very fine property, and ought to rent for as much as the Thornton property, although there is only a small lot of land.

10 Re-cross-examined.

The estimate for insurance I gave was in a mutual company, whose members are required to pay assessments in some cases of loss ; I do not know how much it would cost to insure \$4,000 one year in a company not mutual.

Ques. What, in your judgment, will it cost, per year, to keep the Thornton premises insured, in a company not mutual for five years ?

20 (Counsel for complainant objects for same reason as above.)

Ans. I cannot tell ; it would probably cost \$20 a year.

Re-examined-in-chief.

I have no actual knowledge what the premium would be in a company not mutual, upon an insurance for five years on \$4,000.

Re-cross-examination.

30 Of the buildings I have mentioned as being on the property at the time of my survey, the barn, 22x32, and I believe the wagon-house, 12x25, were burned since ; the rest are there still ; I was not subpoenaed to come here to-day.

(Counsel for complainant objects to the last answer as not a subject of cross-examination.)

WILLIAM COLLINS.

Affirmed and subscribed before me, this third day of December, A. D. eighteen hundred and eighty.

S. M. DICKINSON,
M. C.

SAMUEL STILES, a witness produced on the part of the complainant, alleging himself to be conscientiously scrupulous of taking an oath, and being by me duly affirmed, says : 10

I reside in Moorestown, and have resided there forty years or more ; I was acquainted with Dr. Samuel C. Thornton, Sr., during his life ; I know where he resided at the time of his death ; his son, the defendant, now resides there ; since my residence in Moorestown I have been collector and assessor of the township ; have had some little opportunity of knowing the value and rental value of real estate ; Dr. Thornton, Sr.'s, property is a very nice property ; it is on the south side of the main street, and is very desirably located.

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Ques. What is your judgment of its rental value ?

Ans. I would have to base my answer to that question by comparing that property with others ; otherwise it would be a hard question to answer.

Ques. Please, then, give us your opinion, based on such comparison ?

Ans. I should say for from \$450 to \$500 a year.

Ques. Taking a period of nearly twenty years, extending back to July, 1861, what, in your judgment, would be the average annual rental value ?

Ans. I do not pretend to be well posted so far back as 30 that, as to its rental value in 1861.

Ques. Can you give us an opinion extending back for fifteen years ?

Ans. Not to much of a nicety.

Ques. How far back can you give us a judgment as to the rental value ?

Ans. About eight or ten years.

Ques. In the past eight or ten years what is the average rental value of the property?

Ans. Fully as much as I have first said.

Cross-examination.

10 Ques. Do you include in that estimate ordinary repairs, taxes and insurance, or is that the amount that the property would rent for in your judgment?

Ans. I give my judgment of the rental value without any deductions.

Ques. You say the property would rent for from \$450 to \$500?

Ans. Yes.

Ques. Do you mean by such renting for the landlord to pay the taxes?

Ans. I did not mean for the tenant to pay them.

Ques. Do you mean for the tenant to pay insurance?

20 Ans. No; nor for the tenant to keep up repairs; I am a landholder in a small way, and a very small way, too; my business is farming; I do not own a farm; I rent some land by the year; I have five acres now; I do not follow the business of renting houses.

Ques. Are you and Dr. Thornton on good terms at the present time.

Ans. We are not on speaking terms.

Ques. Were you on good terms with the present Dr. Thornton's father?

30 Ans. I cannot say but what I was, personally; we had a little law suit; he sued me as one of the executors of an estate; we talked friendly after that; I called on him when one of my children was sick; it has been one and one-half or two years since I was on the Thornton property; I was there, as I now remember, three or four months ago, to see the doctor for my sister, who was sick;

I have not been to any place on the premises for years past, except to the office; I was there, about three years ago, looking at a strawberry patch; my recollection is that all of the buildings, except the dwelling, have been burned since the elder Dr. Thornton died; my idea is that all the buildings, except the dwelling, have been replaced by the defendant; I do not know that he has made additions to the house; I did insure for Dr. Thornton, but I cannot say what buildings or what property. 10

Ques. Did you not insure the barn on this property (I mean the barn erected there by Dr. Thornton, Jr.) for \$1,200?

Ans. I cannot answer that question; it is very likely I did. I was not subpoenaed to come here; I came here at this gentleman's (meaning Mr. Fay) request; I do not know his name.

Re-examination-in-chief.

I have not been on speaking terms with Dr. Thornton 20 since the time I was examined in this suit once before; prior to that time we had been quite friendly together.

Ques. Who took the initiative in breaking off those friendly relations?

Ans. Dr. Thornton; I have no personal interest in this suit.

Re-cross-examined.

I think there was no counsel here representing Dr. Thornton on the occasion I refer to when I testified be- 30 fore; I understood that Voorhees, of Camden, was his counsel, but do not know why he was not here; I do not know that Mr. Fay insisted on proceedings in counsel's absence; I know they went on with it.

SAMUEL STILES.

Affirmed and subscribed before me, this third day of December, eighteen hundred and eighty.

S. M. DICKINSON,
M. C.

The further examination of witnesses was thereupon adjourned, by agreement of counsel, to Friday, December 10th, 1880.

Examination resumed in the presence of the respective counsel, Friday, December 10th, 1880.

ALBERT G. JAYNE, a witness produced on the part of the complainant, being duly affirmed according to law, saith :

I reside in Moorestown ; have resided here thirty-five years ; came here in 1845 ; I was acquainted with the father of the present Dr. Thornton, defendant, and am acquainted with the homestead upon which he resided at the time of his death ; I do not know of any property in Moorestown more desirably situated than that ; have always considered it one of the prettiest places here.

Ques. What, in your judgment, would be the fair, average annual rental value of that homestead property for the past twenty years, since February, 1861, to the present time ?

Ans. I should think it would be worth at least \$500 a year.

Cross-examined.

I am a dentist ; have been practicing dentistry for forty-five years ; did not graduate at any institution ; there was none such in this country to my knowledge for a good many years after I commenced practice ; I was last on the premises when some repairs were being made thereto a few years ago ; I do not know how many

years; I went to see one of the carpenters there; it is more than ten years ago I think.

Ques. Was it not about twenty years ago while the doctor was putting some addition to the house?

Ans. I did not see any additions, I saw some repairs; I cannot tell how many years; it was since his father's death; I have not been on the premises since; have had no occasion to go there; I was there the last time for 10 about twenty minutes, not more I think; I did not go to any part of the place then except the house. (Witness desiring to correct his testimony, says.) I was at a fire on the premises, but I do not remember when that was, whether before or since.

Ques. Have you been on the premises any time, except the two above mentioned, within twenty years last past?

Ans. Not that I remember.

Ques. Are you and Dr. Thornton on speaking terms? 20

(Objected to as not the subject of cross examination.)

Ans. We are not; I was on speaking terms with his father before his death; his father spoke to me; we had a little difficulty at one time, but we both got over it.

Ques. Do you follow the business of renting property here in Moorestown?

Ans. I do not make it a business to rent people's houses; I am the agent of one house besides my own, which I rent; I do not know of any house in Moorestown that rents for \$500 a year; I cannot call any one to mind now. 30

Ques. Would you be willing to pay \$2,500 for this property for five years, and take chances of renting it, without furniture, you to be entitled to the rents?

Ans. It is not my business; I would not take it of course; I wouldn't take it for \$1,600; I would not take it that way at any price.

Re-examined-in-chief.

Ques. If you were the owner of the Thornton homestead, containing near six acres of ground, and the buildings and out-buildings thereon, would you be willing to rent them for less than the estimate you have given of their rental value, if from that rent you were
10 obliged to pay taxes and repairs?

Ans. No, sir.

Re-cross-examined.

Ques. What, in your judgment, would the annual repairs of that property amount to?

(Objected to as not a subject of cross-examination, or a subject-matter of this inquiry.)

Ans. I can't say; I don't know what condition the
20 property is in.

Ques. Would it amount to \$100 a year?

Ans. I don't know; I can't tell if it would amount to \$50, nor any amount; I estimate the yearly rental value at \$500; the owner, of course, pays taxes and ordinary repairs; that is the customary way; that is, supposing the property to be in good repair when he takes it; I would not be willing to take this property for the next year at \$300; I would not take it at any price; I don't do that kind of business.

A. G. JAYNE.

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Affirmed and subscribed before me, this 10th day of December, 1880.

S. M. DICKINSON,
M. C.

CALEB POINSETT, a witness produced on the part of the complainant, being duly affirmed, saith:

I reside in Moorestown; have lived here about thirty-five years last past; was somewhat acquainted with defendant's father; I know the homestead where he lived and died; I think it is very desirably located for a place of residence; in twenty years past have passed the homestead frequently; on an average once a week, either on one side or the other of the main street.

Ques. What, in your judgment, would be the average annual rental value thereof for the past twenty years? 10

Ans. I don't know that my judgment in this matter is worth much; somewhere in the neighborhood of from \$400 to \$500 a year; I mean for the last twenty years; an average.

Cross-examination.

Am in brick-making business, about a mile from Moorestown; have been engaged therein since 1846; the first four years, from 1850 to 1854, I rented a house to live in myself; never was in business of renting houses to others; do not know of any house here that rents for \$500 a year; there may be such; I do not know; don't know the rent of any of the houses, particularly; don't know of any renting for \$400; don't know of the general rate of renting in Moorestown; I take an average, and fix the rental value of this homestead by what I think it ought to bring; it passed through my mind what Harris' property had brought for four months, but I did not have on my mind any other property in particular; am not very particularly acquainted with the premises in question; 30 have been in the house a few times; have been there since the old gentleman's death; I guess I was in the office part of the house; have not been in the house to my recollection; have been as far as the door of the brick barn, and looked in, I think.

Ques. How much would you be willing to pay for the

property for the next year, unfurnished, and take the chances of renting it?

Ans. I should not want it at any price; I don't want the property; I sometimes speculate a little.

Ques. On a speculation, what would you be willing to take the property for, for one year, unfurnished, with the privilege of renting it?

10 Ans. I can't fix on any sum at all; I have no idea of taking it at any price; I would not like to make any offer that way; I don't want it at any price; not at \$300, nor for any price; I am only stating my opinion, broadcast, anyhow; the present yearly value, taking the twenty years, I fix at \$400 or \$500; I had talked this matter over very little before I came here; to-day I talked with Wm. Collins.

Ques. Did you talk it over with any one else besides Wm. Collins within the past two weeks, and if so, with whom?

20 Ans. I can't say that I talked it over, but I heard it talked over.

Ques. By whom did you so hear it talked over?

Ans. By Samuel Stiles and 'Squire Lippincott and Wm. Collins; no one else to my knowledge.

Re-examination-in-chief.

Ques. Tell us what the conversation was between you and Wm. Collins, and where it took place?

30 [Objected to as hearsay, and with a party who has already been examined here.]

Ans. Just this side of Burr's stone-walk; I happened to meet W. Collins; he asked me what I thought that property (meaning the homestead) would be worth for twenty years past? I told him I didn't know, hesitatingly, nor give an idea; I said I supposed I could tell some-

thing about it, taking time to consider; I then said, how much land do you suppose there is there? he said he thought there was six acres; I then just considered it, and named \$500 a year for the twenty years past; I heard, afterwards, Samuel Stiles and 'Squire Lippincott talking at the 'Squire's office; Wm. Collins was not there at that time.

Re-cross-examination.

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Ques. What annual amount would it take to keep the property in ordinary repair?

[Objected to as not subject of cross-examination.]

Ans. That would depend upon the order it is in now; I don't know anything about what kind of order it is in.

Ques. If it is in ordinary repair, how much would it take per year to keep that property in such repair?

[Objected to as not proper subject of cross-examination, and because this witness has no knowledge of its present 20 condition.]

Ans. I don't know anything about the property, except from passing by it—except as it appeared to me along the road; I don't know the size of the house; I don't know the size of the barn; I have no idea what it would take to keep it in repairs; out of my estimate of the rental value the owner is to pay the taxes and ordinary repairs; William Collins served the subpoena on me today; I have not been paid my fee.

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CALEB POINSETT.

Affirmed and subscribed before me this 10th December, A. D. 1880.

S. M. DICKINSON,
M. C.

CHARLES F. WELLS, being duly affirmed, saith:

I reside in Moorestown; have resided in the town about thirteen years; before that, resided a short way out of town; have resided here and near here forty-nine years; am a carpenter. I know the property of the defendant somewhat; have been there, and have worked there in his father's time. I worked there one day since his father's death.

Ques. What, in your judgment, would be a fair annual rental value of that homestead for the past twenty years?

Ans. It ought to be worth \$500 a year.

Cross-examination.

I am not able to answer whether or not it could be rented for that, from year to year, without furniture; I would not take it myself for any consideration; I am not in the business of renting to rent again.

Ques. Will you take that property at \$400 a year, for five years, with privilege of renting it?

Ans. I have already answered that question.

Ques. (Question repeated.)

Ans. I would not take it at any consideration; am not in the business of renting properties; would not take at \$400 or any other price; I have already answered that question, and shall not answer it any further.

Ques. Would you not take it for five years at the annual rental of \$5, with privilege to rent it and collect and receive all the rents?

Ans. I consider that baby play, and that I have answered the question twice, and that that is the end of it; have had little experience in the business of renting houses; have rented a couple of small houses for a year or two; I rent them for myself; never had charge of houses to rent for others, that I recollect. It is five or six years since I was on this property, I think—no,

I was on it about two years ago ; about two years ago I went into the side gate, and saw two men working there I wanted to see—and then went out again ; did not then make any examination of the property—did not go there for that purpose. I have not been inside the house for fifteen years or longer.

