

NEW JERSEY
COURT OF ERRORS AND APPEALS
IN ALL CAUSES &c.

Between
BENJAMIN GEROE AND WILLIAM I. STAGG AND
CATY, HIS WIFE, *Appellants,*

and

CORNELIUS WINTER AND PEGGY, HIS WIFE,
Respondents.

On Appeal from a Decree of the Court of Chancery. 10

ABSTRACT OF PLEADINGS.

Bill of Complaint.

To his Excellency Daniel Haines Esquire, Governor and
Chancellor of the State of New Jersey.

Humbly complaining show unto your Excellency your
Orators Cornelius Winter and Peggy his wife of the town-
ship of Franklin in the county of Bergen and State of New
Jersey, that in or about the 16th day of May in the year of
our Lord one thousand eight hundred and forty-three, one
Daniel Geroe died, leaving a large personal property and con- 20
siderable real estate, and leaving a last will and testament,
bearing date the fifteenth day of December in the year of our
Lord one thousand eight hundred and thirty-six, and in and
by his said will besides bequeathing his personal estate, he
gave to his wife Mary the house and lots where he then

dwelt, above and below, as long as she should remain his widow and no longer, then to fall to his heirs, who by his said will were to get the remainder of his real estate; then he gave unto his son Benjamin Geroe the mountain wood lot he bought of Garret Van Blarkum to him his heirs and assignees forever; in the next place he gave the remainder of his real estate unto his three children, Peggy, wife of Cornelius Winter your orator, Caty, wife of William Stagg, and his son Benjamin Geroe, equally share and share alike to

10 them their heirs and assigns forever, to be divided or sold as two out of the three heirs could agree; and he then appointed William I. Stagg and his son Benjamin Geroe, executors of his said will. And your orators further show, that the said Daniel Geroe left three children at the time of his death, to wit; Peggy, wife of Cornelius Winter your orator, Benjamin Geroe and Caty, wife of William I. Stagg, who are all now living. That the said Benjamin Geroe and William I. Stagg, have proved the said will before the Surrogate of the county of Passaic and have taken upon

20 themselves the burthen of the due execution thereof. And your orators further show unto your Excellency, that your orators by the said will became the owners of one third of the real estate of the said Daniel Geroe as aforesaid, that sometime afterwards, to wit, on or about the fall of the year of our Lord one thousand eight hundred and forty three, your orator Cornelius Winter, Benjamin Geroe, and William I. Stagg met together for the purpose of making a division of the real estate, so devised by the will of the said Daniel Geroe, that when they were so met, they requested your orator Cornelius Winter to make a division of the

30 same unto three parts, that thereupon your orator Cornelius Winter proceeded to divide the same into three parts as nearly equal as he could, but inasmuch as your orator thought one of the parts more valuable than either of the other two, he proposed that the person who should take this share should pay to each of the others the sum of sixty-six dollars and sixty-six cents, in order to equalize the shares, and your orator Cornelius Winter being desirous of making such division, amicably offered to them, while they were so together,

that they should each choose a share, and he could take the remaining one. That the said William I. Stagg then chose one share, but the said Benjamin Geroe then refused to choose a share and declined making such division—and since that time the said William I. Stagg and Benjamin Geroe have made no further attempt to divide the same. And your orators further show that they have heard, and suppose it to be true, that the said Benjamin Geroe and William I. Stagg as executors of Daniel Geroe and as devisees under his said will, afterwards advertised the real estate of Daniel Geroe deceased, and in which your orators were interested as aforesaid, to be sold at public vendue, on Thursday the eighteenth day of January, in the year of our Lord one thousand eight hundred and forty-four at the house of John C. Ackerson, innholder, in the township of Manchester, in the said county of Passaic; that your orators not believing that the said William I. Stagg and Benjamin Geroe after the fair proposition of your orator to them as aforesaid would sell the said property did not attend the sale, but your orator has since been informed and believes, and therefore charges the fact to be that the said William I. Stagg and Benjamin Geroe to deprive your orators of the property so devised by the will of the said Daniel Geroe to your orator Peggy 10
20 wife of Cornelius Winter, and to get the benefit therefrom to themselves, did on the said eighteenth day of January, bid of to one John I. Goetschius, who attended the said sale as their agent, the property herein after mentioned, being part of the real estate of the said Daniel Geroe, one-third of which was devised as aforesaid, to your orator Peggy Winter, and did execute a deed to the said John I. Goetschius, together with 30
30 Caty wife of William I. Stagg, for the lands and premises following, as your orators have ascertained by examining the said deed, as recorded in the clerk's office of the county of Passaic, and which as recorded is in the said deed described as follows; as lying and being in the township of Manchester, in the county of Passaic, and state of New Jersey. The first lot, beginning &c. (see description in deed No. 1.) and which deed purports to be given by the said William I. Stagg and Benjamin Geroe, executors of the said Daniel Geroe and Caty wife of William I. Stagg, and as devisees under the will

of the said Daniel Geroe, as by reference to said deed will appear; that said deed bears date the 20th day of January, A. D. 1844, and purports to be for the consideration of \$1035, and was acknowledged on the same day and was recorded on the 22d day of the same month of January, in the clerk's office of the said county of Passaic, in book G. of deeds, pages 451, &c. And your orators further show that the aid John I. Goetschius together with Jemima his wife, did thereupon execute and deliver to the said Benjamin Geroe a deed bearing date the 20th day of the same month of January, for the lots firstly and thirdly described in the before mentioned deed to the said John I. Goetschius, purporting to be given for the consideration of \$600, that the same was acknowledged on the same day and was recorded on the 22d day of the same month of January, in book G. of deeds for said county in pages 555, &c. And that the said deed is a quit claim and without any covenant therein contained, as your orators have ascertained by an examination of the records of said county. And your orators further show, that the said John I. Goetschius and Jemima his wife did thereupon execute and deliver to the said William I. Stagg, a deed bearing date the twentieth day of the same month of January, for lots or parcels secondly and fourthly described in the same deed to the said John I. Goetschius and which purports to be given for the consideration of \$465, that the same was acknowledged on the same day and was recorded on the 22d day of the same month of January, in book G. of deeds for said county in pages 456, &c. And that the said deed is a quit claim deed, without any covenants therein contained, as your orators have ascertained by an examination of the records of said county. And your orators expressly charge that the said sale to the said John I. Goetschius was made to him as the agent of the said William I. Stagg and Benjamin Geroe, and that he conveyed the said property to them as aforesaid, in pursuance of an agreement entered into by them, previous to the said sale; that the said sale was made at a very low price, at about half its fair value, and that the same was so fixed by the said Benjamin Geroe and William I. Stagg, for the purpose of getting your orator's

right in said property at less than its fair value, and that it was done in fraud of your orator. And your orators further charge that no money was paid by the said John I. Goetschius for the said purchase, but the said sale to him and the price put in said deed, were put in to deceive your orators and to induce them to believe that the said sale was fair and *bona fide*. And your orators are advised that the said sale to the said John I. Goetschius and the reconveyance by him and his wife to the said Benjamin Geroe, and William I. Stagg, as aforesaid, are contrary to law, inasmuch as by the laws of this state, an executor or trustee cannot either sell to himself, or to any person for him or on his account; and because the said sale was made for the purpose of defrauding your orators. And your orators pray, that the the said conveyance to the said John I. Goetschius and the said conveyances by him to the said Benjamin Geroe, and William I. Stagg, may be declared by this court to be void and of no effect; and that they may be compelled by the decree of this court, to reconvey the said property to such persons as your Excellency may direct, or to convey one-third part thereof to your orators; and that they may be enjoined from selling, assigning, or conveying the same to any person or persons, or body corporate, without the order of this court. And that they may be decreed to pay to your orators their cost and charges in this behalf expended; that your Excellency will grant, that the said property may be sold or divided under the order of this honorable court, and such further relief as to your Excellency shall seem meet and agreeable to equity and good conscience. And that the state's writ, or writs of subpœna issuing out of and under the seal of this court, may be directed to the said Benjamin Geroe, and William I. Stagg and Caty his wife, therein and thereby commanding them on a certain day and under a certain penalty therein to be specified to be and appear before your Excellency, in this honorable court, then and there to answer all and singular the premises contained in your orator's bill of complaint, and also the state's writ or writs of injunction, enjoining the said Benjamin Geroe, William I. Stagg and Caty his wife, from selling, assigning or conveying the same until the further order of this court, and to stand to and

abide by such order and decree in the premises, as shall seem meet and agreeable to equity and good conscience, and your orators as in duty bound will ever pray, &c.

A. S. PENNINGTON, *Solicitor and of
Counsel with Complainants.*

Answer of Defendants.

To the foregoing bill of complaint, the defendants answer and say, that on or about the tenth day of May, in the year of our Lord one thousand eight hundred and forty three,
 10 Daniel Geroe, in said bill named, died, leaving a large personal property and some real estate, consisting of one store, three lots with dwelling houses thereon of small value, being old, out of repair, and untenantable; and one undivided half of ten vacant lots, worth about twenty-five dollars; and leaving a last will and testament of such date and such purport and effect as in the complainant's said bill is set forth and mentioned; and that the defendants, Benjamin Geroe and William I. Stagg, proved the said last will and testa-
 20 ment, and took upon themselves the execution thereof; and that the said Daniel Geroe left four children instead of three, as in said bill is alleged; to wit, Peggy, wife of Cornelius Winter, the complainant, Benjamin Geroe, and Caty, wife of William I. Stagg, and Elizabeth, wife of Abraham Vanderbeck, who are all now living.

