

New-Jersey Court of Errors and Appeals.

BETWEEN

SENECA SINNICKSON and WIFE, appellants,

and

JONATHAN BRUERE ET AL., administrators of
James Bruere, deceased, appellees,

} On appeal from the
} final decree of
} Chancel. Williamson.

STATE OF THE CASE.

Jonathan Bruere and John H. Bruere, administrators of James Bruere, deceased, filed their bill of complaint in the Court of Chancery, on the second day of April, 1849, against Seneca Sinnickson and Ruth his wife, to foreclose a certain mortgage, executed by the said Seneca and wife to the said James Bruere, bearing date the tenth day of April, 1827, to secure the payment of the sum of five thousand and one hundred dollars in one year from date, *according to the condition of a bond in penal sum of \$10,200.*

The defendants filed their answer to said bill on the 17th day of October, 1849; and, on the 20th day of June, 1851, it was referred to Richard W. Howell, esq., one of the masters of the Court of Chancery, "to ascertain and report the amount due on the said mortgage, for principal and interest, after deducting all payments that have been made thereon, and that the master make his report thereof to this court with all convenient speed. And all further equity and directions are reserved until the coming in of the master's report."

MASTER'S REPORT.

In pursuance of an order of this court, entered in the above cause, bearing date the twentieth day of June, in the year of our Lord one thousand eight hundred and fifty-one, (1851,) I have been attended by the solicitors of the complainants and defendants, and, in the presence of the parties attending me, I have considered of the matters thereby referred to me. And the solicitor of the complainants produced before me the indenture of mortgage in their bill mentioned, bearing date the tenth day of April, in the year of our Lord one thousand eight hundred and twenty-seven, (1827,)

and made and executed by Seneca Sinnickson and Ruth his wife to James Bruere, and which said mortgage was duly acknowledged according to law by the said Seneca Sinnickson and Ruth his wife, and recorded as in the bill mentioned, as appears by endorsements thereon. And the said complainants' solicitor also produced before me the bond intended to be secured by the said mortgage, the execution of which said bond and mortgage is admitted by the said defendants in their answer in this cause, and which said bond and mortgage are marked exhibits A and B, on the part of the complainants; and having examined all the evidence taken in this case, and which is submitted with this my report, I am entirely satisfied, and accordingly so report, that the whole amount of principal and interest due on the bond and mortgage mentioned in the complainants' said bill is due and belongs to the estate of James Bruere, deceased, and that no part of the same is due to or coming to the estate of Richard Bruere, deceased, and that, for this reason, the defendants are not entitled to any equitable offset for moneys due from the estate of the said Richard Bruere, deceased; and that if there is any such right of set-off, the said Seneca Sinnickson is largely indebted to the estate of the said Richard Bruere, on the estates in the county of Salem and the advances referred to in the defendants' answer.

And I do further certify and report, that it appears, from the evidence in the case, to my entire satisfaction, that the said Seneca Sinnickson is not entitled to any offset against the complainants by reason of the bond for £1000, mentioned in his answer, as given and due to the wife of the said defendants, Seneca Sinnickson and the said Ruth Sinnickson, the same having been long since paid off, according to the evidence in this case.

And I do further certify and report, that I find due to the complainants this day, for principal and interest on their said bond and mortgage, after making all proper deductions and allowances, the sum of ten thousand five hundred and forty-five dollars and fifty-eight cents, as will more fully appear by the schedule hereto annexed, and forming part of this my report.

All which is most respectfully submitted.

Dated this twenty-fourth day of June, A. D. 1854.

RICHARD W. HOWELL, M. C.

Schedule referred to in above report.