Ques. You state you consider the yearly rental of the property is \$500; do you now say that you would not 10 pay \$5 per year for the right of receiving the full rental value of that property ?

Ans. I said once I would not take it on any consideration, and that covers the whole ground. I don't suppose I could get it for \$5, nor a good many \$5.

Ques. (Question repeated.)

Ans. I have answered it three or four times ; I have answered that question. I don't refuse to answer ; I have already answered.

Ques. Please answer the question, yes or no ?

Ans. I have answered that question, and I shall not 20 answer it any further.

C. F. WELLS.

Affirmed and subscribed this 10th of December, 1880.

S. M. DICKINSON,

M. C.

EDWARD HARRIS, a witness produced on the part of the complainant, being affirmed according to law, saith :

I live in Moorestown, next door to the homestead of Dr. Thornton ; the property where I reside belongs to the 30 estate of Edward Harris, deceased ; my mother is living ; she is in Italy ; my father died in June, 1863.

Ques. Since his death has the property at any time been rented ?

(Objected to.)

Ans. It has ; it has been rented four times ; first time, in 1869, to Samuel Scattergood, for four months, furnished, for \$900 ; second time, in 1873, to same person, for four months, furnished, for \$800 ; third time, in 1875, about five months during the summer, to Edward Green, furnished, for \$600 ; fourth time, am not sure about the
 10 last date, think in 1877, to Joseph H. Kaighn, for a little over three months, for \$300 ; my mother was abroad during the last renting, and it was rented before my marriage ; I am now occupying the house myself with my family.

Cross-examination.

Have been married two years ; am twenty-nine years old, a little over ; am not on speaking terms with the defendant, and have not been for many years past, say fifteen or twenty years ; our families don't speak ; Mr. Fay has been at my house ; Mrs. Ogden, the complainant, is
 20 now staying at our house, visiting there since yesterday ; we rented the house furnished ; all the furniture, including everything that was there when we removed ; stable and carriage-house also ; these gentlemen came up from the city to spend the summer months.

EDWARD HARRIS.

Affirmed and subscribed before me, this tenth of December, 1880.

S. M. DICKINSON,
 M. C.

30 Counsel announces that his testimony-in-chief on the part of the complainant is now closed.

The examination of witnesses in this case on the part of the defendant is adjourned to Thursday, the thirtieth December, instant, at Mr. Voorhees' office, Mount Holly, at 9.30 A. M.

The further examination of witnesses in this case on the part of the defendant is adjourned at the request of the counsel of the defendant, (the counsel of the complainant being present), to Friday, January 14, 1881, at 9.30 A. M., at the office of F. Voorhees, Mount Holly.

The examination in this case resumed this fourteenth day of January, 1881, in the presence of the counsel of the respective parties, at the hotel of Joseph Regan.

CLAYTON LIPPINCOTT, a witness produced on the part of the defendant, being duly affirmed and examined by Mr. Voorhees, of counsel with defendant, saith :

I reside at Moorestown ; have resided there and in the neighborhood about forty-five years—in the village about thirteen years ; am acquainted with the property late of Dr. Thornton, deceased, and have been as long as I have lived in the neighborhood ; I have been a farmer most of my life ; first became acquainted with the property in 1834-5, when teaching school in the neighborhood ; am now a Judge of Court of Common Pleas of Burlington, and have been for thirteen years ; I have, to a considerable extent, been engaged in the renting of properties and houses ; was acquainted with the late Dr. Thornton ; the property he died seized of is two hundred feet or upwards on the street, and embraces, I think, about five or six acres ; there are a mansion house and other buildings on it ; the buildings were not in very good repair when the doctor died ; the yearly rental value of that property between the years 1861 and 1865 is about \$250 ; the cost of taxes, repairs and insurance for that period for that property would be about one-fourth of the yearly rental ; the fair annual yearly rental value from 1865 to the present time is about \$300 a year, and one-fourth of this would be required for insurance, taxes and ordinary repairs ; there is a mansion-house now on the property, a

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brick barn, a wagon-shed, ice-house, cow-shed ; there may be some other small buildings ; I do not recollect now ; I was over part of the property not long since ; the defendant has erected a barn and wagon-shed, and made some additions to the house ; gas and water have been put in since the elder Dr. Thornton's death.

10 Being cross-examined, says :

When I give the yearly rental value for 1861 to 1865, I speak of the property in its condition when the defendant's father died.

Ques. How much, in your judgment, if the improvements were made during that period, would they have increased the annual rental value ?

Ans. If all the improvements were made at that time, they would have increased the rental value to \$300 a year ; I do not know from what source the gas was supplied to the mansion.

Ques. Did you know Mr. Harris, the neighbor of the defendant, who died ?

Ans. He died ten or twelve years ago, probably ; I do not recollect precisely ; I do not know whether or not the gas was introduced before the first marriage of complainant ; I do not know whether the gas is in the house now or not ; I cannot say I have ever seen the gas burning in the house ; I cannot say from whom I got my information about the gas ; it may have been from the doctor ; I have seen the water-pipes and water fixtures in the house ; I think I have seen the tank ; I do not know when the water was put in the house, nor who paid for it ; I was administrator of Dr. Thornton, deceased.

Ques. Did you not, for some years, pay the taxes on that property, out of the personal estate of Dr. Thornton, deceased ?

Ans. I do not recollect ; I paid it on the outlands, but

I do not remember whether I paid any on the homestead; I consider this property eligibly and desirably located; I have never known this property to be offered for rent since Dr. Thornton bought it; I knew it when it was rented before the doctor, deceased, bought it; it was rented about the years 1834 and 1835.

Ques. Do you base your valuation of rental value in part from the rent which it produced at that time?

Ans. I do not know what it rented for at that time; do not know who the owner was then; a man by the name of Thomas Mason lived there at that time; I do not think he was in any business; it was not occupied as a gentleman's residence; it was occupied, according to my recollection, by a private person of small means, as a residence; I was then twenty-five years old.

Ques. What experience have you had in the renting of property in the village of Moorestown, since your residence there?

Ans. My business has been settling estates, having charge of property and renting it, pretty much all the time during that period.

Ques. State what properties, on the main street in Moorestown, of the size and dimensions of the property in question, you have had charge of renting during that time?

Ans. Not any. I do not know any property similarly situated to this, which has been rented during that period; I reside on the main street in Moorestown, above the William Penn hotel, but on the opposite side of the street to the hotel; I have rented part of the time and owned part of the time.

Ques. What is the highest rent you have known to be paid in Moorestown for a residence during the thirteen years you have resided in the village?

Ans. \$420. That property belonged to Mrs. Hatch, and was rented for that about four years ago; it is situ-

ated at the east end of the village, and about one-third of a mile from the Thornton property; not so near the center of the village as the Thornton property; it rented as a private residence; I had the renting of it; I know the property immediately opposite Wm. Penn hotel Ebenezer Roberts resides there.

10 Ques. Which, in your judgment, is the more valuable property for purposes of renting—that or Dr. Thornton's?

Ans. Roberts'; Roberts' property would rent for more money; it is in better condition; there is not near so much ground connected with it; there is about 3 acres, or perhaps more; there is a barn on the Roberts property, and other out-buildings; there were barns, &c., on the Thornton property when the late doctor died.

Re-examined-in-chief.

20 The property referred to—Hatch property—was rented for \$35 a month for a short time; the Thornton property appears from the street to have a great deal more rental value than it actually has upon examination; it is a beautiful location—a beautiful lot; very few properties in Moorestown are so well situated; the mansion in question is not conveniently arranged for a family residence; the communication from the sitting-room to the dining-room is by a short stairs—four or more steps; from the dining-room to the kitchen there are several steps; it makes it very tiresome passing from one part of
30 the house to another; I consider the whole thing very awkward; I mean the house; it does not furnish a great amount of accommodation, considering its outward appearance; appearances show that it was not well built; the house is not such a one as is suitable for such a fine lot.

Re-cross-examined:

I never measured the size of the main building; I suppose the main front building is about forty-five by eighteen; there are two rooms and a hall on the first floor of the main building; on the west of the main building there is a covered piazza about ten feet wide, eighteen feet deep, and returns around the rear; there is, on the south, a dining-room, built by old Dr. Thornton; the main building is three stories high; the addition 10
back is eighteen by twenty, about, and, I believe, two stories high; to the east of the addition there is a kitchen that is two stories high; to the east of the main building there is an office; it was there in the old doctor's time; it is about twelve or fourteen by eighteen; the main building contains two good-sized rooms, a hall, and a bath-room; the main building has six rooms besides the bath; I do not know how many there are in the second story of the addition.

Ques. While Dr. Thornton supposed himself to be the owner of all the property, did you ever hear him complain of the inconvenience of the house, or that it was too small for his family? 20

Ans. I did not.

By the Master :

There was no change made in the general plan of the house, to my knowledge, by the repairs; I think there were some changes made, but I cannot designate them.

CLAYTON LIPPINCOTT.

Affirmed and subscribed, this 14th January, 1881. 30

S. M. DICKINSON,

M. C.

ISAAC COLLINS, a witness produced on the part of the defendant, being duly affirmed, saith :

I reside and have resided in Moorestown about four-

teen or fifteen years ; have always lived in the neighborhood ; have been a farmer all my life ; I knew the elder Dr. Thornton, he was my family physician ; I know the property in question in this suit ; am acquainted with properties generally in Moorestown, and know something about their rental value ; the Thornton lot is one of the handsomest in the village ; the mansion

10 makes a very imposing appearance from the street, but does not bear examining very well ; Dr. Thornton has had improvements made since he has been the owner ; he has had a tin roof put on ; he has had a new barn built, and some small buildings ; I have been on the property at different times ; I have not been in the business of renting properties ; between 1861 and 1865 rents were much lower than they have been since then ; I suppose the average yearly rental value during this period was from \$250 to \$260 ; I suppose it would

20 pay insurance, taxes and ordinary repairs ; the average yearly rental value between 1865 and the present is about \$325 ; of this, fully one-fourth would be needed for insurance, taxes and ordinary repairs ; I think Judge Lippincott's description of the property, as I heard him give it, is substantially correct ; my recollection is that the appearance of the office from the street is the same as it was sixty years ago ; I think it was a new house sixty years ago, but that is only my impression.

Cross-examined.

30 Dr. Thornton, Jr., has been my family physician since his father's death ; my attention was first called to this question of forming my judgment as to the rental value of this property while this examination was going on at Moorestown, and in conversation with William Collins and Samuel Stiles, two of the witnesses in this suit.

Ques. Had you formed any judgment at that time?

Ans. I had not until I was in conversation with them; Moorestown is a flourishing place; Dr. Thornton has a large practice there as a physician; this property is a very suitable one for a gentleman in his profession; I think I have had conversation with Dr. Thornton on the subject of the rental value of his property since the conversation with Collins and Stiles; I have been at his house; I never knew this property to be offered for rent; not any rent offered for it for the past twenty years; I formed my judgment, measurably, of the rental value of this property, from comparing this property with others. 10

Ques. Did you have any actual knowledge, except from hearsay, of the rental values of the properties with which you compared it?

Ans. I have not; I do not know that I can say what property I compared it with; I did not talk the matter of the rental value over with Dr. Thornton; he did not ask me what my judgment was, nor anybody in his presence, I think. 20

Re-examination-in-chief.

The location of that property is a pleasant one for anybody as a residence; I went to the house, within the last few weeks, and looked over the property for the purpose of forming a judgment as to its rental value—at the request of Dr. Thornton; by hearsay as to rental values I mean what I have heard from the landlord and from the tenant.

ISAAC COLLINS. 30

Affirmed and subscribed before me this 14th day of January, A. D. 1881.

S. M. DICKINSON,
M. C.

JOSEPH LIPPINCOTT, a witness produced on the part of the defendant, being duly affirmed, saith:

I live at Moorestown; have resided there fifty-six years; am a justice of the peace, and have been for twenty years; I was formerly in tailoring business; have been agent for a number of properties there to rent; have had the renting of properties for eight years; I am
 10 acquainted with the Dr. Thornton property; have known it since I can remember anything; have a distinct recollection of it for forty-four years; the appearance of the house from the street has not changed; it was considered an old house then, and hardly tenatable; it was occupied, I think, by two or three poor families; I don't think there was any improvement in the property until the elder Dr. Thornton bought it; I cannot remember when he bought; it must have been before I was twenty
 20 years old; when Dr. Thornton died it had been improved by him somewhat; the present Dr. Thornton made considerable improvements after his father's death; I think he made an addition to the house; I suppose from 1861 to 1865, \$250 would be a reasonable yearly rent for the property; I cannot answer what proportion of the rent would be necessary to keep down the taxes and pay ordinary repairs and the insurance; from the fact of owning an old property, I am constantly repairing it; from 1865 to present time the average
 30 annual rental value, without the furniture, of this property, would be about \$350; I should think it would take one-third of this to keep it in ordinary repair and pay taxes and insurance; I have examined the property; I did so this morning by request; the house is not of such shape or kind as is suitable for a fine lot of that kind; I think the lot would bring quite as much with the house off it; the house does not compare internally with the imposing aspect it presents from the street;

from the street it does not appear to be of any more value than it really is.

Cross-examined.

When I examined the house this morning I found it out of repair; I had not before examined the house critically since I was a boy; I did not form any judgment as to the rental value until after the examination in this case at Moorestown; I was born December 23d, 1824. 10

Ques. Have you expressed any other judgment as to the rental value of this property than you have here given?

Ans. I think not.

Ques. Have you conversed with Dr. Thornton, or spoken with him, on the subject of the rental value of this property?