And these defendants, in further answering, say that in the fall of the year eighteen hundred and forty-three, the complainants Cornelius Winter and Peggy his wife, Benjamin Geroe, and William I. Stagg and Caty his wife, met twice for the purpose of making a division of the real estate
 30 so devised to them by the said last will and testament, prior to that meeting, in complainant's said bill set forth; that at the first meeting, the said Winter divided the said property into three parts, and the parties agreed to draw lots for their respective parts, as divided by said Winter; and did so draw; the wives of said Winter and Stagg, drawing for, and in the presence of, their respective husbands; and the said parties

all expressed themselves satisfied with the division so made, and went together in pursuit of some competent person to draw releases to each other, according to said division, of their interest in the respective shares ; but, not being able to get a person that day, they agreed to meet in Paterson on the following Monday, (this being on Saturday,) to execute said releases, and then separated ; and that on the Monday so appointed, the said Cornelius Winter and Peggy his wife, both failed to appear according to their said appointment ; and after a few days, these defendants were informed, that the said Cornelius Winter and wife were dissatisfied with, and unwilling to abide by the said division. And these defendants, in further answering, say, that about two weeks after the day on which said division was made, as above stated, the said Cornelius Winter and wife, William I. Stagg and wife, and Benjamin Geroe again met, and on conferring together, the said Cornelius Winter said that he would leave the whole matter to his wife ; and his said wife Peggy thereupon informed these defendants that she would take the share drawn at the former meeting by William I. Stagg, with fifty dollars, instead of the sum of one hundred dollars, which was added thereto by the said Winter, on the first division, to be paid by the others, and received by the person drawing the said share ; and give up the share drawn by said Winter to said Stagg. And the said William I. Stagg immediately agreed to the proposition so made by the said Peggy Winter, in presence, and by authority of said husband ; and the business being thus again settled, the said Benjamin Geroe proposed drawing a writing to be signed by all the parties, binding them to the said division ; whereupon the said Cornelius Winter interfered, and told his said wife that she was worse off than before, and she thereupon declared that she would not have any thing more to do with it ; it must take its course of law, and she would never come down to try to settle it again.

And these defendants, in further answering, say, that after the meeting last above mentioned, they, the said William I. Stagg and Caty his wife, and Benjamin Geroe, believing that a division of the said property could not be agreed upon,

agreed to sell the said real estate, so divided as aforesaid, under and by virtue of the authority given in and by the clause in said last will and testament, in complainants said bill recited and set forth; and did advertise the same for sale as in said bill is alleged; and preparatory to such sale, the said Stagg and Geroe saw the said Cornelius Winter and proposed to him to go with them, to have the said real estate surveyed and divided into parcels convenient for selling. And the said Winter accepted said proposal, and went with said

10 Stagg and Geroe, and was present at a survey then made, for the purpose aforesaid; and after the said survey was completed, the said Winter made a proposal to said Stagg and Geroe, to divide the said real estate; and these defendants admit that such division and proposal for ascertaining their respective shares, was then made by said Winter, as in said bill is alleged; and that the said Stagg agreed to accede to said proposal, if the said Geroe would agree to it, but not otherwise; and that the said Geroe wholly refused to accede thereto; and gave as his reason for such refusal, that the

20 wife of said Winter was not present, and that he did not believe that any division that should be made would be adhered to by said Winter and his said wife; and that no other attempt to divide the same has ever been made. And these defendants in further answering, say, that prior to said survey, for the purpose of giving great publicity to said sales, they caused handbills, advertising said sale, as in said bill set forth, to be printed and put up in a great number of public places in Passaic county, and the adjoining parts of Bergen county, including the neighborhood in which the said

30 Cornelius Winter resides; at least sixty days prior to said sale; and also gave one of said handbills to the said Cornelius Winter personally, six weeks before the day of said sale; and in addition thereto, informed various persons that the said property would be sold, and required them to attend and buy at said sale.

And these defendants in further answering, say that at the time and place appointed in the said advertisement, there was an attendance of from twenty to thirty persons, all of whom were persons able, and as likely as any others, to be-

come purchasers of such real estate ; and Peggy Winter, the wife of the said Cornelius Winter, was also present, accompanied by her son-in law, Peter Yoemans ; and the defendants, Benjamin Geroe and William I. Stagg, applied to the said Peggy Winter, to let her said son-in-law buy ; that if she did so, they would favor him by not requiring cash of him ; but would take his note for the amount of any purchase he might make.

And these defendants say, that at the time and place, in said advertisement specified, in the presence of all the persons aforesaid, the said real estate was openly and fairly set up at public vendue, and kept open for bids long enough for every person present to have full and fair opportunity to bid ; and while the first, second and third lots were up, the bidding was suspended long enough to permit purchasers to go and examine the property ; and said Stagg with several and showed them the premises during such suspension ; and that the first lot was struck off to one Cornelius A. Hopper ; and the lot being the first mentioned in the deed from these defendants, to John I. Goetschius in complainant's bill mentioned, were struck off to one David I. Alyea, and the lots being the second, third and fourth in said deed mentioned, were struck off to one John J. Goetschius, in complainants' bill mentioned ; and the bid of the said David I. Alyea was then and there declared by him, to be for the benefit of the said Goetschius, who then and there signed the conditions of sale, and received a deed for all the lots in said deed mentioned, as in said bill set forth, which deed was acknowledged and recorded as in said bill set forth. And these defendants deny that the said sale was fraudulent and intended to injure the said Cornelius Winter and Peggy his wife ; but allege that the same was made in good faith, and as these defendants were advised, and believe, according to the authority given by the said last will and testament of the said Daniel Geroe deceased.

And these defendants deny that the said property so as aforesaid, sold to the said John I. Goetschius, was sold to him as the agent of these defendants, Benjamin Geroe and William I. Stagg, or either of them ; or that the said John I. Goetschius

attended such sale as such agent as aforesaid ; and they deny that the part thereof bid off by the said David I. Alyea, and by him transferred to said John I. Goetschius, was bid off and sold to him, or to the said John I. Goetschius, as such agent as aforesaid ; or that the said David I. Alyea attended such sale as such agent aforesaid ; on the contrary they say that there was no agreement, express or implied, between the said Goetschius and Alyea, or either of them, and the defendants William I. Stagg and Benjamin Geroe or either of them, or any person on their or either of their behalf, that they the said Goetschius or Alyea, or either of them, should, on their part, give up to them, the said Stagg and Geroe, or either of them, or to any other person, the property by them purchased at said sale, or any part or portion thereof, or that the said Benjamin Geroe and William I. Stagg, or either of them, should, on their part, take such property from them, the said John I. Goetschius, or David I. Alyea, or either of them.

And these defendants, in further answering, say, that after the said sale, and on the same day, the said Benjamin Geroe, believing that the property purchased by the said Cornelius A. Hopper, was bid off to him at a moderate price ; applied to the said Hopper, and offered to take the same from him on the same terms, on which he had purchased the same ; but that the said Hopper declined accepting said offer ; in like manner, and for the same reason, the said Geroe and William I. Stagg, on the twentieth day of January, being two days after said sale, applied to the said John I. Goetschius, and offered to give him for the property purchased by him, at said sale, the same price he had given for the same ; and he, the said Goetschius, freely and without any prior obligation, known to these defendants so to do, accepted said offer ; and the defendants William I. Stagg and Benjamin Geroe, each agreeing to take the lots conveyed to them by the said John I. Goetschius and Jemima his wife, as in complainants' bill set forth, received such deeds respectively, as in said bill is alleged, which deeds were for the consideration, and dated and acknowledged and recorded, as in said bill is set forth.

And these defendants deny that said sales and conveyan-

ces last mentioned, were made pursuant to any agreement entered into prior to said public sale, as in complainants' bill is charged, and they deny that said property was sold at said public sale at a very low price, at about half its fair value, as in complainants' said bill is alleged, though they admit that they considered the property cheap at the prices for which it sold. And these defendants admit that the said John I. Goetschius, paid no money on his said sale, but allege that on becoming the purchaser at said sale, he was bound so to do; but was not called upon for it on that day, for the reason that the said Goetschius resided near these defendants, and was a responsible person, and these defendants believed that the money could be had at any moment by calling on him for the same; and they further say that said Goetschius was discharged from such liability by the said William I. Stagg and Benjamin Geroe, on selling to him the said property, they assuming such liability. And they deny that the price or consideration named in said deed, was put in for any fraudulent intent, as in that behalf alleged, but was so put in, as the real *bona fide* consideration of said conveyance. 10

And these defendants say, that, by the conditions of said sale, there was to be paid down in cash, ten per cent. of the purchase money, and fifteen per cent. thereof, on the first day of February, A. D. eighteen hundred and forty-four, making together twenty-five per cent. of said purchase money, amounting to four hundred and seventy-one dollars and twenty-five cents; and that on the said first day of February, the said Benjamin Geroe went with one-third of said sum of four hundred and seventy-one dollars and twenty-five cents, to the residence of said Cornelius Winter and tendered the same to him, the said Cornelius Winter and Peggy his wife; but that they refused to receive the same or any part thereof; and that the residue of said purchase money, with interest thereon, became due and payable on the first day of May, A. D. eighteen hundred and forty-four; and on the ninth day of said month of May, the said Benjamin Geroe tendered to the said Cornelius Winter and Peggy his wife, the sum of six hundred and thirty-six dollars and sixty-nine cents, being one-third of the whole amount of the proceeds of 20 30

said sale of real estate, with interest thereon, from the first day of February last aforesaid, after deducting from said whole amount, six dollars, being the expenses incurred and expended in the aforesaid survey and advertisement; and the said Cornelius Winter and Peggy his wife refused to receive the same or any part thereof. And the defendants William I. Stagg and Benjamin Geroe have ever since that time, held the said last mentioned sum; and have, at all times, been ready and willing, and are still ready and willing, to pay the same over to the said complainants, on receiving a proper receipt and acquittance for the same.