1827.			
April 10,	To bond of S. Sinnickson, of this date, to Jas. Bruere, payable 1 year from date, with interest,	\$5,100 00	
	" interest to April 10, 1830, 3 years,	918 00	
		<hr/> \$6,018 00	
1828.			
April 10,	By 1 year's interest from Richard Bruere,	\$306 00	
1829.			
Aug. 20,	" cash on account of interest from S. S.,	270 00	10
" 21,	" " of Richard Bruere for balance,	36 00	
1830.			
April 13,	" " on account of interest from S. S.,	27 00	
July 27,	" " of Richard Bruere for balance,	279 00	
		<hr/> 918 00	
	To balance due April 10, 1830,	5,100 00	
	To interest on ditto to Oct. 10, 1853,	7,191 00	
		<hr/> \$12,291 00	
1832.			
April 7,	By cash on account of interest from S. S.,	\$137 00	20
1835.			
Mar. 5,	" " " " " " "	190 00	
1839.			
Jan. 19,	" " " " " " "	362 00	
Mar. 18,	" " " " " left with Richard Bruere,	177 00	
1842.			
June 12,	" cash on account of interest from Jonathan Bruere,	20 00	
" 14,	" cash on account of interest from S. S.,	131 00	30
1847.			
May 20,	" " " " " " "	576 12	
Oct. 30,	" " " " " " "	410 60	
1848.			
July 12,	" " " " " " "	170 00	
		<hr/> 2,173 72	
	To balance due October 10, 1853, to the administrators of James Bruere,	\$10,117 28	
	To interest on \$10,117.28, from October 10, 1853, to June 24, 1854,	428 30	40
		<hr/> \$10,545 58	

RICHARD W. HOWELL, M. C.

Exceptions taken by the defendants to the report of Richard W. Howell, esquire, one of the masters of this court, made in this cause, dated the twenty-fourth day of June, 1854.

First. For that it appears, in and by the said report, and the schedule annexed thereto, that the said master has not given credit to the said defendant for ten head of cattle of the value of twenty-five dollars, each, and forty hams, of the value of one dollar and twenty-five cents, each, amounting, in the whole, to the sum of three hundred dollars, sold and delivered by said defendant, Seneca
10 Sinnickson, to the said James Bruere, in the month of June, 1842; whereas it was proved by two respectable witnesses that the said cattle and hams, to that amount at the least, were sold and delivered by said defendant to said James Bruere, on account of money due to said Bruere upon his said bond, upon which said schedule is founded; and the said master ought, therefore, to have allowed the said amount as an additional credit upon said bond.

Second. For that the said master, in said schedule, has calculated interest on said bond up to the tenth day of October, 1853, and then added the interest to the principal, and cast the interest upon
20 the whole amount of principal and interest from that time to the date of said report, thereby charging said defendant with interest upon interest; whereas the said master ought not to have made any rest in said calculation in October, 1853, and ought not to have charged the said defendant with more than simple interest.

In all which respects the said defendants except to the said report, and humbly appeal to the judgment of this honorable court.

F. KINGMAN,

Solicitor and of counsel with defendants.

TESTIMONY FOR DEFENDANTS.

30 *Richard Sinnickson*, of the township of Lower Penns Neck, in the county of Salem, a witness produced on the part of the said defendants, alleging himself to be conscientiously scrupulous of taking an oath, and being duly affirmed according to law, doth declare and say—I was acquainted with James Bruere, deceased, in his lifetime; he was an uncle of mine. I have frequently heard my mother speak of a bond she held against the said James Bruere. I have frequently seen him write, and am acquainted with his signa-

ture. (A paper, marked *Exhibit B, ex parte* defendants,) being shown witness, he says—that is his signature. I helped drive some cattle in June, eighteen hundred and forty-two, or thereabouts, to the said James Bruere's house, in Upper Freehold, Monmouth county; I think there were twelve of them; I know there was ten. James Bruere was at my father's house a few days before I delivered these cattle, and purchased them of my father; he agreed to give for them twenty-five dollars per head; my father took a load of hams to him at the same time in his wagon; I think there was about forty hams; I don't know what he was to give for them; 10 I did not see Bruere, at the time of the delivery of these cattle or hams, pay my father any money, nor do I think he paid him any.

And being cross-examined, says—I know nothing of the charges mentioned in paper marked *Exhibit B*, nor of the receipts described therein. I do not know whether the money mentioned therein was ever endorsed on the bond or not.