Ans I have not; I am now in the tobacco business; there are very few properties in the village that has the land all added to it that that has; the location is very central and beautiful; other properties, not quite so well situated as that, rent quite as low; I knew one that rented for \$300 that was nearly as well situated as that; the one I refer to I bought myself; it had three acres of land; I bought it about five years ago; before that it rented for \$300; there were two stores on it, which made it rent for more than it otherwise would; after I owned it one store rented for \$110; Dr. Thornton is not my family physician; his father was my father's family physician. 20 30

JOSEPH LIPPINCOTT.

Affirmed and subscribed this 14th day of January, 1881.

S. M. DICKINSON,
M. C.

WM. H. HEULINGS, a witness produced on the part of defendant, being duly affirmed, says :

I live at Moorestown ; I have lived there all my life, with one or two brief interruptions ; I knew Dr. Thornton, Sr., and the homestead property in question in this suit ; have known it all my life ; I am a lumber merchant ; I have been so occupied fifteen years for myself, and for ten years before that for my father ; sometimes
 10 I contract for and build buildings ; am acquainted with most of the Moorestown properties ; the defendant has put improvements on this property ; he built an addition to the house, and a brick barn ; I know there is water and gas introduced into the house ; the yearly rental value of this property from 1861 to 1865, as it stood, is \$250 ; I was not old enough to form an estimate as to the proportion of that required for repairs, insurance, &c. ; it would rent for \$300 a year between the years 1865 and the present time ; in the same time one-third would be
 20 required to pay taxes, insurance and ordinary repairs ; have been over the property recently ; the house is not suitable to the fine lot ; the interest on the value of the lot, without the house, if the lot were sold, would be greater than rental value of the property as it stands with that house upon it, because the person who would want that kind of a lot would not want that kind of improvement ; the house is inconveniently arranged ; the appearance of the house from the street indicates that it is worth more than it really is ; I have dealt more or
 30 less in properties, and rented them ; have done so for several years ; I am one of the firm of I. W. Heulings' Sons ; I noticed several of the floors were broken in the middle, indicating the settling of the joist, and that the ceilings were convex in the middle ; the floors are not on a level in the first story ; I mean on the ground floor.

WM. H. HEULINGS.

Affirmed and subscribed before me this 14th day of
January, A. D. 1881.

S. M. DICKINSON,
M. C.

REUBEN M. STILES, a witness produced on part of
defendant, being duly affirmed, saith :

I live at Moorestown ; I have lived there about eighteen 10
years ; have known the property in question ever since ;
the defendant has occupied the property since I have
been there ; I am the assessor for the township in which
Moorestown is situate ; have been so for nine years ; I
have been on the property in question every year ; I
keep a little trimming store in Moorestown ; never acted
as agent to rent properties ; I would not have been
willing to give more than \$300 a year rent for that
property yearly ; from 1865 to present time the value
was not more than \$350 anyhow ; I suppose it would take
about one-third of the rent to pay taxes and insurance, 20
and keep it in repairs ; it is an old fashioned house—not
very conveniently arranged ; the house looks better from
the street than it does when you get into it ; I know the
doctor built a new barn ; do not know as to the others.

Cross-examined.

I could not afford to rent such a property as that ; I
would not give more if I could ; it is not worth any more ;
it is not adapted for a person of small means ; I have
not heard Dr. Thornton complain of the inadequacy of
the property ; it would be suitable for a person of large 30
means, or a professional person, but would need con-
siderable improvement ; I don't think the property is
worth much more with the house than without ; it is
very much out of repair ; I have seen it lately ; I include
painting in necessary repairs ; do not know how long
since it was painted ; cannot say that it has been in last

nine years; I would not give more than \$300 a year for it; as to what any one else would give, I don't know.

Re-examination-in-chief.

I heard the doctor say that it cost a great deal to keep the property in repair.

REUBEN M. STILES.

10 Affirmed and subscribed this 14th day of January, 1881.

S. M. DICKINSON,
M. C.

THOMAS WILSON, being duly affirmed, saith, on the part of the defendant:

I live in Moorestown, and have been there nine years; before that I lived three miles from Moorestown for five years; before that lived at Evesham, three miles south of Moorestown; was there nine years; I never knew Dr. 20 Thornton, Sr.; have known the premises in question for nine years past, but not before that to know it well; have passed it occasionally for twenty years; I have no business now; I own the property where I live; I have recently been on the property in question—within the past few months; from 1871 to present time, I judge \$350 a year is a fair rental value for the property; my estimate is for the whole property; a few acres of land in the town is no profit to a man; I suppose it would take at least one-quarter to keep up repairs and insurance and pay the 30 taxes.

Cross-examined.

There have been times when, if a right kind of customer could be found, it might have rented for more than \$350; if the Harris and Thornton properties had the same kind of improvements on them they would be

equally desirable. I examined the Thornton house a month or two ago, at Dr. Thornton's invitation; I then first noticed its peculiar architecture; I had often been to the office before that, but then was surprised that the house was no larger than it is.

Re-examination-in-chief.

The lawn of this and the Harris property compare favorably, but the houses do not compare favorably, in my judgment; this house would not suit a gentleman who had been used to living in a modern house; what suits one man would not suit another. 10

THOMAS WILSON.

Affirmed and subscribed this 14th day of January, 1881.

S. M. DICKINSON,
M. C.

The further examination of witnesses is adjourned to Saturday, January 29th, at same place, at 9:30 A. M. 20

The examination of witnesses, on part of defendant, resumed this twenty-ninth January, eighteen hundred and eighty-one, in the presence of the defendant, the counsel of complainant not having appeared at 10:30 A. M.

Jehu Jones, a witness produced on the part of defendant, and being duly affirmed, saith:

I live at Moorestown; have resided there nearly twelve years; am in no business; am some acquainted with Thornton property; have known it from the street always; have been on it frequently; have lately been on it to make an examination; it looks very well from the street; it looks worth a great deal more from the street than it does on inspection; I own the property where I 30

live; I am acquainted with the rental values in Moores town; I think somewhere about \$300 per year is all the property would rent for, taking it from 1861 to the present time; taxes, ordinary repairs and insurance would have to be deducted from that amount

JEHU JONES.

10 Affirmed and subscribed before me this 29th day of January, 1881.

S. M. DICKINSON,
M. C.

NATHAN FOWLER, being duly affirmed, and being examined on part of defendant, saith:

20 I live at Moorestown, and have lived there some thirty years; I know the Thornton property, and have known it thirty years; have been on it and over it frequently; am carpenter and builder, and have contracted for several buildings; am frequently called upon to estimate upon the costs of building and improving buildings; I have recently estimated the value of the improvements on the Thornton property, by request of defendant; have done work there, nearly every week, for a good many years—a great deal of ordinary repairs; have not always given receipts for repairs; I was paid when the work was done; I never furnished any material.

30 (The defendant offers in evidence paper marked Exhibit A, being statement of improvements and additions made to Thornton property, from 1858 to the present time.)

I know that the improvements and additions, as stated in Exhibit A, were made to the Thornton property by the defendant; they were all such as added to the permanent value of the property; I have examined the property recently so as to estimate the cost of these

improvements, and estimated as to each one of them; in my judgment the cost as stated in Exhibit A, for each one of the improvements, is correct; at the time of the elder Dr. Thornton's death the property was greatly out of repair; it needed large outlays to put it in tenantable condition; it looks very well from the street, except the window panes are very small; I think it looks better from the street than it really is; I know 10 the rental values in Moorestown, and have been for years back; I think about \$300 a year is all the property is worth by the year, from 1861 to the present time; it is all I would like to give for it and run the risk of getting my money back.

By the Master :

I did not make all these improvements referred to in Exhibit A myself; the statement is my estimate of them recently made, as testified to by me; I let now six houses 20 in Moorestown, which I own; in the last twelve years I have been engaged in letting houses there more or less; all frame houses, two-story and French-roof, and some three-story houses; all double houses, about twenty-eight feet front and about thirty-eight feet deep; seven rooms in each house; I get nine dollars a month for them; the Thornton property is very inconveniently arranged; the dining-room is below the level of the main house, and the kitchen still below that; I consider I am getting a fair rent for the houses I let; it pays me.

NATHAN H. FOWLER.

Affirmed and subscribed before me this twenty-ninth 30
January, 1881.

S. M. DICKINSON,
M. C.

WALTER A. BARROWS, a witness produced on the part
of the defendant, and being sworn, saith :

I live at Mount Holly; am an attorney-at-law; have, at request of Mr. Voorhees, made a statement of the expenses incurred by Dr. Thornton, by way of permanent improvement upon his premises, and also a statement of ordinary repairs, and a statement of the taxes upon the real estate paid by him, as shown by receipts produced
10 to me by Dr. Thornton for 1858 to 1880 inclusive; one item of \$10 for fence rails is contained in Dr. Thornton's private ledger; no receipt was produced for this; for every other item receipts were produced; all these receipts are pasted in an old ledger, the pages of which are first lettered and the other pages are numbered, and references are made by me upon the several statements to pages in the book where the receipts may be found; Dr. Thornton assisted me in the preparation of these statements.

20 (The "ledger" above referred to is here produced by the defendant, and marked Exhibit D in this cause.)

(Defendant also offers in evidence a statement of the cost of permanent improvements made on the property, as represented by the receipts in Exhibit D, from 1858 to 1880, inclusive, which statement is marked Exhibit E for defendant.)

30 The statement is in my handwriting, and was prepared for the receipts above referred to by me; it represents the cost of the permanent improvements only, according to my judgment, from an inspection of the receipts.

(Defendant offers in evidence a paper purporting to be a statement of the cost of ordinary repairs, as represented by the receipts in Exhibit D, which statement is marked Exhibit F for defendant.)

This statement represents, in my judgment, the cost of ordinary repairs, as shown by the receipts.

(Defendant offers in evidence a paper purporting to be a statement of the taxes on the real estate in question, from 1861 to 1880 inclusive, and is marked Exhibit G for defendant.)

It is a statement of the taxes and real estate only, and is taken from the receipts in Exhibit D. 10

WALTER A. BARROWS.

Sworn and subscribed before me this twenty-ninth day of January, 1881.

S. M. DICKINSON,
M. C.

WILLIAM BUZBY, a witness produced on part of defendant, and being duly affirmed, saith :

I live in Moorestown, and have lived there over thirty years; am acquainted with Thornton property and have been all that time; am a carpenter and builder; am acquainted with rental values in Moorestown, and have been for years past; the rental value of the property in question is not over \$300 a year in my judgment; taxes, insurance and ordinary repairs are to be deducted from that amount; have done very little work on the property; have frequently been on the property; I know that large additions and improvements have been made by Dr. Thornton within the last twenty years; I know that the improvements specified in Exhibit A have been made by Dr. Thornton; have recently, at request of defendant, made an estimate of the cost of these improvements; they are all such improvements as add to the permanent value of the property; the cost there stated is in my judgment correct; I believe they could not be put there for less money; I know that the improvements specified in Exhibit B were made; I have not estimated 20 30

as to their value; they all, in my judgment, add a permanent value to the property; I should think the cost of keeping the property in ordinary repairs would be one-third the rental value; the house is inconveniently arranged; there is no open stairway from the main floor; it is a box stairway; the windows are small, and have no sash weights; the floors are sunk down; the
 10 main house is only one room deep; the front door opens into the center room of main part, and an office is at the east end; the dining-room is about two feet lower than the main part; the kitchen is still below the dining-room.

WILLIAM BUZBY.

Affirmed and subscribed this 29th day of January, 1881.

S. M. DICKINSON,
 M. C.

20

JOHN W. BUZBY, a witness produced on part of defendant, and being duly affirmed, says:

I live at Moorestown, and have lived there about sixty years; I know the Thornton property; have known it for fifty years; my father resided there before Dr. Thornton, Sr., bought it; the main building as it now stands was there then; my father rented it; the main lot where the homestead was as it is now; if my memory serves me my father paid \$100 a year rent; that was at least
 30 forty-five years ago; I now reside directly opposite this property on the main street; it makes a good appearance from the street; there is a nice lawn in front; it is not as good as it looks to be from the street; it is an old-fashioned house, the ceilings are low; am somewhat acquainted with rental values in Moorestown; the fair rental value of this property in question I should not think to be over \$300 a year from 1861 to 1880; I would

not be willing to pay more than that, judging from what other property rents for around me; I know Dr. Thornton has made a good many improvements there; I know nothing specially about them.

JOHN W. BUZBY.

Affirmed and subscribed before me this 29th day of January, 1881.

S. M. DICKINSON,
M. C. 10

The witnesses examined by the defendant this 29th January, 1881, are to be subject to cross-examination by the complainant's counsel, and the evidence taken this day is to stand on this condition, and the further examination of witnesses is adjourned to February 11th, at 10 o'clock A. M., at Mount Holly.

Examination of witnesses on the part of defendant resumed at Mount Holly, in the presence of the counsel of the respective parties, this 11th February, 1881. 20

JOSEPH SNYDER, a witness produced on the part of the defendant, being duly sworn according to law, saith:

I live at Moorestown; have lived there and in its vicinity for about thirty-seven years; have known the Thornton property over thirty years; am a contractor and builder; have worked on the property; made some of the improvements and additions; am some little acquainted with the rental values in Moorestown; the yearly rental value of this property from 1861 to 1865 is \$225; and from 1865 to the present time, in my judgment, \$275 yearly would be a fair rent; the dwelling is very inconveniently planned; it is an old style house; it has a good appearance from the street; looks better from the street than it really is; the improvements indicated by Exhibit A, I know were made 30

by Dr. Thornton; I judge they all add a permanent value to the property; I made a thorough examination of the property some time ago; I went over Exhibit A with you (meaning defendant's counsel) in your office this morning.