DANIEL BARKALOW, *Solicitor and of
Counsel with defendants.*

New Jersey, ss.—Benjamin Geroe and William I. Stagg, two of the defendants in the above answer named, being duly sworn on their oaths severally, say that the facts, matters and things set forth in the foregoing answer, so far as they relate to the acts and deeds of these defendants are true; and so far as they relate to the acts and deeds of other persons, they believe them to be true.

(signed)

BENJAMIN GEROE,
WILLIAM I. STAGG.

Sworn and subscribed before me, this 25th of November, A. D. 1844.

B. W. VANDERVOORT, *Master in Chancery.*

Replication.

To the foregoing answer the complainants filed a replication, averring the truth and sufficiency of their bill, and denying the truth and sufficiency of the answer.

Proofs.

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Cornelius S. Van Wagoner, Esq., a witness offered on the part of the complainants, being objected to by defendants, was sworn on his *voire dire*. And on his said oath deposeth and saith, that he has advised with Mr. Winters (the com-

plainant) touching the bringing of this suit, and Mr. Winters promised witness, if he succeeded in this cause, that he (witness) should be liberally paid. If he did not succeed in the suit witness would not expect to have anything, except for services as surveyor. Witness has not advised Mr. Winters as to the bill, but has advised him as to the course in which he could get redress. Winters came to him and made a statement of his grievances as to Stagg and Geroe, his brothers-in-law, (the defendants.) Witness advised him that the only way he could get redress, as witness thought, was to file a bill in chancery, and went with him to Mr. Pennington for the purpose of communicating information as to the course he should pursue. Mr. Winters has, occasionally, consulted with witness on the subject since, and witness has given him advice as far as he could, and has done so in anticipation of being paid for it by Mr. Winters if he succeeded. 10

Being cross-examined, says he is a surveyor by occupation, and had been employed by Mr. Winters to make a sketch of some part of the real estate of Daniel Geroe, deceased. Expects to be paid for making the map; not for any other services. Says he is willing to execute a release to Mr. Winters. There was no price or sum fixed or agreed upon. 20

A release was executed by the witness, and produced in evidence, and marked "Exhibit A, No. 1," on the part of the complainants. The execution thereof being first admitted by defendants' solicitor.

Further examined by defendants. Says he had no agreement in writing with Mr. Winters. Thinks after executing the release he would not have any legal claim against Mr. Winters, but in *honor* he never could be released from paying him. 30

Further cross-examined. Says Mr. Winters has here now given him notice that he will never pay him anything depending upon the event of this suit. Has had conversations occasionally, within a week or two, with defendants, but not in relation to this suit until this morning. Can't say who told defendants that witness had an interest in this suit. Mr. Barkalow (solicitor for defendants) was in witness's

office this morning, when witness told him that he (witness) was unpleasantly situated in relation to this suit, in two ways. In the first place, that these men, (the defendants) had employed him to survey for them, and had advised with him about the sale of the property. And that afterwards Mr. Winters had called on witness respecting the same property, and witness had given him his opinion about it. And witness said to Mr. Barkalow, that he presumed a person, not an attorney, situated as witness was, could not be excluded from being a witness, and whatever had passed in secrecy could not be withholden, and that in cases in which witness stood, as in the present case, this was the first time that ever a party had taken advantage of his situation.

(The defendant's solicitor still objecting.) The witness was sworn in chief, and on his oath, deposeth and saith, he was not present at the time of sale. Had some conversation with Mr. Geroe about sale of the property. Witness told Mr. Geroe they (Mr. Geroe and Stagg) might sell the property, but that they could not be purchasers themselves.

20 That in case the property would not bring enough, so as to warrant its being sold to others, it might be well for them to get some person to bid it off for them, and in the latter case, he would advise them to let the title remain in the person who bid it off, until a fair and amicable settlement might be made with Mr. Winters. Witness's impression is that Mr. Geroe acquiesced, though he does not recollect that Mr. Geroe said anything one way or the other. Soon after that they advertised the property for sale. Don't recollect any other conversation with either of them until after the sale.

30 Shortly after the sale Mr. Geroe called on witness (witness had thought Mr. Stagg was also present but now thinks Mr. Stagg was not present,) Mr. Geroe said the time had almost come to make deeds for this property which they had sold. That for the lot bid off by Mr. Hopper the deed was to be made out to Hopper. That for the parts of the property that had been bid off by Mr. Alyea and Mr. Goetschius the deeds were to be made out to him (Geroe) and Stagg, and asked whether that could be done. Witness at first told him he thought it could, but it would be necessary for Alyea

and Goetschius to assign their rights on the conditions of sale to them, (Geroe and Stagg.) After a little reflection, at the time, witness told Geroe that he thought it would be altogether illegal; that if Alyea and Goetschius had purchased the property for the purpose of retaining it the title should be made out to them, and if the title was made out to Alyea and Goetschius, and by them immediately to Stagg and Geroe, he (witness) did not think it would stand law, even if the sale had been *bona fide* to Alyea and Goetschius. Witness then told him their best way would be to make out the deeds to the purchasers as they appeared upon the list of sales. Witness asked Geroe whether these men had paid any percentage on their purchases; thinks Geroe said they had not, he did not consider it worth while, that their object was to get the estate settled, that they were willing at any time to do what was right with Mr. Winters, that from the beginning they had wanted nothing but what was right, and did not now want anything else, though Mr. Winters had not manifested the same feeling towards them. Deponent then drew one deed, but for whom he cannot tell. From the conversation between deponent and Geroe, deponent took it, that Alyea and Goetschius had bought in the property for him (Geroe) and Stagg, though he did not say so in so many words. He did not allege that Goetschius or Alyea had bought upon their own account. Mr. Geroe said "we'll take the deeds and risk it, we have taken advice upon it." The subject of the conversation between deponent and Geroe was, whether the sale would be a valid one, if it went to Goetschius and Alyea and from them direct to Stagg and Geroe. Deponent understood from the conversation and from what had transpired between deponent and Geroe, that the property had been bid in by Goetschius and Alyea for Stagg and Geroe. A few days ago deponent was under the impression (and so expressed it) that Mr. Stagg was present at the conversation above referred to, but upon reflection is now satisfied that he was not present. The reason why he supposed Mr. Stagg was present, was, that the conversation took place on the premises, but is now satisfied that it took place at deponent's house, and that Mr. Stagg

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was not there. Deponent drew one of the deeds and handed it to Mr. Geroe. Deponent has had very little conversation with Mr. Stagg within the last six or eight months.

On cross-examination. The defendants' counsel declined cross-examining.

(Signed) C. S. VAN WAGONER.

Sworn and subscribed, 30th December, A. D. 1849. Before me,

JAMES SPEAR, *Master and Ex. in Chan.*

- 10 Cornelius A. Hopper, a witness produced on the part of the defendants, being duly sworn, on his oath, deposeth and saith, he was present at the sale of the real estate of Daniel Geroe, deceased, in Manchester, by defendants, about the month of January or February last winter. There was a number of people present at the sale, say from fifteen to twenty. Stagg and Geroe appeared anxious to have people buy. They urged deponent to buy, the sale was kept open long enough for every body to bid. It was adjourned for (a few minutes at a time,) two or three times before it was struck off. Deponent bought part of the property. He bought the first house that was put up. The wife and son-in-law of the complainant were present at the sale.

Question proposed to deponent by Mr. Barkalow. "Did Mr. Geroe, after the sale, propose to you to take the property which you bought off your hands? Which, being objected to by Mr. Pennington, was overruled.

Deponent cannot say whether Mrs. Winters was present or not at the time of any conversation between deponent and Mr. Geroe.

- 30 Mr. Barkalow then proposed to deponent this question: "Did Mr. Geroe, at the time and place of sale, and shortly after you bought the first lot, offer to take the same off your hands if you did not want it? Which, being objected to by complainant's counsel, was overruled.

Deponent says that he believes that Mr. Stagg, during one of the adjournments mentioned, showed the property to persons present. Mr. Stagg, after deponent had bought his lot, urged deponent to buy one or both of the other lots.