RICHARD SINNICKSON.

Affirmed and subscribed before me, June 7, 1851.

G. S. CANNON, M. C.

James Sinnickson a witness produced on the part of the said de- 20
fendants, being duly sworn according to law, doth depose and say—
I was acquainted with James Bruere, deceased, in his lifetime; he
was an uncle of mine. I am acquainted with his signature. (*Ex-*
hibit B, ex parte defendants being shown witness, he says)—I be-
lieve the name signed to this paper to be his signature. I remem-
ber my uncle James Bruere coming to my father's house in May
or June, of the year 1841 or 2; he came after money. My father
told him he had no money, but he had some cattle, which he would
sell him; they then went up in the field to look at the cattle, and
he purchased ten or twelve head of them, at twenty or twenty-five 30
dollars per head; they had been purchased in the fall, wintered
over, and, I think, were worth about twenty-five dollars per head.
My father took up a load of hams to him at the time he took the
cattle; I think he was to pay ten cents a pound for the hams; they
were smallish hams, and would weigh from ten to sixteen pounds
a piece; there was about forty of them; they were good hams;
I think I heard James Bruere say, some time afterwards, that he
got ten or eleven cents per pound for them at Trenton; I saw the
same cattle which were taken away at my uncle James' afterwards.

The money my uncle James was talking about when he was at my father's house was due upon a bond which he held against him. I understood the price of the cattle and hams so taken by him was to be endorsed upon this bond.

And being cross-examined, says—I have known my father frequently to have more than forty hams in one year. I have known my father to kill eighty hogs in one year, and helped him do it. I do not know any thing about the accounts mentioned in the paper marked *Exhibit B*; I do not know whether the charges mentioned
 10 therein have been endorsed on the bond; I don't know whether the cattle and hams were to be on account of interest due on the bond or not.

JAMES SINNICKSON.

Sworn and subscribed, before me, June 7, A. D. 1851.

G. S. CANNON, *M. C.*

TESTIMONY FOR COMPLAINANTS.

Napoleon B. Bruere, a witness produced on the part of the complainants, being duly sworn according to law, on his oath saith—I reside in Upper Freehold, Monmouth county. I knew James
 20 Bruere, deceased, in his lifetime. I am acquainted with Seneca Sinnickson. I remember James Bruere once got five head of cattle of Mr. Sinnickson; I think he bought the cattle some time in June, A. D. 1842; I was at James Bruere's the day before and the day after the cattle were brought there; I was not there the day the cattle came; I was living at Mr. Bruere's at that time, and remained there until the cattle were killed in the winter. Mr. Bruere told me he gave twenty-eight dollars a piece for them; I never heard Sinnickson say any thing about it. James Bruere did not get any other cattle of Seneca Sinnickson during that sea-
 30 son; I do not know that he ever got any other cattle of him; I am satisfied that there were only five head of the cattle.

NAPOLEON BRUERE.

Sworn and subscribed, at Trenton, this 17th day of June, A. D. 1851, before me.

CALEB S. GREEN, *M. C.*

Joseph Imlay, of Upper Freehold, in the county of Monmouth, a witness produced on the part of the complainants, being duly sworn according to law, on his oath saith—I remember that James Bruere bought five cattle of Seneca Sinnickson some time in June,

eighteen hundred and forty-two; I lived with Mr. James Bruere at that time. Seneca Sinnickson, and one or two of his boys, (I can't remember which) came with the cattle to Mr. Bruere's. I worked for Mr. Bruere the whole of that season, and helped kill the cattle; they were killed during that fall and winter; one or two in the fall, the rest in the winter. I never knew Mr. Bruere to get any other cattle of Sinnickson; he did not get any others that season; I saw the cattle almost every day from the time they were brought to Mr. Bruere's until they were killed. I am sure there were only five cattle brought to Mr. Bruere's by Sinnickson; I 10 think the cattle were worth between twenty-five and thirty dollars a piece. I think Sinnickson brought some hams or shoulders to Mr. Bruere's at the same time he brought the cattle; I do not remember the quantity.