10 Ques. Are the amounts specified in Exhibit A, in your judgment, fair estimates of the cost of those improvements?

(Counsel for complainant objects to the leading character of the examination.)

Ans. To the best of my judgment I think they are; I know that all the improvements specified in Exhibit B have been done by the doctor; have not made any estimate of the cost of those improvements.

20 Ques. From your knowledge as a contractor and builder, and your knowledge of the premises, are the estimates, specified in Exhibit B, correct?

Ans. I can't say, positively.

Cross-examination.

30 I have made no estimate of the items in Exhibit A; had nothing to do with making additions to the house in 1858, nor with building a carriage-house, wood-house and shed in 1860; had nothing to do with the improvements made in 1863; I did the work on the water-tank in 1870; my work was building a tank-house and a tank and building some wash-stands; my work was day's work; I do not know that I made out a bill for that work; I had a settlement with Dr. Thornton some four or five years ago; cannot say how much I was allowed in settlement for that work; I say it cost at least \$10; cannot say it cost \$50; cannot say without my books; I think my books would show my transaction; Dr. Thornton is my family doctor.

(Being shown paper as Exhibit D, page 67.)

I think I made out that bill; that is the last settlement we had; it covers a period from August 18th, 1866, to August 3d, 1877; the work on the tank is not covered by this bill; I did that work for Mr. Fowler, and he paid me; all the work I did directly for Dr. Thornton is in that bill, on page 67; since 1866 I have lived continuously in Moorestown; I have had some properties to rent—a small farm in the country; I never heard of Dr. Thornton's property being offered for rent; I base my idea on the rental value on what I would be willing to give for it; it is desirably located; suitable for a gentleman's residence; I base my judgment, also, on what other properties rent for there; there is no other residence I know of in Moorestown that rents for over \$275; I think that would be a fair rent for it at the present time; have not talked with any one about the rental value; have not been asked about it before to-day; I cannot say when I made up my mind about it; I knew I was to be a witness in this case; I came at Dr. Thornton's request; Dr. Thornton told me he wanted me to come here as a witness, to settle his business in some way or another; cannot say how much the reduction in rental values is from a few years ago; I haven't any property to rent; I don't know anything about it; I know what some of the properties rent for; I know nothing of the value of the property; the doctor took me over the house to show me what condition it was in, recently; I don't know what object he had; did not notice whether it needed paint or not; some parts of it were much out of repair.

Re-examination-in-chief.

A mason was employed on the tank, and also a plumber and a tinker and a painter; the estimate of the rental value I gave you is a fair average, to the best of

my knowledge and judgment; the ceilings in the third story were out of repair, as referred to above.

JOSEPH SNYDER.

Sworn and subscribed before me this 11th day of February, 1881.

S. M. DICKINSON,
M. C.

10

THOMAS GILL, a witness produced on part of defendant, being duly affirmed, saith :

I live in Moorestown; am acquainted with Thornton property, and have been for fifty years; am a builder and contractor, and have been in business there for myself thirty-nine years; I own some houses, and let them; I know the rental values in Moorestown; I have been in Thornton mansion several times; know its construction; it is nicely located; the building shows very well from the street; it is about eighty years old; it is about fifty yards
20 from the street; you called my attention in your office this morning as to the rental value; I suppose, from 1861 to 1865, the rental value yearly is \$225, and from 1865 to present time about \$275; this is about an average; tenants going in and out all the time; have been engaged in renting houses about twenty-seven years; to the best of my knowledge, the improvements specified in Exhibit A were made by Dr. Thornton; some of these items add permanent value—others only to keep property up; I have not estimated on these improvements.

30 Ques. From your knowledge of the property and the improvements, are the accounts there specified, in your judgment as to the costs, correct?

(Question objected to, as the witness has already testified he has made no estimate.)

Ans. I know the property; the improvements are there,

and I know the estimate must be about correct, to the best of my knowledge; I know the improvements specified in Exhibit B were done by Dr. Thornton; I have made no estimate as to the cost.

Cross-examination.

I think these estimates are correct, because I know, generally, what has been done; I suppose this estimate is about right. 10

Ques. Can you give me an estimate, now, as to what it would cost to put the house there?

Ans. No; I would have to go around among certain mechanics in different branches of building.

(Question objected to as irrelevant and not cross-examination.)

Ques. Can you give me an estimate, now, of the cost of the out-buildings?

(Objected to for same reason.) 20

Ans. I cannot, except by looking over that bill; I think they are about correct.

Ques. As I have the paper which you looked at, I wish you now to tell me the amount, without referring to the paper, which, in your judgment, it would cost to place the out-buildings upon the property that are now there?

Ans. I could not answer the question in that shape; I could make a calculation if I had a chance.

Ques. Why can you tell us, when looking at the figures on Exhibit A, that you consider that about correct, and yet, without referring to a memorandum not made by you, can give us no estimate? 30

Ans. I can follow the buildings up from the paper, and calculate in my head; if I had a plan I could tell you then.

Ques. If I name the buildings, can you then make an estimate?

Ans. I suppose I could, but it takes time to do it; I have frequently seen the out-buildings and been in them.

Ques. What, in your judgment, would it cost to build the brick barn, carriage-house and cow-house, and any sheds connected therewith?

10 Ans. Near \$3,000, I should judge; that is only guess-work—no calculation.

Ques. What do you think that property would rent for at the present time?

Ans. It might rent for \$300; rents have been some little higher than they are now.

Re-examined-in-chief.

20 They have been much lower since 1865 than they are now; the estimate of \$275 is an average since 1865.

THOMAS GILL.

Affirmed and subscribed before me this 11th February, 1881.

S. M. DICKINSON,
M. C.

JOHN WORRELL, a witness produced on the part of defendant, and being duly sworn, saith:

30 I live at Mount Holly; am a plumber and gas fitter; have been such since 1849; know Dr. Thornton and his property at Moorestown, and have known it about thirty-five years; gas was put in his house about 1859, by me; I found the pipes and fittings, Dr. Thornton bought the gas fixtures; the cost of my work was something over \$600; I did not give receipts for all the money paid me; cannot tell what proportion of the whole I gave receipts for; I put the water in the house about 1870; I found the materials for this work; the cost of it was over \$450

I think; Dr. Thornton paid me for both the water and gas work; did not give receipt for all that money; he paid me at different times; in 1874 I put another tank in the upper part of the house, and a force-pump and pipes; I fitted stationary wash-stand and water-closet in 1875; the cost of this work in 1874 and 1875 was about \$1,000; Dr. Thornton paid me; the estimates in Exhibit B are about correct. 10

Cross-examined.

I have kept some books; I suppose I could find them; I speak of these matters from memory; it cost \$600 first to put in the gas pipes; the receipt on page thirty-nine was for tank and pipes connected therewith; the bill on page thirty-eight is in addition to the charges on page thirty-nine; the credit in the bill on page thirty-nine has no reference to the receipt on page thirty-eight.

JOHN WORRELL. 20

Sworn and subscribed before me this 11th of February, 1881.

S. M. DICKINSON,
M. C.

SAMUEL C. THORNTON, the defendant, being duly sworn, saith:

My father died in 1858; I resided on the homestead property at the time of his death; it was then dilapidated; it needed repair very much; my sister, the complainant, had not the means to make repairs; I was not willing to make repairs while the title was in her; she conveyed her title to me in 1858; after that, immediately, I repaired the property; I put the repairs and additions on the property that are specified in Exhibit A and B; they all add to the permanent value; I believe the cost of them, as stated in those exhibits, is correct; from 1861 30

to 1865 the yearly rental value of the property was, I suspect, \$225; from 1865 to the present, I think it could not be rented for over \$250, without furniture; all the improvements put there by me I deemed necessary for comfort and convenience; I took receipts for the majority of these improvements; those receipts are in Exhibit D; they do not cover all the costs of the improvements by a great deal; a great many men worked for me from whom I received no bill; many of the mechanics with whom I had running accounts are dead, or gone away, who did work on these improvements; I have the names of forty or fifty men who worked on these improvements, from whom I have no receipts; I believe that one-third or one-fourth of the cost I have no receipts for; a great deal of the work was paid for in cash at the time, and no bill or receipt made for it; all the items in Exhibit E are contained in the receipts in Exhibit D; all the items in Exhibit E are for permanent improvements; the receipts themselves do not show what part is for permanent improvements, and what for ordinary repairs; all the items in Exhibit F are amongst the receipts, except one of \$10; all these items on Exhibit E and F were paid by me for improvements and repairs on the homestead property; Mr. Barrows prepared these two statements, and separated the permanent from ordinary repairs with my assistance; they are correctly separated so far as I am able to do it; Exhibit G shows the taxes on the real estate of last twenty years; I have receipts for all those taxes; have paid them all; the cost of insurance for the last twenty years has averaged \$14.23 per year.

Cross-examination.

My estimate of insurance was made up from the policies; the insurance on the house is \$3,400; on the barn, \$1,000; one is a ten year policy, the other a five year

policy; the Cumberland County Insurance Company and the Mt. Holly Insurance Company; the buildings have been insured since the barn burned down, in August or September, 1863; I received \$200 on policies that were on the property previous to my father's death; I paid several installments on this old policy from 1858 to 1863; and afterwards on renewal I paid \$13.90.

10

The further examination of the defendant is adjourned to Friday, February 18th, 1881, at same place.

Examination resumed this 18th February, 1881, in the presence of the counsel of the respective parties.

The examination of Samuel C. Thornton, the defendant, being continued.

I desire to say that I wish to correct my estimate of the average cost of insurance, as testified to by me on the last adjourned day; the cost of insurance is \$10.88 per year instead of \$14.23, as before testified to by me; I have gone carefully over the matter since then; I was wrong in my former statement as to the amount of insurance on the mansion; it is \$5,700, not \$3,400; the old barn was burned in 1863, and the new one erected immediately afterwards; in 1858, my mother, my aunt, Miss Thackara and myself composed the family at the homestead; at the time of my father's death I had been engaged in the practice of medicine with him over six years, but not under any articles of copartnership; I succeeded to his practice at his death; I had no source of income anterior to his death other than my practice; prior to my father's death I was, equally with the complainant, a member of his family; the office of my father was the same that I have now; a change was made in the office shortly after my father's death; that change is not included in my estimate of the expenses of the additions to the house in 1858; the cost of that alteration was paid

20

30

by me, and charged in Exhibit D; it ought to be included in my estimate of permanent improvements made here.

Ques. What approximately did those alterations cost which you made to the office after your father's death?

10 Ans. I cannot approximate it; I have no recollection of how much I paid for it; I don't even know who did the work.

(Being shown page 54 of Exhibit D, bill of John S. Wilson.)

The item here of \$96.20 was for the addition to the house; it had nothing to do with the office.

Ques. How much did the addition to the house which you state you made in 1858 add to the permanent value of the property?

20 (Objected to by counsel of defendant, on the ground that there is no order to take any account of how much any improvement added to the permanent value, and because the subject matter of the question is irrelevant.)

Ans. Twice as much as it cost.

Ques. Look at first item in Exhibit A and state whether that is your estimate of its cost?

Ans. Yes.

30 Ques. What, in your judgment, did the carriage house, wood house and shed, which in your statement you say you built in 1860, add to the permanent value of the property?

(Objected to for same reason as before.)

Ans. About \$500 or \$600.

Ques. What did the additions and improvements which you made to the office add to the permanent value?

Ans. A good deal more than they cost, but I don't

know what they did cost; they did not cost several hundred dollars; they might have cost \$100, more or less; I have no bills.

Ques. What, in your judgment, did the brick barn, cow house, carriage house, erected after the fire, add to the permanent value of the property?

(Objected to by counsel of complainant as irrelevant.)

Ans. They added more than they cost; I wouldn't live 10
in a place without a barn and stable on it; they cost \$1,600.

Ques. How much did the addition, in 1865, to the office and piazza add to the permanent value?

Ans. \$80. The corn crib added \$75 to the permanent value.

Ques. How much did the introduction of water add to the permanent value?

Ans. About \$1,500; the alteration in 1878, costing \$400, consisted of a change from a cellar kitchen to an upstairs kitchen, removing two stair-cases—one from the 20
cellar kitchen and one from the dining-room—tearing away partitions from dining-room and making it wider, building a back stairway for the servants, making a new entrance into the cellar, laying stone wall, new kitchen floor, papering, plastering and painting; George Maines did the carpenter work, Holland the mason work, Snyder the painting, George Abs did the graining; all that added more than it cost to the permanent value; the introduction of gas added what it cost—\$600—to the permanent value; the lowest wagon-house and cow-shed, added in 30
1878, added \$100 to the permanent value.

Ques. What is the present value of the property now occupied by you, and which is involved in this suit, in your judgment?

(Objected to as irrelevant, no cross-examination, and

that counsel makes the witness his own, and is bound by his answer.)

Ans. I say under oath that I think a fair estimate of the value of that property is \$10,000.

Ques. How much, in your judgment, is the present value of the land, apart from any buildings thereon?

10 (Objected to for same reasons.)

Ans. Judging from other properties, I think \$3,000 would be a large price for it; I have put an extra \$1,000, because it is in the centre of the town.

Ques. At the time of your father's death did your mother have any separate income?

(Objected to as irrelevant.)

Ans. Yes.

20 Ques. Between April, 1858, and February, 1861, did she contribute, from her separate income, anything towards the cost of either the repairs or what you call permanent improvements?

(Objected to as irrelevant.)

Ans. I don't remember that she gave anything; I collected for her her separate income; she took charge of it.

30 Ques. Do you state, positively, that she contributed nothing to the repairs or items for which you make charge?

(Objected to as irrelevant.)