Stagg seemed anxious to have them sold. The other houses were very much out of order, which was one reason why deponent objected to buying one of them. Had a little notion to buy it, but for that. Was present when it was struck off. Was present during all the sales. Thinks the sale was conducted fairly, and so as to give every one present an equal chance to buy. The persons present, most of them, were able to buy the property, and as likely to buy as any others, so far as deponent knows. Deponent still has the property purchased by him. He purchased it for himself. 10

Cross-examined. Says he did not see Mr. Winters (the complainant,) at the sale. The rest of the property sold that day (besides that bought by deponent,) was struck off to Mr. Alyea and Mr. Goetschius separately. The lot adjoining that bought by deponent was struck off for four hundred and ten dollars. Deponent gave eight hundred and fifty for the one he bought. It was a corner lot. The third lot sold was struck off for four hundred and ten or four hundred and twenty dollars. Don't recollect positively which. Did not think the lot next to deponent's (being the second lot sold,) was worth half as much as deponent's lot. Thinks the third lot was worth a little more than the second one. 20

Direct again. The last parcel sold were some vacant lots lying in a pond, a small part of them is out of the pond. They are not worth much. Deponent would not want them at any price. Would say twenty-five dollars is a good price for them as they are situated.

(Signed) CORN'S A. HOPPER.

Sworn and subscribed at Paterson, January 6th, 1845.
Before me, 30

JAMES SPEAR, *Master and Ex. in Chan.*

David I. Alyea being duly sworn on the part of defendants, says, he was present at the sale of the Geroe property in Manchester, last winter, and bought some of the property. Deponent bought the lot adjoining that purchased by Corn's A. Hopper, (last witness;) it was struck off to deponent at four hundred and ten dollars. Did not attend the sale as agent for Mr. Stagg and Geroe, or either of them. Did not

bid off that lot as agent for them or either of them. There was not, before the sale, any agreement, understanding or arrangement between deponent and Mr. Stagg and Geroe, or either of them, that they should take the lot struck off to deponent. In making his bids, and purchasing the property, deponent acted entirely for himself, and upon his own responsibility. After the property was struck off Mr. Goetschius took deponent's bid. This was not the same day of the sale, but was a day or two afterwards, as near as deponent can recollect. Mr. Stagg had then spoken to deponent, and offered to take the property off deponent's hands if he did not want it. It was after the day of sale when Mr. Stagg made the offer to take the property. Deponent consented to let him take it at his (deponent's) bid. Deponent did not care to keep the property after he saw the condition it was in. Deponent transferred his bid to Mr. Goetschius, at Mr. Stagg's request, to save the expense of making two deeds. At the time deponent bought the property he thought he had it cheap, but after he came to examine it he did not consider it so. It was considerably out of repair. Should not consider it in sufficient repair for a decent family to live in. It was empty at the time it was sold. Deponent judges there were upwards of twenty people present at the sale. They were, generally, persons able, and as likely as any other in the neighborhood, to buy. Some of them deponent knows had come for the express purpose of buying. The sale was so conducted as to give every person present an equal chance to buy, according to deponent's judgment, as fair as sales are generally, and a little more so. Thought there was more time given and bids longer dwelt on than is commonly done. Saw Mr. Stagg at the sale urging people to buy, and saying the property was going cheap. Mrs. Winters, the wife of Cornelius Winters, was present during the sale. Deponent knows Peter Yeoman when he sees him. Understood him to be the son-in-law of Corn's Winters. Saw him and Mrs. Winters talking together at the sale. During one of the adjournments at the time of the sale, deponent saw Mr. Stagg and Mr. Geroe talking with Mrs. Winters and Mr. Yeomans, urging them to buy, and

saying the property was going cheap and they had better buy. Mrs. Winters said she did not dare to buy. Mr. Stagg then told Yeomans he could buy, and he had better buy, and he need not pay any money. They did not buy. Don't recollect whether they said they would or not. Knows the sale of the property was advertised, one printed advertisement was put up by Mr. Geroe at deponent's store.

Cross-examined. Mr. Stagg or Geroe had not requested deponent to attend the sale, more than that one of them (as he thiaks,) told him the property was to be sold on a certain day. Mr. Stagg or Geroe did not, before the sale, consult with deponent about the sale of the property, anything more than when it was to be sold. Deponent did not examine the house bought by him on the day of sale before he bid for it. Mr. Stagg went over to show the house to Mr. Person, Mr. Hopper and some others, but deponent did not go. Deponent when he went to the sale did not intend to bid. Did not know as he should be a purchaser. Deponent was induced to bid because he thought the property was selling cheap. No person on that day or at the sale requested deponent to bid for him. Deponent did not receive any hint or intimation from any person, either before, or at, or during the sale, that if he (deponent) bought, and did not want to keep the property, it would be taken off his hands. When the property was struck off to deponent he expected to keep it, to the best of his knowledge. He did not know anything to the contrary at that time. Did not, while bidding, expect the bid to be taken off his hands by either Stagg or Geroe. Stagg came to deponent, while he was bidding, and asked him whom he was bidding for, and deponent told him he was bidding for himself. Don't recollect exactly whether it was Stagg or Geroe who afterwards spoke to deponent about giving up his bid, but thinks it was Mr. Stagg. Don't recollect the conversation exactly, but thinks it was something to the effect, that if deponent did not care about the property he (Stagg) would take it off his hands. Deponent was not the first bidder on the lot bought by him. Thinks there were two or three other bids made before his. There was an adjournment after the bidding on this lot commenced and

before it was sold, to give people a chance to look at the property. Mr. Stagg did not give deponent anything for his bid. By the condition of sale, ten per cent. of the purchase money was to be paid down at the time of sale. Deponent had not the money with him to pay the ten per cent., but if it had been required he could have got it. Thinks he had it at home. Did not pay the ten per cent.; was not called on to pay it. Did not sign the conditions of sale. Don't think he was asked to do so. Did not sign any written transfer of his bid to Mr. Goetschius; it was done verbally.

10 Further direct examination. Says he don't recollect signing any transfer of his bid.

(Signed) DAVID I. ALYEA.

Sworn and subscribed at Paterson, January 6th, 1845.
Before me

JAMES SPEAR, *Examiner in Chancery.*

John I. Goetschius, a witness produced on the part of defendants being duly sworn, on his oath deposed and saith, he attended the sale of the Geroe property, in Manchester
20 last winter, and purchased one house and lot on Division street, for one hundred and ninety dollars. Also bought five lots lying in McCurdy's Pond for twenty-five dollars. Also the lot mentioned in the conditions of sale, as lot No. 3 for four hundred and ten dollars. Deponent bid them off at public sale. Deponent did not attend the sale as agent for any body. There was no agency—not in his mind as he considered it. Before the sale, and deponent thinks in the forenoon of the day of sale, deponent saw Mr. Stagg and he asked deponent whether he was going to the sale; deponent thinks he told
30 Mr. Stagg he did not know whether he should or not. Stagg said deponent had better go as he (Stagg) expected the sale would go on, and if deponent bought any property there that was cheap, he (Stagg) would take it off deponent's hands. Deponent in speaking of agency has reference to this conversation. If there was any agency it was that; deponent did not consider it an agency. Deponent considered if he bought the property he was at liberty to keep it, or to let Stagg have it, as he (deponent) chose. When deponent bid off the property he had an idea that Mr. Stagg would take it

from him. Did not bid it off as agent ; he thought the property was cheap, yet he had an idea that Mr. Stagg would take it of him. And if he would not he (deponent) would keep it himself, as it was cheap ; did not consider himself in any way bound to give the property up to Mr. Stagg. Mr. Stagg was not bound to take the property from deponent, any further than he said, if deponent bought it cheap, he would take it. Deponent did not consider that he (Stagg) was bound to take it by what he said. Deponent don't think nor remember any thing else that passed between him and Stagg or Geroe, about the property before the sale. Deponent would have bid what he did for the two houses, and lots without any reference to the conversation with Stagg. Deponent thinks he was at the sale from beginning to end ; there was a tolerable fair attendance ; thinks about twenty persons were present, most of them deponent thinks were able to buy and as likely to do so as any other persons in the neighborhood. The sale appeared fair, and every body, it seemed, had a chance to buy ; thought the cryer dwelt on the bids rather more than is generally done ; remember one adjournment during the sale, to give persons a chance to examine the property. There was no favor or disadvantage shown to one bidder over another, so far as deponent saw ; Mr. Stagg (and deponent thinks both him and Geroe,) urged people to buy, and said the property was going cheap ; Mrs. Winters, (wife of Cornelius Winters,) was present at the sale. (A paper writing being shown to deponent.) He says, it is the conditions of sale ; the signature of deponent, of David I. Alyea, William I. Stagg and Benjamin Geroe, are their genuine signatures.