JOSEPH IMLAY.

Sworn and subscribed, at Trenton, the 17th day of June, A. D. 1851, before me.

CALEB S. GREEN, M. C.

The following account is taken, by consent, from a book proved to be the book of original entries, and the account proved to be in 20 the handwriting of James Bruere.

April 1, the 1844, Joseph C. Sinnickson rented the Bertus farm, at \$500, for one year, and pay the land tax and the repairs about house and farm for	\$500 00
From the first of April, 1844, to the first of April, 1845, there is 1 year's rent,	500 00
From the 1st of April, 1845, to the first of April, eighteen hundred and forty-six,	500 00
From the first of April, 1846, to April the 1, 1847,	500 00
1845, September 22, by 10 bushel of wete, at \$1.00,	\$10 00 30
November, by 202.00 dollars of Sinica Sinnickson, on account of rent, for wich e gave him a recpt of the same date,	202 00
I recevd of Joseph Sinnickson, by the hands of his father, a bill given by Asher Schenck to the amount of 200.00 dollars.	
May 25th, 1846, I recevd the money of Schenck,	200 00

January 21, receivd of Sinica Sinnickson two hundred and forty-eight dollars and ninety cents, to grow towards the interest on the bond and mortgage for which I have given Sinnickson a rept of the same date—Note by Richard Bruere, \$248 90
 May 20the, 1847, recevd 52 dollars, and it was and all the 52 00
 moneys that I gave rept for was put on the bond.
 October 30the, 1847, received of Sinnickson, and endorsed on the bond the sum of 410 60

- 10 The bond, to secure which the mortgage was given, is dated April 10th, 1827, in the penal sum of ten thousand two hundred dollars, conditioned for the payment of \$5100 in one year.

There are a number of receipts endorsed on said bond prior to 1839, after which the only receipts endorsed were the following, in the order herein set down :

Received, January 19th, 1839, of Seneca Sinnickson, the sum of three hundred and sixty-two dollars, on account of interest of the within bond.

\$362.

JAMES BRUERE.

- 20 Received, March 18th, 1839, of Seneca Sinnickson, one hundred and seventy-seven dollars, on account of the interest on the within. This sum was left by him with Richard Bruere, and by said Bruere paid over to me.

\$177.

JAMES BRUERE.

Received, June 12th, 1842, of Jonathan Bruere, for account of Sinneca Sinnickson, twenty dollars, on account of interest of the within bond.

\$20.

JAMES BRUERE.

- 30 Received, June 14th, 1842, of Mr. Seneca Sinnickson, the sum of one hundred and thirty-one dollars, on account of interest of the within bond.

\$131.

JAMES BRUERE.

Received, Nov. 1, 1842, of Mr. Seneca Sinnickson, his bond and warrant of attorney of this date, for one thousand dollars, which is to be credited hereon for interest, when paid.

Received, May 20th, 1847, of Mr. Sinnica Sinnickson, the sum of five hundred and seventy-six dollars and twelve cents. I say received as interest of the within bond.

\$576.12.

JAMES BRUERE.

Received, October 30th, 1847, of Mr. Seneca Sinnickson, the sum of fore hundred and ten dollars and sixty cents. I say recd by me, as interest of the within bond.

\$410.60.

JAMES BRUERE.

Received, July 24th, 1848, of Senica Sinnickson, the sum of one hundred and seventy dollars, for interest on the within. 10

\$170.00.

JAMES BRUERE.

At the October term of the Court of Chancery, the exception to the master's report was overruled, and a final decree made in favor of the complainants, for the sum of ten thousand three hundred and thirty-four dollars and three cents, with interest from the date of said report and the costs of suit; and a sale of the mortgaged premises, to raise said moneys, was ordered.

OPINION OF THE CHANCELLOR.

The Chancellor furnishes the Court of Errors and Appeals with the following reasons for the decree made in this case. 20

I overruled the exception, because the question presented involves a mere matter of fact, in determining which, I am not satisfied that the master committed any error.