Ans. I say, positively, I remember nothing about it.

Ques. In 1863, after the fire, did your mother furnish any portion of the cost for erecting the new building, and if so, how much?

Ans. I don't remember that she ever gave a cent; I pasted the receipts in book marked Exhibit D, this winter; before that they were stowed away in a room in the barn.

Ques. Were there any outstanding accounts against parties, at the time of your father's death, which were afterwards turned on account for improvements or repairs put on the property? 10

Ans. There were none so turned, except such as were due to me individually. (Receipt of William Laconey being shown witness, same on page 11, Exhibit D, he says.) This is for repairs, and the account extended back to 1855; I cannot tell how much of this \$84.90 was before 1858.

Ques. You stated in your direct examination that the annual rental value from 1861 to 1865, you suspected, was \$225; on what did you base your judgment?

(Objected to as not being a correct statement of what 20 witness did say.)

Ans. On my superior judgment; I mean by that that I know more about it than anybody else in Moorestown; I never tried, during the period from 1861 to 1865, to rent the property.

(The question to which this answer was given was demanded to be entered, by the counsel of the defendant, and the Master determines that it is unnecessary to depart from the rule (90) and put the question in writing.) 30

I never tried to rent any property for my own use during that time; have never, during that time, been the owner of other property which I have rented; have never rented property for my own use; no one has applied to me, from 1861 to present time, to rent the property; never has been, during that time, in the hands of
7

an agent for rent ; it is for sale, not rent, now ; have applied to the Court of Chancery to have it sold ; I mean I have filed a partition suit ; never have made a public offer to sell.

Ques. Would you consent to rent the property, with the consent of the complainant, now ?

10 Ans. No ; I fix the present rental value at \$250 per year ; I will not rent my half interest for \$125 ; I won't rent for anything, because I am going to have it sold ; I will not consent to rent for \$500 a year, because I want my money out of it and buy another place.

Ques. are you willing to fix any price at which you are willing to sell your half interest now ?

(Objected to as irrelevant and no cross-examination.)

Ans. By and with the counsel and advice of Mr. Voorhees, I won't fix any price to-day except on terms mentioned.

20

Ques. Will you take \$3,000 for your half interest ?

(Objected to as irrelevant and illegal, and no cross-examination.)

Ans. I refuse to answer because I have answered this already.

(Exhibits A and B and E being shown witness, he says)
—Exhibit E is a detailed statement of charges contained in A and B ; it is not an additional charge ; receipts in Exhibit D are represented in the statements in E, F and
30 G, except \$10.

(The counsel of complainant claims the right to recall the witness, and examine him as to any items in the exhibits to which his particular attention has not been directed, and with this exception declares his cross-examination closed as to said witness.)

(Counsel of the defendant dissents from the above claim and reservation, and claims that if he does recall him he must do so as his own witness.)

Re-examination-in-chief.

The estimate as to cost of insurance runs back to the time the barn was burned; soon after my father's death I had a new floor put in the office; shifted a window; had venetian shutters put on; had the steps and railing 10 removed from the inside to the outside; all these alterations added to the permanent value; had the office papered, too; Samuel Bowen did some of the work on the other improvements (besides the office); was there two or three weeks at a time; there are no bills for any of these things; this work amounted to \$40 or \$50; I have no bill or receipt for any of his work; Bowen's brother did work—painting; I have no receipt from him.

Ques. Were any of the improvements so made by you to the property, from time to time, made except such as were requisite and proper to the uses and necessities of 20 the occupant?

(Objected to as leading.)

Ans. No; all the improvements on Exhibits A and B were so added by me; I did not get any receipt for this work; I got no receipt at all for the graining; I paid Brandt; Clayton Lippincott, administrator, paid for the improvements that were made before my father's death; I paid for no repairs done before his death; since last adjournment I have made a list of forty or fifty men who 30 worked for me on these improvements from whom I have no receipts; the amount paid them is over \$1,200.

S. C. THORNTON.

Sworn and subscribed before me, this 18th day of February, 1881.

S. M. DICKINSON,
M. C.

NATHAN H. FOWLER, being recalled and being cross-examined, saith :

10 I made the estimates referred to in Exhibit A, four or five weeks ago ; I am forty-eight years old ; I moved to Moorestown over thirty years ago from Camden county ; I made none of these improvements by contract ; I am a carpenter ; Dr. Thornton pointed out to me the different items of improvements in Exhibit A ; over
20 twenty years ago I first did work for Dr. Thornton ; I made several of the improvements mentioned in Exhibit A in 1870 and 1878 relating to water tank and lowest wagon-house ; I kept an account book ; I rendered Dr. Thornton an account from this book ; the bills
30 on pages 92 and 94 cover everything I did during the periods covered by the dates on the bills, except what he paid in cash, when work was done ; I know Dr. Thornton paid for these improvements ; I often saw him pay men ; I didn't see him pay Worrell in 1870, and he has paid me for work.

Ques. Do you wish to be understood that you swear that you know that all the amounts in Exhibit A were paid by Dr. Thornton, from 1858 to 1878, or simply that
30 you know he paid out moneys to different persons, and from general reputation and hearsay you believe he paid them ?

Ans. I can't say from my knowledge that he paid them all ; I don't know that others did not furnish him money to pay them ; whether his mother or aunt did not furnish it.

N. H. FOWLER.

Affirmed and subscribed before me, this 18th day of
February, 1881.

S. M. DICKINSON,
M. C.

EXHIBITS.

10 EXHIBIT A OF DEFENDANT.

IMPROVEMENTS—ESTIMATE OF COSTS.

	Addition to house in 1858.....	\$1,500 00
	Carriage-house, wood-house and shed, 1860.....	1,000 00
	New brick barn, cow-house and carriage-house, 1863.....	1,600 00
	Office and piazza—addition 1865.....	80 00
	Corn-crib in 1869.....	75 00
20	Addition to house for water tank, 1870.....	275 00
	Closets put in house, bed-room and cellar, 1876	40 00
	Privy well, (new,) 1877.....	45 00
	Wagon house, (lowest) 1878.....	75 00
	Alteration and improvement of house, 1878....	400 00
	Cow-shed, &c.....	35 00
		<hr/>
		\$5,125 00

EXHIBIT B OF DEFENDANT.

30	Gas in house.....	\$600 00
	Two heaters in house and setting.....	350 00
	Water in house.....	488 00
	Water over rest of house, wash stand, bath tub	1,070 00
	Drain (blind), for privy well, terra cotta pipe...	100 00
	Cistern.....	60 00

EXHIBIT C OF DEFENDANT.

Insurance yearly, average, per year..... \$10 88

*Exhibit D of wife - Old Ledger with receipts pasted in it
 Ex post 1812-20*

EXHIBIT E OF DEFENDANT.

10

Statement of cost of permanent improvements made by
 Dr. Samuel C. Thornton upon the property in Moorestown,
 N. J., held by him in his own right and as trustee of his
 sister, Ellen E. Ogden :

1858.

Two-story, four room, frame addition to house, viz :		
A. W. Engle, lumber, page A.....	\$78 57	
Haines & Buzby, hardware, page B...	8 75	
George F. Doughten, hardware, page G	17 44	
M. Jacoby, lime, page C.....	11 03	
Charles Gaskill, plastering, page E....	26 20	20
Charles Lippincott, tiles and brick, page E.....	15 00	
Francis Snyder, painting, page E.....	37 00	
Thomas McIntyre, waiting on masons, page I.....	48 00	
Caleb Poinsett, bricks, page I.....	5 45	
John S. Wilson, carpenter work, page 54	96 20	
Jeremiah Vansciver, carpenter work, page K.....	24 70	
	<hr/>	\$368 34

1859.

Caleb Poinsett, bricks, page I.....	\$ 60	30
Jeremiah Vansciver, carpenter, page K		
George F. Doughten, paint, oil, lumber, page M.....	10 44	
Warner & Miskey, gas fixtures, pages N, Q.....	40 00	

	Charles Lippincott, tile for drains, page Q.....	\$21 00	
	William Lippincott, sand, page S.....	70	
	I. W. Heulings, lumber, pages S, W...	4 32	
	John Worrell, gas fixtures, pages S, U.	81 16	
	Jacob Hollinshead, setting range, page U	4 00	
10	Wm. D. Brock, gas pipes, page U.....	12 60	
	Samuel Slim, boarding gas fitters, page A2.....	19 00	
	Francis Snyder, painting, page 30.....	14 00	
		<hr/>	\$207 82

1860.

	A. W. Engle, lumber, pages A and G..	49 60	
	See Reuben Roberts land plaster.		
	Robert Muffett, bricks, page B2.....	\$10 50	
		<hr/>	60 10

1861.

20	Robert Muffett, bricks, page B2.....	\$3 25	
		<hr/>	3 25

1862.

	Geo. F. Doughten, building materials, page B2.....	\$10 87	
	Frank Snyder, page 30.....		
		<hr/>	\$10 87

1863.

	J. B. Stiles, hauling bricks, page 1.....	8 46	
	E. B. Brown, lime, page, 2.....	7 20	
30	Ben. Stiles, hauling bricks, page, 2....	15 95	
	G. R. Sapp, lime, (3 items) page 2-3...	20 60	
	J. C. Coffman, page, 3.....	12 25	
	W. & E. Maimes, carpenter work, page 4	19 12	
	William Wells, carpenter work, page 4	25 18	
	Muffet & Son, bricks, page 4.....	100 00	
	Lynch & Shinn, gravel roof, page 5....	80 46	
	Geo. W. Brown, mason work, page 6....	195 00	

Caleb Poinsett, bricks, page 10.....	\$17 22	
Asa Matlack, carting bricks, page 83...	12 75	
Eli Maimes, carpenter work, page 77...	4 12	
J. Perkins, trees, page 55.....	3 75	
		————— \$522 06

1864.

Heulings & Son, lumber, page 7-8-10..	211 12	
Fitzgerald, cement and lime, page 7-8-9.	7 65	
Peter Lynch, page 9.....	50	10
Lippincott & Son, lumber, page 19....	21 66	
Robert Muffett, bricks, page 7.....	20 00	
John Perkins, trees, page 55.....	24 50	
		————— \$285 43

1865.

Peter Lynch, tin roof, page 9.....	10 73	
Heulings & Son, lumber, page 11.....	5 52	
John S. Wilson, carpenter work and lumber, page 54.....	56 00	
Lippincott & Son, lumber, page 19....	24 21	
Francis Snyder, painting.....	4 50	20
		————— \$100 96

1866.

Tippenhower, lumber, page 12.....	6 00	
W. & E. Maimes, carpenter work, page 4	11 75	
John S. Wilson, carpenter and lumber, page 54.....	11 79	
Eli Maimes, lumber and work, page 77	20 75	
John Perkins, trees, page 55.....	22 00	30
		————— \$72 29

1867.

I. W. Heulings, lumber, pages 13-14...	30 42	
Nathan Fowler, carpenter work, page 14	79 14	
Daniel Erdman, roofing, page 17.....	19 07	
Lippincott & Son, lumber, page 19....	53 25	

	John S. Wilson, lumber and work, page		
	54.....	\$16	92
	John Perkins, page 55.....	3	00
		<hr/>	\$201 80
	1869.		
	Thos. Makin, tin roofer, (two items),		
	page 24.....	126	00
10	George Maimes, carpenter work, page 24	94	82
	Robert Muffett, bricks, page 25.....	110	00
	Heulings & Sons, lumber, page 26.....	35	45
	H. Stokes, mason work, page 26.....	20	00
	Lippincott & Sons, lumber, (two items),		
	page 28.....	24	36
	J. Perkins, trees, page 55.....	3	00
		<hr/>	\$413 63
	1870.		
	Joseph Pierson, gravel, page 29.....	37	00
	Robert Shoemaker, painting, page 33-34	117	08
20	John Gillette, mason work, page 31...	9	30
	I. W. Heulings & Sons, lumber, page 44	27	66
	Geo. F. Doughten, plumbing, page 33..	9	42
	Thomas Gillette, painting, page 34.....	66	00
	Gillette & Sutherland, plastering, page		
	36.....	5	92
	A. H. Burr, lead, page 36.....	7	00
	Thomas Makin, roofing, &c., page 37...	17	77
	Lippincott & Son, lumber, page 38....	13	25
	Gillette & Sutherland, page 38.....	14	30
	Worrell & Shaw, plumbing, page 38... 244	94	
30	John Gillette & Co., plastering, page 40	19	50
	Thomas Makin, roofing, page 40.....	25	36
	Lippincott & Sons, page 41.....	2	36
	Nathan Fowler, carpenter, page 92....	31	00
	Jos. Snyder, carpenter, page 67.....	8	25
	John Worrell, copper boiler, page 42.. 114	00	
	F. Snyder, painting, page 32.....	75	00
	Nathan Fowler, page 92.....	77	67
		<hr/>	\$922 78

1871.

I. W. Heulings & Sons, lumber, page 43	\$22 78	
John Gillett, page 43.....	0 00	
F. Snyder, painting, page 44.....	15 00	
R. Muffett, bricks, page 45.....	4 50	
Jno. Gillette, plastering, page 45.....	16 56	
Jno. Worrell, plumbing, page 46.....	25 00	
Cummins & Co., grape vines, page 47..	7 60	10
John Perkins, grape vines, page 55....	6 00	
	<hr/>	\$97 44

1872.

Richard Pike, gravel, page 50.....	11 00	
Fitzgerald, lime, page 50.....	2 25	
Samuel Bispham, brick work, page 51..	25 50	
Daniel Erdman, heater, page 53.....	187 48	
Robert Muffett, Bricks, page 45.....	19 00	
	<hr/>	\$245 23

1873.