The paper and printed advertisements of sale annexed to it, being offered, was admitted in evidence, and marked as Exhibit B. No. 1, on the part of defendants. After the sale deponent took a deed for the property struck off to him, and also for that struck off to David I. Alyea, from Wm. I. Stagg and Caty his wife, and Benjamin Geroe. Deponent is under the impression, that on the same day of sale something was said to him by Stagg and Geroe, about their taking the property, but he can't recollect exactly what it was. No conclu-

sion was come to between them on that day ; by conclusion, he means that they made no bargain, confirmed nothing. Nothing was done by which he was bound to give the property up to them ; there was nothing further passed between them in relation to the property, until the deed was given, that he can now remember. Deponent can't recollect how many days after the sale the deed was given, but thinks it was on the Saturday after the sale ; don't remember what time of day the sale took place, whether forenoon or afternoon ; can't say, whether it was between 12 and 5 o'clock. Deponent's not remember of any positive agreement to let them have the property, only the delivery of the deed ; there was none before then.

Cross examined. Deponent says he cannot now recollect whether he executed one or two deeds.

It is here admitted by the parties, that the property bid off by David I. Alyea, was conveyed by this deponent to Benjamin Geroe.

Deponent thinks he signed the conditions of sale, on the day of sale, and thinks Hopper and Alyea also signed them on the same day : thinks Hopper signed them before deponent did : does not remember more than one adjournment after the bidding commenced. It seems to strike deponent, that something was said to him by Stagg and Geroe, on the day of sale about their taking the property, but don't remember what was said.

Don't remember refusing to let them have it : when they came to deponent, on Saturday, at his store, the deed or deeds were already drawn and were brought there to be executed.

30 They paid him no more for the property than he gave : deponent did not pay any thing for the drawing or acknowledging of the deeds. They (Stagg and Geroe,) paid or gave deponent a small compensation for his trouble : thinks it was two dollars. Deponent thinks he would have gone to the sale if Mr. Stagg had not spoken to him about it, but is not positive. Deponent thinks the adjournment of which he spoke took place during the bidding on the lot which was struck off to Alyea. Deponent did not ask any compensation but they gave him two dollars : the deeds were brought

to deponent's store by Stagg and Geroe, to be executed by deponent.

Further direct examination. Deponent says, he does not exactly remember whether the \$2 were given to him or to his wife. It was his intention it should go to his wife; it was altogether gratuitous.

(Signed) JOHN I. GOETSCHIUS.

Sworn and subscribed this 6th day of January, 1845.
Before me

JAMES SPEAR, *Master and Ex. in Chan.* 20

Cornelius Rutan a witness on the part of defendants, being duly sworn, on his oath, deposeth and saith, that he resides in Manchester in this county, is by occupation a mason and builder. Knows the house and lot in Division street, which belonged to Daniel Geroe deceased, in his lifetime. Knows what condition the house was in, before and at the time of the sale last winter; deponent thinks in the condition it was, it was worth from two hundred and fifty to three hundred dollars; deponent would not give two hundred and fifty dollars for it. It lies where deponent would not want it at all, and the situation of the house was but poor; it lies in a back street, and in a hollow or low place. If deponent wanted to purchase property in Manchester village, he would not be willing to give two hundred and fifty dollars for that property in the condition, in which it was last winter. 20

Deponent was at the sale of the Geroe property, in January last; came there after one house was sold: was there when the house and lot in Division street was sold; did not bid on it. The house sold before deponent came there, was the store bought by Mr. Hopper: was present when the second house was put up, and remained until the sale closed. The sale was so conducted (as far as deponent could see,) as to give every person present an equal chance to buy; deponent saw Stagg at different persons to buy: said "now is the time to make your fortune." Thinks and feels sure, to the best of his knowledge, the bidding was adjourned twice, while deponent was there, to give persons a chance to see and make up their minds. Deponent was bidding himself, 30

and run it up as high as he thought it was worth. It was the vacant lots that deponent bid upon; did not bid upon any thing else, that he recollects: Mr. Winter's wife and Mr. Yeomans, his son-in-law, were present at the sale; don't recollect hearing Stagg or Geroe urge either of them to buy; deponent went up to Yeomans and asked him why he did not buy.

Cross examined says. He cannot tell the size of the building on Division street; never measured it, thinks it is about twenty-two feet front, and about twenty-four feet deep. It is a two story building; the lower story is stone; deponent can't tell how long ago it was built, thinks as long as ten years ago, not longer; thinks it was built by Edward O'Neill. Guesses such a house could be built for three hundred dollars, or three hundred and fifty; values the lot, without the building, very small. Don't know how big the lot is; if it is twenty-five feet front, thinks it is worth a hundred dollars, perhaps a little more, but don't know; it being thirty feet by eighty, deponent thinks it is worth one hundred and twenty-five dollars. Stagg asked deponent to bid, don't recollect hearing him ask Alyea or Goetschius to bid; he asked deponent to bid on the house, next to the store bought by Hopper.

Further direct examination. Deponent says, he don't recollect whether the house in Division street, was originally a shop and moved from another place upon that lot. It is a house of one story, besides the basement, which is above ground: there is no cellar under it.

(Signed) CORNELIUS RUTAN.

Sworn and subscribed this 9th day of January, A. D. 1845.
30 Before me,

JAMES SPEAR, *Master and Ex. in Chan.*

Peter Yeomans, a witness, produced on the part of the defendants being duly sworn, on his oath, deposeth and saith, he was at the sale of the Geroe property in Manchester in January last. Mrs. Winters was also there, deponent was in town, and meant to go home when Mrs. Winters requested him to stay and see the sale: Mrs. Winters never requested deponent to attend the sale; deponent can't tell whether

Mrs. Winters was requested by Stagg, or Geroe, at the sale to bid. Mr. Stagg said to Mrs. Winters, that she could not buy, but might get any other person to buy for her; might get deponent; thinks something was said about no money being required, but might go on Mrs. Winters share of the property; but can't recollect particularly what was said; there was a talk of deponent's buying, and he thinks Mr. Stagg said he would give deponent a good chance, that he need not pay the money down as was specified in the conditions of sale; that talk was in reference to deponent's buying for him- 10
 self. Deponent and Mrs. Winters went out, and Mrs. Winters asked deponent what she should do, deponent told her that she must know. Deponent thought every body had a fair chance, to buy at the sale. There was plenty of time given; remember the bidding was adjourned once, while the second bidding was up, Mr. Hopper who had bought the store was bidding on the second house, and went to examine it while the bidding was adjourned; don't remember more than one adjournment, it was after twelve o'clock before the sale begun. Deponent left before the sale was through; left 20
 there in time to get home, between sunset and dark; lives about six miles distant from the place of sale. The property was all sold when deponent left, but the vacant lots and they were then up at sale; deponent is a son-in-law of Mr. Winters the complainant; deponent has heard talk about their trying to divide this property, has heard Mrs. Winters say they had drawn for it. Can't say she said they had divided it. She did not say when they had drawn for it. Did not hear her say any thing about a time being fixed when she and Mr. Winters were to come down and sign releases. Heard 30
 her say that they had drawn, but it was in fun. Don't recollect hearing her say which lot she had drawn; believes the one she had drawn was in Manchester; has heard her say that she would not draw at first, then it was said that they would draw in fun, and then they drew.

Cross examination. Deponent says Mrs. Winters was at the sale before deponent. When deponent came in she sat crying. She was crying when Stagg and Geroe were by.

Deponent lives about a mile and a half from Mr. Winters.

(Signed) PETER D. YEOMANS.

Sworn and subscribed this 9th day of January, A. D. 1845,
before me.

JAMES SPEAR, *Master and Ex. in Chan.*

Maria Stagg produced on the part of the defendants, being duly sworn on her oath deposeth and saith : She is the daughter of Wm. I. Stagg, one of the defendants. Deponent remembers Mr. and Mrs. Winters, being at her father's house and drawing for some property. The property had been divided into three shares. In the division, the store was No. 1; the building next to the store, and the house in Division-street were No. 2. The second house from the store was No. 3. Deponent don't know in which parcel the vacant lots were put. Don't know whether any money was to go with either lot. Mr. and Mrs. Winters, Mr. Geroe, and deponent's father and mother were present. The numbers were written on pieces of paper, and were put in a hat and the hat shaken. Mrs. Winters drew first, she drew No. 2. Mrs. Stagg drew next, and drew No. 3. Mr. Geroe took what was left. Mr. and Mrs. Winters seemed to be satisfied with the drawing; said at the time they were satisfied. Immediately afterwards Mr. Winters, Mr. Geroe and Mr. Stagg, went out to get some one to draw writings between them. Deponent saw them when they came back. They had not time then, and appointed the next Monday to get it done. It was said when they came back, that they had been to Mr. Van Wagoner to get the writings drawn. This was on Saturday. Don't remember the month; it was in the fall, last fall a year ago. It was toward evening when they went out. Mr. and Mrs. Winters did not come down, on the next Monday, that deponent knows of; she did not see them. Mr. and Mrs. Winters came down after that; they called at Mr. Stagg's and went from there to Mr. Geroe's. Deponent don't recollect whether any thing was then said about what they were down for. Don't recollect hearing any thing said about dividing again. Don't remember hearing any thing said about what they were going to Mr. Geroe's for. They made the

division among themselves. When they, Mr. and Mrs. Winters came down the second time, they were not satisfied with the division.