The opportunity afforded the master, in arriving at a correct conclusion, was much more favorable than that afforded me. It is true, I have the same evidence before me upon which the master made up his judgment. The testimony of witnesses, generally, appear all alike upon paper; and yet, every one at all acquainted with the investigation of contraverted facts, where the evidence is conflicting, appreciates the importance of seeing the witnesses confronted with each other, and of hearing their testimony as they give it. Where a correct decision depends upon the degree of credit to be attached to the witnesses examined, the appearance and manner of the witnesses are almost indispensable in forming a correct and satisfactory judgment. I do not mean to be under-

stood as saying, that the decision of a master should be considered as conclusive upon a matter of fact: all I mean to say is, that before the court will interfere with the report of a master, upon a question of fact submitted to him, depending upon the credibility of witnesses, the decision of the master ought not to be interfered with, unless the error of the master is satisfactorily and clearly made to appear. The court has always acted upon this principle, and I think it the only correct and safe one. I cannot say, that it satisfactorily appears that the master has committed an error in the
 10 matter of this exception.

The second exception is well taken. There is no reason why the master should have made a rest in the accounts in October, 1853: he should have calculated simple interest on the bond up to the date of his report.

B. WILLIAMSON, C.

PETITION OF APPEAL.

COURT OF ERRORS AND APPEALS.

BETWEEN

SENECA SINNICKSON AND WIFE, appellants,

and

JONATHAN BRUERE AND JOHN H. BRUERE,
 administrators of James Bruere, deceased, appel-
 lees,

} On bill, &c.

*To the Honorable the Court of Errors and Appeals in the last resort
 in all causes of law.*

The humble petition of Seneca Sinnickson and Ruth his wife, the appellants in the above stated cause, respectfully shows, that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor Benjamin Williamson,

Chancellor of New Jersey, bearing date the second day of December, in the year of our Lord one thousand eight hundred and fifty-four, wherein Jonathan Bruere and John H. Bruere, administrators, &c., of James Bruere, deceased, were complainants, and your petitioners were defendants, in this respect, to wit: that the said final decree adjudges that the exceptions taken by the said defendants to the report of Richard W. Howell, esq., one of the masters of said court, made in this cause, dated June 24th, 1854, be overruled and disallowed; whereas, by the evidence in the cause, the said exceptions should have been sustained. 10

And your petitioners humbly appeal from that part of said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, and contrary to law and equity.

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 relief in the premises as to this honorable court shall seem meet.

F. KINGMAN,

Solicitor for and of counsel with appellants.

Dated December 9, 1854.

ANSWER.

These respondents, not confessing or acknowledging all or any 20 of the matters or things to be true, as in and by the said petition of appeal are contained and set forth, for answer thereunto say, that they believe it to be true that such decree, as is complained of by the appellants was made by the Court of Chancery, as, in the said petition of appeal is set forth, but, as to the date, substance, and contents thereof, these respondents humbly crave leave to refer thereto, when the same shall be produced.

And these respondents are advised, and believe that the said decree is agreeable to equity and justice, and they humbly pray the same be affirmed, and that the petition of appeal be dismissed by 30 this honorable court, with costs, to be adjudged to these respondents.

JOS. F. RANDOLPH,

Solicitor and of counsel with the respondents.

New Jersey Court of Errors and Appeals.

BETWEEN

SENECA SINNICKSON, appellant,

and

JONATHAN BRUERE AND OTHERS, administrators, &c., and heirs-at-law of Richard Bruere, deceased, appellees,

} On appeal from the
final decree of C.
Williamson.

STATE OF THE CASE.

Seneca Sinnickson, the appellant, filed his bill of complaint in the Court of Chancery on the 31st day of March, 1848, against Jonathan Bruere and others, administrators and heirs-at-law of Richard Bruere, deceased, the appellees, setting forth, among other things, that, in the year 1824, he, the said Seneca, being possessed of three valuable farms and other tracts of land in Salem county, and being embarrassed and indebted beyond his ability to pay in cash, executed a deed for said farms and other tracts of land to his brother-in-law Richard Bruere, who undertook to pay off all claims against said Seneca, and to reimburse himself out of the 10 rents and profits of the said plantations and real estate, and to take care of said estate, as trustee for said Seneca, and when fully paid and reimbursed, to reconvey the same to said Seneca. That said Richard Bruere immediately entered into possession of said real estate, and from thence received the rents and profits thereof.