Samuel Bispham, plastering, page 54..	18 00	
Richard Pike, gravel, page 55.....	10 00	20
D. H. Erdman, (heater,) page 55.....	65 56	
Thomas Makin, roofing, page 56.....	24 83	
Baker & Arnold, gas fixtures, page 57..	4 25	
John Perkins, asparagus plants, page 55.....	3 00	
	<hr/>	\$125 64

1874.

John Worrell, plumbing, &c., pages 58-59.....	907 35	
Harvey & Anderson, terra cotta pipes, page 60.....	18 00	30
Lippincott & Son, lumber, page 60....	24 62	
Eli Maimes, making tank, page 77.....	15 00	
Warwick, gravel, &c., page 68.....	20 00	
Nathan Fowler, (carpenter work,) page 94.....	67 57	
	<hr/>	\$1,052 54

1875.

James Vance, hardware, page 61.....	\$2 80	
Reuben Buckley, panneling, page 61...	57 70	
Thomas Makin, roofing, page 63	26 13	
		\$86 63

1876.

10 Geo. Maimes, carpenter work, page 63.	26 00	
Thomas Makin, tin roof, page 66.....	68 87	
Joe Snyder, carpenter work, page 67...	10 17	
Eli Maimes, carpenter work and materials, page 77.....	21 16	
		\$126 20

1877.

D. H. Erdman, work on heaters, page 67	27 00	
H. Makin, tin roof, &c., page 68-67....	108 18	
A. B. Cherry, water-back, &c., page 68.	24 00	
20 Levi Troth, building privy well, page 69.....	14 65	
Daniel Lenton, carpenter work, page 70.....	36 67	
Benjamin Morgan, carpenter work, page 70.....	37 07	
		\$247 57

1878.

John Worrell, plumbing, page 71.....	21 00	
Geo. Maimes, carpenter work, page 72.	118 00	
Jos. Holland, mason work, page 73....	24 00	
Lippincott & Son, lumber, page 73....	41 75	
30 Howell Finn & Co., paper, &c., page 74.	15 10	
James Vance, nails, page 74.....	5 25	
Frank Snyder, painting, page 75.....	15 00	
Etris Bros, papering, page 76.....	8 38	
James Vance, sash fixings, page 78....	68	
J. W. Worthington, leads, paints and oils, page 79.....	10 52	

Rogers, Duer & Miller, hardware, page 79.....	\$2 00	
I. W. Heulings & Sons, lumber, page 80.....	25 66	
C. A. Blessing, sink, page 80.....	5 00	
George Worrell, plumbing, page 81....	46 50	
William Maines, chestnut rails, private ledger.....	10 00	10
Lippincott & Sons, lumber, page 82....	12 60	
	<hr/>	\$361 44

1879.

Lippincott & Sons, lumber, page 82....	14 03	
Thomas Makin, tin roof, page 86.....	56 03	
	<hr/>	\$70 06

1880.

I. W. Heulings & Sons, terra cotta pipe, four men four days, &c., (items), page 106.....	35 32	
	<hr/>	\$35 32

Exhibit of 1880

5617.40

Statement of cost of ordinary or incidental repairs to premises :

1858.

William Lippincott, pump log, page S.	9 60	
Jeremiah Van Sciver, carpenter work, page K.....	15 85	

1859.

William London, fence rails, ledger....	10 00	
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1860.

Frank Snyder, painting, page 30.....	7 50	30
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1862.

Frank Snyder, painting, page 30.....	13 00	
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1863.

Frank Snyder, painting, page 30.....	4 50	
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1864.

John S. Wilson, repairing fence, page 54	\$3 50	
Francis Snyder, painting, page 30.....	11 62	
E. Maimes, carpenter work, page 77...	2 75	
		<hr/> \$17 87

1866.

10 William Le Coney, carpenter work, page		
11.....	84 90	
Frank Snyder, painting, page 30.....	12 00	
Joseph Snyder, carpenter work, page 67	3 75	

1867.

Clayton Hollinshead, carpenter work,		
page 15.....	37 50	
French, Richards & Co. and others, var-		
nish, page 15-16.....	8 27	
Thomas Gillette, painting, page 16....	19 00	
20 Thomas Makin, tin work, page 17.....	16 28	
Frank Snyder, painting, page 30.....	6 00	
Joseph Snyder, carpenter work, page 67	4 50	
		<hr/> \$192 20

1868.

Finn & Sons, paper, &c., page 20.....	12 15	
Daniel Erdman, tin work, &c., page 20.	8 40	
E. H. Owens, tin roofing, page 21.....	69 93	
Nathan Fowler, carpenter work, page		
92.....	11 25	
		<hr/>

30

1869.

Thomas Gillette, painting, page 25....	25 00	
George F. Doughten, page 27.....	5 70	
Nathan Fowler, carpenter work, page		
92.....	6 65	
Thomas Gillette, painting, page 34....	13 50	
		<hr/>

1870.

George F. Doughten, oils, varnish, &c., page 30.....	\$1 85	
I. W. Heulings & Sons, lumber, page 32.....	24 10	

1871.

John Gillette, page 43.....	3 69	
Gillette & Sutherland, page 46.....	2 82	
	<hr/>	\$185 04 10

1872.

Jacob Hollinshead, plastering, page 49.	26 00	
Thomas Makin, work, page 49.....	12 00	
J. C. Finn, papering, &c., page 51.....	42 50	
I. W. Heulings & Sons, lumber, page 52.	4 55	
N. Fowler, carpenter work, page 94....	13 72	

1873.

I. W. Heulings & Sons, lumber, pages 56 and 62.....	9 96	
Lippincott & Sons, lumber, page 57... 20	12 10	
Nathan Fowler, carpenter work, page 94.....	14 60	

1874.

Finn & Son, paper, &c., page 60.....	75 95	
Frank Snyder, painting, page 75.....	7 50	
I. W. Heulings & Sons, lumber, page 62.....	13 61	

1875.

P. A. Grosh, paints, &c., page 61.....	12 00	30
I. W. Heulings & Sons, lumber, &c., page 62.....	8 44	
T. C. Finn, paper, &c., page 62.....	7 83	
Lippincott & Sons, lumber, page 63... 30	30 22	
E. Lippincott, lumber, page 63.....	8 19	
	<hr/>	\$299 17

Joseph Snyder, carpenter work, page 67	\$2 37
Nathan Fowler, carpenter work, page 94	1 50

1876.

James Carter, graining, page 64.....	6 00
I. W. Heulings & Sons, lumber, page 64	71 59
Wm. Wimbly, painting, &c., page 65...	15 00
10 Howell & Finn, paper &c., page 66.....	6 75
Lippincott & Sons, lumber, page 66...	7 20
Frank Snyder, painting, page 75.....	46 75
Joe Bishop, rep. fences, page 90.....	8 00

1877.

Chas. F. Robinson, painting, page 68..	8 13
Etris Bros., papering, page 69.....	41 47
Howell, Finn & Co., paper, &c., page 69	38 91
I. W. Heulings & Sons, lumber, &c., page 70.....	38 52
20 E. L. Hollins, carpenter work, page 68	7 00
Jos. Bishop, carpenter work, page 90..	16 00
Eli Maimes, carpenter work, page 77..	14 36
Thomas Makin, pipes, gutters, &c., page 86.....	11 25

\$340 80

1878.

Thos. Gillette, painting, page 71.....	98 00
Thos. Gill, carpenter work, page 72....	27 00
Nathan Fowler, carpenter work, page 94	13 50
Jos. Bishop, fencing, page 90.....	10 75

30

1879.

Josiah Brunt, graining, page 82.....	6 00
D. H. Erdman, heater work, page 83...	27 00
J. W. Worthington, paints, page 84...	3 70
Etris Bros., papering, page 85.....	13 48
Geo. Als, graining and varnishing, page 85.....	22 00

H. Stokes, plastering, &c., (2 items, page 67.....	\$9 00	
Jos. Bishop, fencing, page 90.....	3 25	
Lippincott & Sons, lumber, page 89...	8 50	

1880.

H. Stokes, plastering, &c., page 90....	6 00	
J. W. Worthington, paints, pages 69-91	7 00	10
Jos. Bishop, cow shed, page 90.....	1 50	
Heulings & Sons, lumber, page 88.....	8 80	
		<hr/>
		\$265 48

EXHIBIT ^g ₁₁ OF DEFENDANT.

TAXES.

1861, page 95.....	22 01	
1862, page 95.....	31 65	
1863, page 96.....	32 20	
1864, page 96.....	47 60	
1865, page 97.....	87 20	20
1866, page 98.....	52 00	
1867, page 98.....	41 09	
1868, page 99.....	45 00	
1869, page 99.....	40 00	
1870, page 100.....	36 50	
Insurance, 1871.....	202 00	
1871, page 101.....	47 50	
1872, page 102.....	65 50	
1873, page 103.....	61 00	
1874, page 103.....	43 50	
1875, page 104.....	40 00	30
1876, page 104.....	53 00	
1877, page 105.....	60 00	
1878, page 105.....	42 00	
1879, page 106.....	45 00	
1880, page 106.....	51 50	
		<hr/>
		\$944 25

IN CHANCERY OF NEW JERSEY.

Between
 ELLEN E. OGDEN,
 10 Complainant,
 and
 SAMUEL C. THORNTON,
 Defendant.)

Master
Report

In pursuance of the decree of this Court made in the above stated cause, whereby it was referred to the subscriber, one of the Masters of this Court, to state an account between the parties to this suit, and to charge the defendant in said account with one-third the annual
 20 value of the premises in question in this suit since the date of the first marriage of the complainant (February 7, 1861), till the death of her mother (May 18, 1865), and with one-half the annual value thereof since the time of said death, and to charge the complainant in said account with one-half of the cost of such improvements made by the defendant to said property as have added a permanent value thereto, with interest on such cost, and to report thereon to the Court and to state the balance which upon such accounting appears by the evidence taken before him to be due from either party to
 30 the other, I, S. Meredith Dickinson, Master as aforesaid, do hereby respectfully report that I have been attended by J. Augustus Fay, Jr., of counsel with the complainant, and by Frederick Voorhees, of counsel with the defendant, and in their presence have taken the depositions accompanying this, my report, and have considered of the matters referred to me by said decree.

And I do further certify and report, that it appears by the evidence taken before me to be due to the complainant by the defendant, on the accounting ordered as aforesaid, on the seventh day of May, eighteen hundred and eighty-one, the sum of three thousand one hundred and thirty-one dollars and twenty-two cents.

Respectfully submitted this first day of November, eighteen hundred and eighty-one.

S. M. DICKINSON,
Master. 10

SCHEDULE.

DR. SAMUEL C. THORNTON.

1881.	To ELLEN E. OGDEN, DR.	
May 7.	To one-third annual value of property from February 7, 1861, to May 18, 1865, 4 years, 3 months and 11 days.....	\$436 38
	one-half annual value do. from May 18, 1865 to May 7, 1881, 15 years, 11 months, and 19 days	2,694 84
		\$3,131 22

CR.

By cost of permanent improvements, &c., that have added, &c..... 0,000 00

Balance due Ellen E. Ogden, May 7, 1881..... \$3,131 22 30

S. M. DICKINSON.
Master.

A true copy.

G. S. DURYEE,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between ELLEN E. OGDEN, Complainant, 10 and SAMUEL C. THORNTON, Defendant.	}	ON DECREE ON REMITTER FROM COURT OF ERRORS. EXCEPTIONS TO MASTER'S REPORT.
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The defendant in the above stated cause excepts to the report of S. Meredith Dickinson, one of the Special Masters of this Court, to whom it was referred by the decree of this Court on remitter from the Court of Errors of this State to take an account and report from the evi-
 20 dence taken before him, the annual value of the premises in question, from the seventh day of February, A. D. 1861, to this fifth day of May, A. D. 1865, and the annual value of said premises since said last named date; and also the cost of such improvements made to said premises by said defendant as have added a permanent value to said property, with the interest on such costs; and that in stating said account he do charge the said defendant, Samuel C. Thornton, with one-third the annual value of said property from the date of the first marriage of the complainant to the time of the death of her mother; and
 30 with one-half the annual value of said property from and after the time of such death; and do charge the complainant, Ellen E. Ogden, with the one-half part of the costs of said permanent improvements, with the interest thereon; and do state the balance which upon such accounting shall appear to be due from either party to the other.

First. Because said Master has not taken any account

or made any report, from the evidence taken before him, of the annual value of the premises in question for the time specified, and as directed in and by said decree, but has wholly neglected and refused so to do; whereas, he ought to have taken an account and reported what, by and from the evidence so taken before him, was the annual value of said premises for the time specified in said decree.

Second. Because said Master has not taken any account or made any report, from the evidence taken before him, 10 of the cost of such improvements made to said premises by said defendant as have added a permanent value to said property, and of the interest on such costs, as specified and directed in and by said decree, but has wholly neglected and refused so to do; whereas, he ought to have taken an account and reported what, by and from the evidence so taken before him, was the cost of such improvements to said premises by said defendant as have added a permanent value to said property, and of the interest thereon, as directed in and by said decree.

Third. Because said Master has not stated any account, 20 charging the defendant, Samuel C. Thornton, with portions of said annual value, and charging said complainant, Ellen E. Ogden, with portions of said costs of permanent improvements, and the interest thereon; and showing the balance which upon such accounting shall appear by the evidence to be due from either party to the other, but has wholly neglected and refused so to do; whereas, he ought to have stated such account and made such charges and shown the balance thereupon due 30 from either party to the other, as in and by said decree he was directed.