Cross examined. Deponent says she was in the room all the time before the drawing. Mrs. Winters at first refused to draw. It was not then said that they would draw in fun, that deponent heard. Mr. Stagg did not say they would draw and see whether they would be satisfied, nor any thing to that effect. There was nothing said at that time about one portion being better than the others by two hundred dollars. When they came in, after looking for Mr. Van Wagoner, deponent did not hear of any difficulty between them. 10

(Signed) MARIA STAGG.

Sworn and subscribed, January 9th, A. D. 1845, before me,

JAMES SPEAR, *Master and Ex. in Chan.*

Cornelia Stagg, a witness, produced on the part of defendants, being duly sworn, deposeth and saith, deponent is a daughter of Wm. I. Stagg, (one of the defendants,) remembers the drawing for property by Mr. and Mrs. Winters, Mr. Stagg and Mr. Geroe at Mr. Stagg's house. Deponent was present at the drawing, knows of the property being divided before it was drawn for. It was divided into three parts, and numbered 1, 2, 3. The store was No. 1. Don't remember whether any thing else was put with the store in No. 1. The house next to the store was No. 2. No. 3 was the second house from the store. Thinks the house in Division-street was put in No. 2. Don't remember where the vacant lots were put. Remembers about some money, but don't know which was to pay it. Don't remember the amount. The numbers were written on tickets, and put in a hat. Mr. and Mrs. Winters drew first, and drew No. 2. Deponent's mother drew next, and drew No. 3. Mr. Geroe took the other. After the drawing, Mr. and Mrs. Winters said they were satisfied. Mr. Geroe, Mr. Stagg and Mr. Winters, then went out to get some one to draw the papers. When they came back they said they would leave it until Monday. It 20 30

- was then towards evening. Mr. and Mrs. Winters said they would come down on Monday. When they came in, it was said they had been to Mr. Van Wagoner's to get writings drawn. This was on Saturday, don't remember what month it was. It was in the fall. Mr. and Mrs. Winters did not come down on Monday, that deponent knows of. Mr. and Mrs. Winters took tea up stairs with deponent's grandmother, before they went away. Deponent did not hear any thing about their being dissatisfied with the division after
- 10 they came back from Mr. Van Wagoner's. Remembers Mr. and Mrs. Winters came down some time after, can't say how long. Don't remember hearing them say then, whether they were satisfied or not. They were at Mr. Stagg's house then, and went from there to Mr. Geroe's. Mr. and Mrs. Stagg went with them. Deponent did not hear either of them say what they were going to Mr. Geroe's for. Deponent saw Mrs. Winters coming back from Mr. Geroe's, but she did not come in at deponent's father's. She went on down the street to the wagon. Did not see Mr. Winters.
- 20 Cross examined. Deponent says she was present all the time prior to the drawing. Can't say how long they were there before the drawing; not very long; thinks about an hour. Neither deponent nor her sister, was out of the room during that time. Mrs. Winters, at first, refused to draw, and said she had never seen the houses. Neither she, nor any body in the room, then said they would draw in fun.

(Signed)

CORNELIA STAGG.

Sworn and subscribed, January 9th, 1845, before me,

JAMES SPEAR, *Master and Ex. in Chan.*

- 30 Cornelius S. Van Wagoner, a witness previously sworn, being recalled by the defendants, on his oath aforesaid, deposes and saith, he recollects of Mr. Stagg, Mr. Geroe and Mr. Winters, calling on deponent, or meeting him in the street. Don't remember which spoke, but the observation made by one of them, was, that they had been dividing the Geroe property, and wanted deponent to draw releases between them. Deponent asked them, whether they had any particulars from which he could draw the papers. They said they

would call on a future day, (which deponent does not now remember,) and have a survey made from which the releases could be drawn correctly. Don't recollect that either of the parties called on deponent on the day fixed. Deponent thinks it was towards evening when they called on him. Don't remember the day of the week.

Cross examined. Defendant says he has had a conversation with John I. Goetschius, some time after the sale, about the sale. Deponent joked him about his having purchased a cheap property. Deponent took it from what he said, that he had not purchased it for himself. 10

(Signed) C. S. VAN WAGONER.

Subscribed this 9th day of January 1845, before me,

JAMES SPEAR, *Master and Ex. in Chan.*

John I. Goetschius, a witness previously sworn on the part of the defendants, being recalled by defendants, on his oath aforesaid, deposeth and saith, that upon reflection and recollection since his former examination, he is now satisfied it was on the day after the sale when he had a conversation with Stagg about his and Mr. Geroe's taking the property off his hands. On the day after the sale, Mr. Stagg and Mr. Geroe both came to deponent and asked him if he was willing they should take the property back, and he, (deponent,) told them he was. They then said that deponent should be at no expense, that they would get the deed drawn. 20

Cross examined. Deponent says he was not called upon to pay the per centage down, and did not pay any thing. When deponent signed the conditions of sale, he had not been spoken to by Stagg or Geroe about their taking the property back. Thinks Alyea had not then agreed o transfer his bid to deponent. 30

(Signed) JOHN I. GOETSCHIUS.

Subscribed this 18th day of January, A. D. 1845, before me,

JAMES SPEAR, *Master and Ex. in Chan.*

Cornelius A. Hopper, a witness previously sworn on the part of the defendants, being recalled by complainant, on his oath aforesaid, deposeth and saith. That on the day of sale,

he was called upon pay the ten per cent. of his purchase, and gave his note for it in the sum of eighty-five dollars, not having the money with him. He gave the note to Mr. Stagg and Geroe, as executors of Daniel Geroe deceased, and at the same time took their receipt as executors for the ten per cent.

Cross examined. Deponent says he resided at that time, in the country. At the time of giving the note for the ten per cent. and also at another time afterwards, Mr. Geroe told
 10 deponent if he was dissatisfied with his purchase, he (Mr. Geroe) would take it off his hands. The note was given and dated on the day of sale, payable *one* day after date. Deponent paid fifty-five dollars out on the first day of February. The balance was paid some time after, but don't recollect the time. Is not certain whether he paid it before he paid the rest of the purchase money or not. He paid the whole of the purchase money in the course of the spring, thinks about May. The receipt above-mentioned being produced, and proved on the part of the defendants, was offered
 20 in evidence, and is marked Exhibit B. No. 2, on the part of defendants.

(Signed) COR'S A. HOPPER.

Subscribed on the 16th day of January, 1845, before me,
 JAMES SPEAR, *Master and Ex. in Chan.*

Henry M. Spear, a witness called on the part of the complainant, being duly sworn, on his oath deposeth and saith, that he remembers the sale of the Geroe property. Was present at it. Directly after the sale, don't know whether the same day, or a few days after, deponent said to David I. Alyea, "you have bought that property cheap." Deponent
 30 asked him what he would take for his bargain. He said he did not know. Deponent told him he could find a man would give him (Alyea) a hundred and fifty dollars in cash, for his bargain. Alyea asked deponent who it was, and deponent told him it was Mr. Myers. Alyea did not say whether he would take it or not, or whether he would sell it or not. At another time afterwards deponent asked Alyea whether he bought the property for himself or not. He

(Alyea) said "no." He bought it for them. He had property enough. At the first conversation with Alyea, deponent went in to see what he (Alyea) would take for his bargain, and told Alyea that Myers would give him a hundred and fifty dollars for his bargain. When Alyea said he bought it in for "them"; he did not mention any names, but deponent supposed he meant Stagg and Geroe.

Cross examined. At the time when deponent told Alyea, that Myers would give him a hundred and fifty dollars for his bargain, deponent did not think that Myers wanted to buy. Deponent did not go seriously on business, but thought if Alyea could make a hundred and fifty dollars, he had better do it. There was a great deal said about the sale, at the time in the neighborhood; and the talk of deponent, with Alyea, was for talk sake, and to find out too. At the time when deponent asked Alyea whether he bought the property for himself, or not, it was not in joke, as deponent knows of; don't know it was not. The first conversation which deponent had with Mr. Alyea, was a few days after the sale. 10

Further direct examination. Deponent thinks, first conversation with Alyea was not on the day of sale. It might have been on Saturday of the same week, but don't recollect the day; it was on the same day on which Myers spoke to deponent about it, deponent went directly from Myers to Alyea at the time. 20

Further cross examined. Says he thinks it was not on the day of sale, if he was sure it was not he would say so; he is not sure Mr. Myers was not at the sale, deponent does not know where he was; thinks the time of day, when deponent and Myers were talking about the sale, was about dinner time, (12 o'clock,) but won't be certain; don't remember what time of day the sale commenced, whether in the forenoon or afternoon. It runs in his mind it was in the forenoon, but can't remember whether forenoon or afternoon. and further deponent saith not. 30

(Signed) HENRY M. SPEAR.

Sworn and subscribed January, 16th 1845. Before me
JAMES SPEAR, *Master and Ex. in Chan.*

Cornelius I. Vreeland a witness, called on the part of the com-

plainant, being duly sworn on his oath, deposeth and saith, he remembers hearing of the sale of the property, of old Mr. Geroe. He was not at the sale; shortly after the sale deponent had a conversation with John I. Goetschius, concerning it. Can't tell how soon after the sale Mr. Goetschius came to Mr. Bogert's shop, where deponent was at work; deponent wished him much joy, or something to that effect. He (Goetschius) asked what for? Deponent said "with your purchase," Goetschius smiled, but did not say anything that deponent recollects. Then deponent and he talked over the sale, and he told deponent he had bought a house at the lower bridge, and one in "Staggtown," as deponent thinks. They then talked considerable, and finally deponent asked Mr. Goetschius whether he had bought the property for himself, or for them; (thus) "have you really bought the property for yourself or for them?" Goetschius answered that he had bought it with that intent, that they were to take it off his hands. By "them" was meant Stagg and Geroe by deponent.