Fourth. Because said Master has refused and neglected to report, as the annual value of said premises for the times specified in said decree, the amount shown and established by the evidence taken before him, and has reported a much larger amount; whereas, he ought to

have reported as the annual value of said premises for said time the amounts shown and established by the evidence, as directed in and by said decree.

10 Fifth. Because said Master has neglected and refused to report the cost of all or any part of such improvements made to said premises by said defendant as have added a permanent value to said property, and of the interest thereon, as by said decree he was commanded to do; whereas, by the evidence taken in said cause, it is shown and established that many and extensive improvements were made to said premises by said defendant of such nature as added a permanent value to said property, at great cost to said defendant, and said Master should have reported the cost of such improvements so made, and the interest on such cost, as in and by said decree he was directed to do.

20 Sixth. Because the said Master, in making his said report, has neglected and refused to report either the amount of said annual value or the cost of said permanent improvements, in accordance with the evidence taken before him; whereas, he ought to have reported both the annual value of said premises and the cost of said permanent improvements as they were shown and established by the evidence taken before him, as in and by said decree he was directed to do.

30 Seventh. Because said report is in divers other respect erroneous and contrary to law and is not in accordance with said decree, or with the evidence taken in said cause.

In all which particulars the report of said Master is, as the said defendant is advised, erroneous and the said defendant appeals therefrom to the judgment of this honorable Court.

Dated November 7th, A. D. 1881.

FRED'K VOORHEES,

Solicitor for and of Counsel with said Defendant.

Filed Nov 7th 1881

OGDEN

vs.

THORNTON.

ON EXCEPTIONS TO MASTER'S REPORT.

*Concluding of V.C. Van Fleet
Filed Jan 14. 1885*

I cannot assent to the construction which the defendant's counsel put upon the decree. They say that, by its true construction, the complainant is to be charged with one-half of the cost of such improvements as have added to the permanent value of the property, without regard to the amount which they have added to its permanent value; that is to say, for an improvement which cost \$500, but which added only \$100 to the permanent value of the property, the complainant must be charged, not \$50, but \$250. Such a construction, in my judgment, is utterly inadmissible. It would make the decree an instrument of injustice, and compel the complainant to pay for something she had never had; to yield her money without an equivalent; in truth, to make a donation to the defendant. Depriving a citizen of his property against his will, and without giving him an equivalent, is so contrary to natural justice that it was thought necessary, by the framers of the constitution, to give the citizen the protection of a constitutional safeguard against it being done, even in behalf of the public. Private property cannot be taken, even for public use, without compensation. According to my construction of the decree, the complainant is only required to contribute to such improvements as have added to the permanent value of the property, and her contribution in respect to them need only be to the extent that they actually increased the permanent value of her moiety. So that, following the illustration already given, if it appears that an improvement was made at a cost of \$500, but which in fact only added \$100 to the permanent

value of the property, all that the complainant should be charged with, in respect to such improvement, is \$50.

I agree with the Master in his conclusion as to the clear rental value of the property, but not in his conclusion that the defendant is entitled to nothing for lasting or permanent improvements. The evidence respecting the addition made to the permanent value of the property by the improvements is very meagre and extremely unsatisfactory. There is no evidence at all tending to show what was the fair market value of the property before the improvements were made, and what was its fair market value at the date of the reference; nor are any other means furnished by which it may be determined whether the present value of the property is greater than it was before the improvements were made. But some of the improvements were manifestly indispensable to the property and must necessarily have increased its permanent value. In estimating this increase, it is impossible, in the present condition of the proofs, to do more than reach a probable or proximate result. Anything like a certain and definite result is out of the question. The conclusion I have reached, after much consideration, is, that the defendant should be allowed \$1,000 for the increased value which his improvements have added to the complainant's moiety, and that \$700 of this sum should be allowed as of January 1, 1864, and the balance, \$300, as of January 1, 1876.

Crediting the defendant with these allowances, the balance remaining due to the complainant on the seventh of May, 1881, without interest, was \$1,894.20.

The decree does not direct the allowance of interest to the complainant, but does expressly direct its allowance to the defendant. In this respect it follows the precise language of the decree of the Court of Errors and Appeals, where the decree directs rests, but is silent as to interest. The rule seems to be that the Master is not to

compute interest, but it is understood that the question whether interest shall be allowed or not is reserved by the Court for further consideration—Hoffman's Master, 88. The defendant is a trustee. He became so *mala fides*. The general doctrine is that trustees are bound to take the same care of the trust property that a discreet and prudent man would take of his own property; to manage it for the exclusive benefit of the *cestui que trust*, and to make no profit or advantage out of it for themselves—
 Boynton v. Dyer, 18 Pick., 6; Perry on Trusts, ss 468. 10

Under this rule, it would seem to be clear, that the defendant must account for interest, unless it appears that the Court of Errors and Appeals meant to absolve him from a liability which trustees are ordinarily required to bear.

IN CHANCERY OF NEW JERSEY.

Between

ELLEN E. OGDEN,

Complainant,

and

SAMUEL C. THORNTON,

Defendant. }

20

Re-statement of the account in the above stated cause. 30

By the decree the complainant is entitled to one-third of the annual value of the property in question, from February 7th, 1861 (the date of her marriage) to May 18, 1865, (the date of her mother's death) and from May 18, 1865, to the date of the Master's report (May 7th, 1881)

she is entitled to one-half of the annual value of the property.

	Income due February 7th, 1862.....	\$100 00
	Income due February 7th, 1863.....	100 00
	Interest on the \$100.00, due February 7th 1862,.....	6 00
10	Interest on \$200.00 from February 7th, 1863, to January 1st, 1864.....	10 76
		<hr/> 216 76
	Amount allowed defendant January 1st, 1864	700 00
	Deduct amount due complainant January 1st, 1864.....	216 76
		<hr/> 483 24
20	Interest on \$483.24 from January 1st, 1864, to February 7th, 1864.....	2 96
		<hr/> 486 22
	Income due February 7th, 1864.....	100 00
		<hr/> 386 22
	Interest on \$386.22, from February 7th, 1864, to February 7th, 1865.....	23 17
		<hr/> 409 39
	Income due February 7th, 1865.....	100 00
		<hr/> 309 39
30	Mother died May 18th, 1865, interest on \$309.39 from February 7th, 1865, to May 18th, 1865.	5 21
		<hr/> 314 60
	Income from February 7th, 1865, to May 18th, 1865, at rate of \$100 a year.....	28 05
		<hr/> 286 55

Balance due defendant May 18th, 1865.....	\$286 55	
Interest on \$286.55 from May 18th, 1865, to May 18th, 1866.....	17 19	
	<hr/>	
	303 74	
Income due May 18th, 1866.....	168 75	
	<hr/>	
	134 99	10
Interest on \$134.99 for one year to May 18th, 1867.....	8 10	
	<hr/>	
	143 09	
Income due May 18th, 1867.....	168 75	
	<hr/>	
Balance due complainant May 18th, 1867.....	25 66	
Interest on \$25.66 from May 18th, 1867, to May 18th, 1868.....	1 54	
	<hr/>	
	27 20	
Income due May 18th, 1868.....	168 75	20
	<hr/>	
	195 95	
Interest on \$194.41 for one year to May 18th, 1869.....	11 76	
Income due May 18th, 1869.....	168 75	
Interest on \$363.16 for one year to May 18th, 1870.....	21 88	
Income due May 18th, 1870.....	168 75	
Interest on \$531.91 for one year to May 18th, 1871.....	32 01	
Income due May 18th, 1871.....	168 75	
	<hr/>	
	42 13	30
Interest on \$700.66 for one year to May 18th, 1872.....	168 75	
Income due May 18th, 1872.....	52 26	
Interest on \$869.41 for one year to May 18th, 1873.....	168 75	
Income due may 18th, 1873.....		

	Interest on \$1,033.16 for one year to May 18th, 1874.....	\$62 38
	Income due may 18th, 1874.....	168 75
	Interest on \$1,206.91 for one year to May 18th, 1875.....	72 51
	Income due May 18th, 1875.....	168 75
10	Interest on \$1,375.66 for one year to May 18th, 1876.....	82 63
	Income due May 18th, 1876.....	168 75
	Interest on \$1,544.41 for one year to May 18th, 1877.....	92 76
	Income due May 18th, 1877.....	168 75
	Interest on \$1,713.16 for one year to May 18th, 1878.....	102 88
	Income due May 18th, 1878.....	168 75
	Interest on \$1,881.91 for one year to May 18th, 1879.....	113 01
20	Income due May 18th, 1879.....	168 75
	Interest on \$2,050.66 for one year to May 18th, 1880.....	123 13
	Income due May 18th, 1880.....	168 75
	Interest on \$2,219.41 from May 18th, 1880, to May 7th, 1881.....	128 72
	Income due from May 18th, 1880, to May 7th, 1881 at the rate of \$168.75 a year.....	163 60
		<hr/>
		\$3,323 08
	Defendant credited with amount allowed for improvements as of January 1st, 1876.....	300 00
30		<hr/>
		\$3,023 08

IN CHANCERY OF NEW JERSEY.

Between

ELLEN E. OGDEN,

Compl't.

and

SAMUEL C. THORNTON,

Def't.

ON BILL.

10

DECRETAL ORDER.

The defendant having filed exceptions to the report made and account taken by S. Meredith Dickinson, Esquire, one of the Special Masters of this Court in the above stated cause, and the exceptions coming on to be heard and having been debated by J. Augustus Fay, Junior, of counsel with complainant, and by Frederick Voorhees, Esquire, and Barker Gummere, Esquire, of counsel with the defendant, and the Court having considered the arguments of counsel and also carefully examined the said report and account and the evidence relating thereto, and being of opinion that the several exceptions which allege that the said report and account are erroneous in that they do not make any allowance to the defendant for the cost of such improvements as have added to the permanent value of the property in question, are well taken and should be sustained, and the Court being further of opinion that the defendant is entitled to an allowance as and for the complainant's share of the cost of such improvements to the sum of seven hundred dollars as of the first day of January, in the year eighteen hundred and sixty-four, and to the further sum of three hundred dollars as of the first day of January, in the year eighteen hundred and seventy-six;

And the Court being also of opinion that the other exceptions are not well taken and should be overruled ;

It is therefore, on this twelfth day of May, in the year eighteen hundred and eighty-five, by his Honor Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the exceptions filed
 10 by the defendant to the report made and the account taken by S. Meredith Dickinson, Esquire, Special Master, so far as they allege and charge that said report and account are erroneous, in that they do not allow the defendant anything for the cost of improvements, be and the same are hereby sustained and that all the other exceptions filed by said defendant to said report and account be and the same are hereby overruled, and that neither party shall recover costs of the other on the exceptions. The decree made on the exceptions having made a re-statement of the account between the parties
 20 necessary and the Court having re-stated said account (a copy of the re-statement as made by the Court being hereto annexed) and on such re-statement having found that the balance due to the complainant for her share of the annual value of said property, from the seventh day of February, in the year eighteen hundred and sixty-one, the date of the complainant's first marriage, to the seventh day of May, in the year eighteen hundred and eighty-one, the date of the said Master's report, is including simple interest to the said seventh day of May, in the year eighteen hundred and eighty-one, the sum of
 30 three thousand and twenty-three dollars and eight cents.

It is therefore, on this twelfth day of May, in the year eighteen hundred and eighty-five, by his Honor Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the sum due to the said complainant from the said defendant, for her share of the annual value of the property in question, from the seventh day of February, in the year eighteen

hundred and sixty-one, to the seventh day of May, in the year eighteen hundred and eighty-one, is the sum of three thousand twenty-three dollars and eighty cents, and that the said complainant is entitled to recover that sum, with interest thereon from the seventh day of May, in the year eighteen hundred and eighty-one, from the defendant.

It is therefore further ordered, adjudged and decreed, that the said defendant pay to the said complainant the sum of three thousand seven hundred and fifty-one dollars and thirteen cents, together with the taxed costs of this suit in this Court (excluding however the complainant's costs on the exceptions to the Master's report) within thirty days after service upon him of a copy of this decree, together with a copy of the taxed bill of costs, and that in case the said defendant shall fail or neglect to take such payment, the said complainant shall be at liberty to apply to this Court for such further relief and aid as may be necessary to enforce this decree.

And it is further ordered, that an extra allowance of seventy dollars be and the same is hereby made to the said S. Meredith Dickinson, Esquire, for his services as Master in taking and stating the account and making the report in this case, and that such extra allowance, together with his fees as Master allowed by the statute, be included and taxed as part of the taxable costs to be recovered by the complainant of the defendant.

THEODORE RUNYON,

C.

Respectfully advised.

A. V. VAN FLEET,

V. C.

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A true copy.

G. S. DURYEE,

Clerk.

IN CHANCERY OF NEW JERSEY.

Between	ELLEN E. OGDEN,	}	ON BILL
	Complainant,		FOR RELIEF.
10	and		NOTICE OF
	SAMUEL C. THORNTON,		APPEAL.
	Defendant.		

Samuel C. Thornton, the defendant in the above stated cause, hereby appeals from the decretal order made by this Court in the said cause, on the twelfth day of May, in the year eighteen hundred and eighty-five, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

20 Dated May 20th, 1885.

FREDERICK VOORHEES,
per S. K. R.
Sol. and of Counsel with Defendant.

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

S. H. GREY,
Of Counsel with Defendant.

STATE OF NEW JERSEY, }
COUNTY, } ss.

30 FERDINAND V. DILLS, being duly sworn according to law, on his oath says, that on Friday, the twenty-second day of May, eighteen hundred and eighty-five, he served a true copy of the within notice on Col. J. A. Fay, by leaving the same at his office in the care of his clerk.

FERDINAND V. DILLS.

Sworn and subscribed this 22d day of May, A. D. 1885,
before me.

FRANK BERGEN, M. C. C.

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

Between

SAMUEL C. THORNTON,

Appellant,

and

ELLEN E. OGDEN,

Appellee.

PETITION OF AP-
PEAL FROM DE- 10
CRETAL ORDER
OF THE COURT
OF CHANCERY.

To the honorable the Court of Errors and Appeals in the last resort in all causes :

The humble petition of Samuel C. Thornton, the ap-
pellant in the above stated cause, respectfully shows that
your petitioner finds himself aggrieved by a Decretal 20
Order made in the Court of Chancery by his Honor
Theodore Runyon, Chancellor of New Jersey, bearing
date the twelfth day of May, eighteen hundred and
eighty-five, wherein the said Ellen E. Ogden was com-
plainant, and the said Samuel C. Thornton, your peti-
tioner, was defendant, in these respects, to wit:

1. That the said Decretal Order adjudges that the ex-
ceptions filed by your petitioner to the report made and
account taken in said cause by S. Meredith Dickinson,
Esquire, one of the Special Masters of the said Court of
Chancery, be sustained only in part and overruled as to 30
the remainder.

2. That the said Decretal Order adjudges that the de-
fendant, your petitioner, is only entitled to the sum of
seven hundred dollars as of the first day of January, in
the year eighteen hundred and sixty-four, and the fur-
ther sum of three hundred dollars as of the first day of

January, in the year eighteen hundred and seventy-six, as an allowance for the complainant's share of the costs of such improvements as have added to the permanent value of the premises in question.

3. That the said decretal order adjudges that the complainant is entitled to the sum of one hundred dollars per year for her one-third of the annual value of said premises from February 7th, 1861, (the date of the marriage) to May 18th, 1865, (the date of her mother's death) and the sum of one hundred and sixty-eight dollars and seventy-five cents per year for her one-half of the annual value of said premises from the latter date to May 7th, 1881, (the date of said Master's report) with interest on said yearly sum.

4. That the said decretal order adjudges that the balance due to the complainant for her share of the annual value of said property from the seventh day of February, in the year eighteen hundred and sixty-one, to the seventh day of May, in the year eighteen hundred and eighty-one, is, including simple interest to the latter date, the sum of three thousand, twenty-three dollars and eighty cents, and that the said complainant is entitled to recover that sum, with interest thereon from the seventh day of May, eighteen hundred and eighty-one, from the defendant.

5. That the said decretal order adjudges that the said defendant pay to the said complainant the sum of three thousand seven hundred and fifty-one dollars and thirteen cents, within thirty days after service upon him of a copy of said decree.

And your petitioner humbly appeals from all those parts of the decretal order of the Chancellor which decree as aforesaid, upon the ground that the same are erroneous.

1. For that all of the exceptions filed by your petitioner to the report made and account taken by the

said Special Master were well taken, and should have been wholly sustained by the said Chancellor.

2. For that your petitioner is justly entitled to a much greater allowance than the sums named in said decretal order, as and for the complainant's share of the cost of such improvements as have added a permanent value to the premises in question, with interest on the complainant's share of said costs as they accrued.

3. For that the yearly sums allowed to the complainant for her share of the annual value of the premises in question during the period of the accounting are unjust and larger in amount than is warranted by the evidence, and that the allowance of interest thereon is contrary to the specific direction of this honorable Court. 10

4. For that the balance due to the said complainant from your petitioner for her share of the annual value of said property during the period of the accounting, if there be anything due to said complainant therefor, is much less than the sum of three thousand twenty-three dollars and eighty cents.

5. For that the sum of three thousand seven hundred and fifty-one dollars and thirteen cents required by said decretal order to be paid by your petitioner to the said complainant is much more than the amount lawfully and justly due by your petitioner to the said complainant for the balance on said accounting and interest thereon. 20

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

SAMUEL K. ROBBINS,
Solicitor for Appellant.

S. H. GREY,
Of Counsel with Appellant.

ANSWER TO PETITION OF APPEAL.

Filed
In the usual form.

1885.

10

ADDENDA.

IN CHANCERY OF NEW JERSEY.

Between

ELLEN E. OGDEN, ET AL.,

20

Complainant,

and

SAMUEL C. THORNTON,

Defendant.

DECREE ON REMIT-
TITUR AND ORDER
OF REFERENCE.

30 Upon opening the matter this day to the Court by J. Augustus Fay, Jr., solicitor for and of counsel with Ellen E. Ogden, et al., the above named complainants and respondents in the Court of Appeals, and it appearing that Samuel C. Thornton filed an appeal from the decree made in this cause on the twenty-first day of November, A. D. 1879, to the Court of Errors and Appeals in the last resort, and that the said appeal has been determined by the said Court of Appeals, and the proceedings have been remitted to this Court to proceed further thereon according to law, and on reading the remittitur from the said Court of Appeals, whereby it appears that it was ordered and decreed by said Court that the said decree

of the Chancellor be reversed without costs, and that a decree be entered against the appellant and in favor of the respondent as follows: That the said Samuel C. Thornton be declared to hold his sister's moiety of the property in question in trust for her and in the capacity of a trustee account to her for it, and that an account be taken of the annual value of the property, and that the respondent recover her costs in this Court, to be paid by the defendant, &c. :

It is thereupon, on this twentieth day of July, A. D. 1880, on motion of J. Augustus Fay, Jr., solicitor for and of counsel with the complainants, ordered that the decree of the said Court of Appeals be and the same is hereby made the decree of this Court, and it is further ordered, that it be referred to S. Meredith Dickinson, Esquire, one of the Special Masters of this Court, to take and state an account between the said complainants and the said defendant, in accordance with the provisions of the said decree, and report the same, with all convenient speed, for the better ascertainment of which account the parties are to produce before the said Master, upon oath or affirmation, if required, and leave with him all books, writings, in their custody or power relating thereto, and are to be examined upon interrogatories as the said Master shall direct, and said Master is also to have power to examine other witnesses in relation to said account, and is to report what the annual value of the premises in question has been since the seventh day of February, in the year eighteen hundred and sixty-one, which date is fixed as the date of the first marriage of the said complainant, Ellen E. Ogden, and also the costs of such improvements made by the defendant as have added a permanent value to such property since the last aforesaid date; also the date of the death of the mother, and what upon the accounting appears to be due from each party to the other, and also the balance which upon the said

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account shall appear to be due from either party to the other, and that all further equities be reserved until the coming in of said report.

THEODORE RUNYON,
C.

By the statute.

A. V. VAN FLEET,
V. C.

10

A true copy.
G. S. DURYEE,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between

20

ELLEN E. OGDEN, ET AL.,

Complainant.

and

SAMUEL C. THORNTON,

Defendant.]

ON REMITTITUR
FROM COURT OF
ERRORS.
Amended
DECREE.

It appearing that the decree of the Court of Errors and Appeals of this State, made on appeal in the above stated cause, on the twelfth day of July last past, A. D. 30 1880, as entered on the records of said Court, was by said Court, at its March term last past, A. D. 1881, ordered and decreed to be amended by inserting in the last clause of said decree as now entered, near its close and immediately after the words "cost of such improvements as have added a permanent value to such property," the words "with the interest on such costs" and that the same has been amended accordingly.

And it further appearing that the decree of this Court, made on the twentieth day of July last past, on remittitur in the above stated cause, did not conform to the decree of said Court of Errors and Appeals in that it limited the account for the cost of permanent improvements therein directed to be taken to the cost of such permanent improvements as were made after the seventh day of February, in the year of our Lord one thousand eight hundred and sixty-one ; 10

It is thereupon, on this twenty-ninth day of May, in the year of our Lord one thousand eight hundred and eighty-one, on motion made pursuant to notice by Frederick Voorhees, solicitor of the defendant, and on good cause shown in the presence of J. Augustus Fay, Esquire, solicitor of the complainant, ordered and decreed by the Court, that the decree of the said Court of Errors and Appeals, as amended at its March term last past, be and the same is hereby made the decree of this Court ; that the said defendant, Samuel C. Thornton, be and he hereby is declared to hold the moiety of the property in question conveyed to him by Ellen E. Thornton, now Ogden, his sister, in trust for her, and that in the capacity of a trustee he must account to her therefor ; that an account be taken ; that the defendant, Samuel C. Thornton, be charged in said account with one-third of the annual value of the property since the date of the first marriage of the complainant till the death of her mother, and with one-half of the annual value of said property since the time of said death, and that the complainant, Ellen E. Ogden, be charged in said account with one-half of the cost of such improvements made by the defendant, Samuel C. Thornton, to the property as have added a permanent value to such property, with interest on such costs ; that the depositions and evidence heretofore taken in this cause by the Special Master named in the above decree of this Court on remittitur . 20 30

above referred to, be taken, used and considered in said cause the same in all respects as if taken under this decree; that the said Special Master and the several parties to this suit have leave to take such further depositions therein as to them shall seem necessary, and that the said Special Master do take and state an account
 10 between the said complainant and the said defendant, in accordance with the provisions of the above named amended decree of the Court of Errors, and that he report the same with all convenient speed, and do state the balance which upon such accounting appears by the evidence so taken before him to be due from either party to the other, and that all further equities be reserved until the coming in of said report; and it is further ordered and decreed that the above named decree of this Court, made on remittitur on the twentieth day of July last past, be and the same is hereby revoked, annulled and set aside in all respects wherein the same is inconsistent
 20 with or in antagonism to the provisions of this decree.

And it is further ordered, that the costs of the defendant on this application to be taxed, be paid by the complainant.

THEODORE RUNYON,
 C.

Respectfully advised.

A. V. VAN FLEET,
 V. C.

A true copy.

30 G. S. DURYEE,
 Clk.

IN CHANCERY OF NEW JERSEY.

Between

ELLEN E. OGDEN,

Compl't,

and

SAMUEL C. THORNTON,

Deft.

MEM.

*with**Master's Report**To his Honor the Chancellor :*

It appears in evidence before me that the premises in question consist of a lot of land of about six acres, fronting on the main street of Moorestown, a flourishing village in Burlington county.

The lot is very eligibly located in the heart of the village and is one of the most desirable sites there. There 10
is an ill-planned frame dwelling house thereon, originally built about sixty or eighty years ago, and barn and other outbuildings. The barn was built in 1863 to replace one previously burned.

I am required to state an account between the parties to this suit and to charge the defendant with one-third the annual value of the above mentioned property since the date of the first marriage of the complainant till the death of her mother, and with one-half the annual value 20
thereof since the time of said death, and to charge the complainant with one-half the cost of such improvements made by the defendant to said property as have added a permanent value thereto, with interest on such cost, and to state the balance which upon the accounting appears by the evidence to be due from either party to the other.

It is admitted that the date of the first marriage of the complainant is February 7, 1861, and the death of her mother May 18, 1865.

I have deemed it necessary to make a short statement of the principles upon which my report is based.

10 The opinion of the witnesses on both sides differs widely as to the annual value. In my judgment those for the complainant are as much entitled to credit as those for the defendant. None of them seem to have taken into consideration in forming their judgment that the property derived an additional value by reason of the use by the defendant of the office connected with the main dwelling in his professional business.

20 The defendant, who is a physician in extensive practice, has occupied the property since 1858, both as a dwelling and an office, and it was occupied by his father before him for the same purposes. Under all the circumstances of the case I think \$400 is a fair occupation rent for the first period and \$450 for the second period. Rents increased largely during the second period and apart from any improvements to the property such increase would be reasonable.

There is no proof as to taxes, insurance and ordinary repairs, except the receipts in Exhibit D and the testimony of the defendants. The receipts themselves are not proved in any legal manner and I ought not to report in favor of the deductions claimed on the unsupported testimony of the defendant.

30 But I am satisfied from the testimony of other witnesses, (mainly those called on his behalf), that one-fourth of the annual rental value stated is a reasonable allowance for taxes, insurance and ordinary repairs, and I have therefore made an allowance to that extent in the account. The annual value therefore for the first period is \$300 and for the second period \$337.50.

I do not charge the defendant in this account with

any moneys received by him for policies of insurance, although he acknowledges the receipt of \$200 on this head.

The defendant claims nearly \$7,000 for permanent improvements, and for interest on such sum nearly \$6,000. The several items of his claim are set out by his counsel in Exhibits A and B. In a very large part of these items he produces no receipts, (see Exhibit E), nor does it appear that he kept any books of account. 10

He has produced none. He states that for many expenditures he took no receipts, and he appears to have offset many charges against himself by charges for his professional services, the character of which he does not specify. The receipts produced do not specify the particular work for which they were given, except as they have been identified for the purpose of this accounting. Any accounts predicated upon such evidence would be little else than conjectural. 20

Apart from the legal difficulty the weight of the testimony on his own behalf is decidedly against the theory that the expenditures if all proved have added a permanent value to the property.

They certainly have, in the opinion of the witnesses, increased the rental value very little and most of them testify to the poor condition of the dwelling and its need of repairs. Some of them are of opinion that the improvements are unsuited to such a fine lot, and that the land would be quite as valuable without the building as with it. The evidence on the whole leads to the conclusion that such extensive expenditure on a building so ill planned, old and dilapidated, was imprudent in the owner and would be unjustifiable in a trustee. 30

The defendant, no doubt, truly characterizes these improvements as all being "necessary for comfort and convenience," (p. 69) but this view of the matter does not,

in my opinion, warrant me in reporting a charge for them against the complainant.

A very considerable part of the expenditures named were for the introduction of water and gas, both of which would probably be reckoned useless luxuries by a large majority of the residents of Moorestown.

A true copy.

G. S. DURYEE,
Clerk.