20 Cross examined. Deponent thinks that this conversation was the next week after the sale, or the week after that, but can't be certain, perhaps a longer, perhaps a shorter time.

(Signed) CORNELIUS I. VREELAND.

Sworn and subscribed January 16th, 1845. Before me,
JAMES SPEAR, *Master and Ex. in Chan.*

30 Peregrine Sandford Esq. a witness, called on the part of the complainant, being duly sworn on his oath, deposeth and saith, he resides in Manchester, near the property left by Daniel Geroe deceased. There is some of it on both sides of deponent; deponent has lived there about seventeen or eighteen years, deponent knows the property which was Daniel Geroe's and has understood a part of it was sold. The corner store now occupied by Mr. Hopper, deponent thinks is worth eight or nine hundred dollars, think's the two houses and lots next to the store worth together two thousand dollars, and thinks as between these two houses and lots, there is two hundred dollars difference in the value. Thinks the one farthest from the store worth two hundred dollars more

than the other, which would make the one worth eleven and the other nine hundred dollars. These estimates are made with reference to the value of the property a year ago, The house and lot in Division street, (or Staggtown as it is called,) deponent was, at one time before the death of Mr. Geroe, about buying. Mr. Geroe then asked six hundred dollars for it, as deponent thinks; deponent thinks it was a year ago worth six hundred dollars, it would rent for ten per cent at that. Deponent is a judge and justice of the county of Passaic; deponent has been clerk of the county. 10

Cross examined. Deponent was clerk of the county seven months by appointment of the Governor; deponent don't know the precise dimensions of the lots near the lower bridge. The houses cover them in front, deponent don't know the condition in which the houses were a year ago, except from outward appearance. The outward appearance was pretty good, and deponent thinks they have been generally in pretty good hands, never saw that any of the weather boarding was off of either of those houses a year ago. Never noticed that the glass was very much broken; don't know whether 20 the outer door had any locks or fastenings on them or not; had never observed that they were in want of paint particularly. Thinks a year ago they were in part unoccupied. They were not wholly so, that deponent knows of; does not know that they were occupied; deponent has never been in the houses. The immediate neighborhood of the house in Division street, deponent thinks is bad; thinks it has that reputation. The house a year ago, was not in very good order; thinks there was here and there a weather board loose; thinks the windows in the lower part more than the upper were broken. 30 Can't say whether the garret or gable end windows were broken, sashes and all. Does not know of the front door being broken; has often been in this house, not to examine it, but when he had business to take him there. Does not know whether there were any holes in the roof; can't say the house was particularly out of order about January last, though it was dirty and filthy inside. The last tenants, before the sale, were blacks. It was not occupied at the time of the sale. Deponent and Benjamin Geroe are at variance; have

been so five or six or seven years ; have lived neighbors during all that time, and in the habit of seeing each other almost daily. In the first of this time, deponent has spoken to Mr. Geroe from five to ten times when they met in the street, and Mr. Geroe did not speak to him and then deponent stopped ; spoke to him last between three and four years ago.

Further direct examination. Deponent has had no recent difficulty with Mr. Geroe. There never was any cause of difficulty between them that deponent knows of. The store occupied by Mr. Hopper is on a corner lot, and that, and the two houses next, are in as central and valuable a part of Manchester as any property in it.

(Signed) PEREGRINE SANDFORD.

Sworn and subscribed, January 16th, 1845. Before me,
JAMES SPEAR, *Master and Ex. in Chan.*

Exhibit B, No. 1, on the part of Defendants.

Conditions of the above sale this 18th day of January, A. D. 1844.

- 1st. The highest bidder to be the purchaser.
- 20 2d. Ten per cent. of the purchase money to be paid to the subscribers on the day of sale.
- 3d. Fifteen per. cent of the purchase money to be paid by the first day of February next, at which time a deed will be given, on having the balance of the purchase money secured to be paid by the first day of May next.
- 4th. Any purchaser failing to comply with the foregoing conditions shall forfeit all moneys by him paid; and the property by him bid off shall be re-sold, and he be held liable for any loss that shall accrue on such second sale, but to receive no benefit if the same shall, on such second sale, bring a higher price.
- 30 5th. This sale is subject to adjournment.

Dated Manchester, January 18th, 1844.

WILLIAM I. STAGG } *Executors, &c., of*
BENJAMIN GEROE } *Dan'l Geroe, dec'd.*

for lots, house No. 1, being the store, house and lot, for eight hundred and fifty dollars.

CORN'S A. HOPPER.

I have purchased at sale within named lot No. 2, on a map made by C. S. Van Wagoner, for John I. Goetschius. January 18th, 1844.

DAVID I. ALYEA.

I have purchased at the sale within named lot No. 3, on the aforesaid map; also, by David I. Alyea, lot No. 2; also a lot fronting on Division street, next north to the John Berry lot; also the one equal undivided half of ten lots on the Holsman purchase.

The 2, and 3, lots above named at \$410 each	\$820	10
The lot on Division street for	190	
The equal undivided half of 10 lots	25	

\$1035

And do agree to comply with the within conditions of sale. January 18th, 1844.

JOHN I. GOETSCHIUS.

Exhibit B, No. 2, on the part of Defendants.

Received, Paterson, January 18, 1844, from Cornelius A. Hopper, his note, bearing even date, payable one day after date, for eighty-five dollars, when paid will be in full for his ten per cent. on purchase money for the store, house and lot now occupied by Alfred Westerfield. 20

WILLIAM I. STAGG } *Executors, &c., of*
 BENJAMIN GEROE } *Dan'l Geroe, dec'd.*

Decree.

The decree is dated March 17th, 1846; and, after a recapitulation of the facts of the case, or a portion thereof, is in the words following, to wit: "It is therefore ordered, adjudged and decreed, by Oliver S. Halsted, Esquire, Chancellor of the State of New Jersey, and the said Chancellor, by the power and authority of this Court, doth, on this seventeenth day of March, in the year of our Lord one thousand eight hundred and forty-six, order, adjudge, and decree, that 30

the said deed given by Benjamin Geroe and William I. Stagg, and Caty his wife, as executors of Daniel Geroe, and as devisees under his will, to the said John I. Goetschius, be set aside and vacated, and that the said re-conveyances of the said property by the said John I. Goetschius and Jemima his wife, to the said Benjamin Geroe and William I. Stagg, respectively, be set aside and vacated, and that the said William I. Stagg and Caty his wife, at their own cost and charge, execute and deliver to the said Peggy Winter, one
 10 of the complainants, a deed for one-third of the property described in the said deed from John I. Goetschius and Jemima his wife to the said William I. Stagg, and that the said Benjamin Geroe at his own cost and charge execute and deliver to the said Peggy Winter, one of the complainants, a deed for one-third of the property described in the said deed from John I. Goetschius and Jemima his wife to the said Benjamin Geroe, and that the said deeds contain full cove-
 nants as against their own acts and deeds respectively, and that the said deeds be executed and delivered to the said
 20 Peggy Winter on or before the first day of May, in the year of our Lord one thousand eight hundred and forty-six. And that the defendants William I. Stagg and Benjamin Geroe pay to the complainants their costs in this cause to be taxed, and that the complainants have execution therefor according to law and the course of this court.

O. S. HALSTED, C."

Petition of Appeal.

To the Honorable the Court of Errors and Appeals in the last resort, &c.:

30 The petition of Benjamin Geroe, and William I. Stagg and Caty his wife, the appellants in the above stated case, respectfully sheweth that your petitioners find themselves aggrieved, by a final decree made in the Court of Chancery, by his Honor Oliver S. Halsted, Chancellor of the State of New Jersey, bearing date the seventeenth day of March, A. D. eighteen hundred and forty-six, wherein the said Cornelius Winter

and Peggy his wife, are complainants, and the said Benjamin Geroe and William I. Stagg and Caty his wife, are defendants. By which decree, a certain deed made by the said Benjamin Geroe, and William I. Stagg and Caty his wife, as executors of, and devisees under the last will and testament of Daniel Geroe deceased, dated the twentieth day of January, A. D. eighteen hundred and forty-four conveying to one John I. Goetschius, certain real estate therein particularly described, situate in the township of Manchester, in the county of Passaic, and also a certain conveyance, by the said John I. Goetschius and Jemima his wife, to the said Benjamin Geroe, dated the same day and year last aforesaid, of a certain portion of the property in said decree particularly specified; and also a certain conveyance by the said John I. Goetschius and Jemima his wife, to the said William I. Stagg, dated the day and year last aforesaid, of a certain other portion of said property, in said decree particularly specified, are set aside and vacated, and the said William I. Stagg and Caty his wife, are ordered by a certain day therein mentioned, at their own costs and charges, to execute and deliver to the said Peggy Winters, one of the complainants, a deed for one-third of the property described in the said deed from John I. Goetschius and Jemima his wife, to the said William I. Stagg; and the said Benjamin Geroe is ordered by a certain day therein mentioned, at his own cost and charge, to execute and deliver to the said Peggy Winters, a deed for one-third of the property described in the said deed, from John I. Goetschius and Jemima his wife, to the said Benjamin Geroe; and that said deeds contain full covenants as against their own acts and deeds respectively; and costs are awarded to the said complainants in their behalf. And your petitioners appeal from the said decree, as to all the matters herein before mentioned, upon the grounds that the same is wholly erroneous, for, that the said several deeds of conveyance above mentioned and referred to, and each and every of them were and are lawful and valid, and ought not to be set aside or vacated; and also for that, by setting aside and vacating the said several deeds of conveyances as hereinbefore stated, and also ordering deeds to be

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made by the said William I. Stagg and Caty his wife, and by the said Benjamin Geroe to the said Peggy Winters, as hereinbefore stated ; the said decree gives to her, the said Peggy Winters, a larger interest in the said reale state than is given to her by the last will and testament of Daniel Geroe, deceased, to wit ; one third of the whole property specified in said decree as devisee, under the said last will and testament ; and one-third thereof by force of the deeds, as aforesaid ordered to be made.

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

Dated this first day of September, A. D. eighteen hundred and forty-six.

DANIEL BARKALOW, *Solicitor of, and*
Counsel with Appellants.

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- To the foregoing petition of appeal the respondents filed
an answer denying that the decree therein mentioned is erro-
20 neous, and averring that the same ought to be affirmed, &c.

Points relied on by the Appellants.

1. That the will of the testator directs the real estate in controversy to be divided or sold as two out of the three persons to whom the same was devised, should agree.

2. That two of the devisees of said estate, agreed that the same should be sold.

3. That the said William I. Stagg and Benjamin Geroe, as executors of the last will and testament of Daniel Geroe deceased, and devisees under the same, had, on such agreement being made, full power and authority to sell the said real estate. 10

4. That the said sale by them made, was in all things fair and *bona fide*, and without fraud or collusion between them or either of them and the respective purchasers, at said sale or either of them.

5. That the said purchasers, having by their said purchases, become the *bona fide* owners of said real estate, had good right and full power to sell and convey, and the said William I. Stagg and Benjamin Geroe might lawfully purchase the same. 20

6. That the said several sales and conveyances were lawful and *bona fide* sales without fraud or collusion between the parties thereto, or any or either of them.

7. That the said decree gives to Peggy Winters a larger interest in the real estate in controversy, than is given to her by the will of Daniel Geroe deceased.

8. That the said decree is in other respects erroneous and unjust.

DANIEL BARKALOW, *Solicitor and of
Counsel with Appellants.*

Points on the part of the Respondents.

1. That the sale was made by the executors for the benefit of the executors, and they had no right to sell and purchase.
2. That before sale, they were bound by the will to divide, if two out of three heirs could agree; that two out of the three heirs did agree as to mode of division, and that a sale took place without such division.
3. That the negotiation for division was broken off abruptly for the purpose of selling the property.
- 10 4. That the executors selling, gained a great advantage by the purchase.

A. S. PENNINGTON. *Solicitor*, and of
Counsel with Responden's.

Proofs.

The following Depositions should follow that of Peregrine Sandford ; but were accidentally omitted :

Peter V. H. Van Riper, a witness produced on the part of the Defendants, being duly sworn, on his oath deposes and saith : that he resides in Manchester and occupies the dwelling house formerly belonging to Daniel Geroe, deceased, and is the second building from the store, (which stands on the corner;) moved into the house as tenant of William I. Stagg on the first of May last, or within a few days of that time. Mr. Stagg has made repairs and improvements on the house a short time before deponent moved into it. It was very much out of repair when Mr. Stagg first showed it to deponent. The improvements made by Mr. Stagg were: he painted the house outside and inside, (deponent thinks 2 coats of white paint, excepting in the kitchen, which was lead color,) put new locks on all the doors excepting one or two, and on them he put new latches; he built a new inside stair-way into the kitchen, where there had been none before, and for that purpose removed a stone wall which was in the way; enclosed the stair-way and hung a new door in it. He built a lath-and-plaster wall across the basement and placed a door in it. This partition wall was lathed and plastered on both sides.— When deponent first saw the house there was a large quantity of sand washed into the basement, which Mr. Stagg removed, and levelled or re-laid the hearth in the basement. He also laid a new floor in the basement entry, where there had been no floor before. He built a new front stoop and removed the old front stoop and placed it at the back door. The old back stoop was entirely worn out. He also papered two front rooms (in the first and second stories,) with a very neat paper, selected by

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deponent. The walls were generally more or less out of repair in all parts of the house, and were all repaired by Mr. Stagg. The stove-pipe holes in the chimney were in bad condition, and Mr. Stagg had new sheet iron casings with covers put in each, and the walls plastered around them. He put new blinds to the front windows of the first and second stories of the house, making in all five pairs of blinds.—
 10 The glass in several of the windows was more or less broken, and in two of the basement windows the sashes were wanting; in one of them the window frame was also gone,—all of which were supplied by Mr. Stagg. He also re-set the front fence and erected a new gate, and painted both the fence and the gate. In the rear of the house were the ruins of an old oven, and considerable of rubbish, all of which were removed by Mr. Stagg; and the yard was graded and sodded. An old privy sink was
 20 cleaned out, a new one dug, and a new privy built by Mr. Stagg at considerable expense. He also erected a high fence of boards along each side of the lot, and a new paling or picket fence along the rear, with a gate in it.

Before the above repairs were made the house was not in a tenantable condition. These repairs were commenced in the latter part of February or early part of March of last year, and were completed between that time and the first of March, except a few trifling things, which were done shortly afterwards. Deponent has not estimated particularly
 30 what those repairs would cost, but should think three hundred dollars or over.

[The above testimony was objected to by Mr. Pennington, so far as respects repairs and improvements made after notice to Mr. Stagg of complainant's intention to contest the sale.]

Deponent would think the property would sell, since the repairs, for at least three hundred dollars more than it would before the repairs were done.

Deponent says the house between the above-mentioned one and the store has been painted in front by Mr. Geroe, (the defendant) about the same time that Mr. Stagg had his painted. Mr. Geroe also had new blinds put to the front windows of this house, (five pairs.) He also had a new front stoop put up and painted, and the front fence painted; he also built a new privy on the lot. The general appearance of this house before the repairs were made was bad, and it was without tenants. Defendant would judge that the cost of the improvements on this house, which he has observed, would be from seventy five to one hundred dollars; would not say particularly. 10

[Signed] P. V. H VAN RIPER.

Sworn and subscribed at Paterson, March 15, 1845, before me,

JAMES SPEER, *Master and Ex. in Chan.*

William Milnes a witness produced on the part of the defendants, being duly sworn, on his oath deposeseth and saith: He resides in Manchester, in Division street, occupies a house of Benjamin Geroe, formerly belonging to Daniel Geroe, dec'd. Has resided there since the 17th of Feb. of last year. Before deponent moved into the house it was very much out of repair—not fit for any one to live in. The repairs put to it by Mr. Geroe were: the greatest part of the walls were fresh plastered; the panels of the doors (which had been broken out) were replaced by new ones; new locks were put on the rear outside door and the upper room door; some of the locks on the other doors were repaired; the roof was repaired; the windows were newly glazed, and new sashes put in some of them. Before this there were not more than a dozen panes of glass in all the windows of the house. Since Deponent has occupied the house it has been painted both inside and out, with one coat of paint; the area wall curbed, and the walk 20 30

filled up with gravel ; a new fence built in front, with a gate in it ; a new stoop built at the front door ; a large quantity of rubbish was removed from the back yard, and a walk raised and graded ; the lot was previously exposed to being flooded by water flowing from the adjacent lots, which was prevented by raising and forming the walk ; a high board fence was erected along one side of the lot ; the ruins of an old privy were removed, the sink cleaned out and a new privy erected.

10 Deponent would think the cost of the above repairs would be one hundred and fifty dollars ; thinks the house is that much better than it was before the repairs were made.

[Signed] WILLIAM MILNES.

Sworn and subscribed at Paterson, March 15, 1845, before me,

JAMES SPEER, *Master and Ex. in Chan.*

20 The following papers were produced before the Master and admitted in evidence by consent of the parties, and marked as exhibits in the cause on the part of the defendants :

Exhibit B, No. 4, on the part of Defendants.

Certified copy and probate of the last will and testament of Daniel Geroe, deceased.

Exhibit No. 5.

Advertisement of sale dated November 16th, 1843, signed by Wm. I. Stagg and Benjamin Geroe, Executors, &c.

30 *Exhibit No. 6.*

William I. Stagg and Caty his wife and Benjamin Geroe, to John I. Goetchius—*Deed dated Jan. 20th, 1844.*

Exhibit B, No. 7.

John I. Goetchius and Jemima his wife, to William I. Stagg,—*Deed dated January 20th, 1844.*

Exhibit B, No. 8.

John I. Goetchius and Jemima his wife, to Benjamin Geroe—*Deed dated January 20th, 1844*