That on the 22d day of April, 1831, the said Richard reconveyed to said Seneca a portion of said real estate, and that both deeds were duly executed and recorded.

Richard Bruere died intestate, January 19, 1848. Jonathan Bruere and James H. Bruere, jun., took out letters of administra- 20 tion on the first day of February, 1848.

Defendants filed their answer to said bill June 19, 1850, admitting the conveyance in trust and the reconveyance, as stated in master's report, and annexed an account showing that the complainant was indebted to the estate of Richard Bruere in the sum of ten thousand dollars and upwards.

On the day of July, 1851, it was referred to Richard W. Howell, esq., one of the masters of this court, to take a mutual account of all the dealings and transactions between the said plaintiff and the said Richard Bruere, deceased, in his lifetime, and also the said Jonathan Bruere and James H. Bruere, administrators of said Richard Bruere, since his death, touching the matters in controversy in this suit; and of all moneys due and owing from the said plaintiff to the said Richard Bruere, deceased, in his lifetime; and of all the rents, issues, and profits received by the said
 10 Richard Bruere, in his lifetime, from the several farms or plantations mentioned in the pleadings in said suit; and of all expenses, for repairs or necessary improvements, paid by the said Richard Bruere, in his lifetime, or his personal representatives, since his death.

And, for the better taking of the said account and discovery of the matters aforesaid, the parties are to produce before the said master, upon oath, all deeds, books, and papers and writings in their custody and power relating thereto, and are to be examined upon interrogatories, as the said master shall direct; who, in taking
 20 the said account, is at liberty to use the evidence heretofore taken in this cause, and also, is to make to the said parties all just allowances. And the said master is to make his report touching the matters hereby referred to him with all convenient speed. And if in taking the said account, any special matter shall arise, the said master is at liberty to state the same to the court.—On motion of William N. Jeffers, solicitor and of counsel with complainant.

MASTER'S REPORT.

In pursuance of an order of this court, entered in the above cause, bearing date the day of July, in the year of our Lord one thousand eight hundred and fifty-one, but filed on
 30 the eighth day of November, in the year last aforesaid, I have been attended for several days by the parties, and their respective counsel, and have considered of the matters thereby referred to me, and have taken and examined the evidence and exhibits submitted with this report, and I find that, on the twentieth day of September, A. D. eighteen hundred and twenty-four, (1824,) the said Seneca Sinickson, the complainant, by deed of that date, conveyed to the said Richard Bruere all those several tracts and lots or parcels of

land, situate in the county of Salem, in the state of New Jersey, in said deed particularly mentioned and described, that is to say:

(1.) The first of said tracts, situate in the township of Lower Penns Neck, in the county of Salem aforesaid, bounded by lands of John Redstreak, of the monthly meeting of friends, and others, containing one hundred and seventeen acres, more or less, ("being the same that was Lummis'.")

(2.) A lot of marsh meadow and upland, situate on the south side of Cobb's island, in the township of Lower Penns Neck, in said county of Salem, bounded by lands of Andrew Sinnickson, John 10 Louderback, and others, containing fifty acres, more or less, being the same which Samuel Sharp, by deed dated the 8th day of January, A. D. 1796, conveyed to Joseph Cobner, his heirs and assigns, for ever.

(3.) The third, a lot of wild meadow on Salem creek, in the township of Mannington, and county aforesaid, bounded by lands now or late of Thomas Thompson, Salem creek, &c., containing ten acres, more or less, being the same which the said Thomas Thompson and wife, bearing date the 16th day of December, A. D. 1800, conveyed to Joseph Copner in fee; the three foregoing 20 tracts being the same which the said Joseph Copner devised to his grandson, the said complainant, by his will, dated 14th June, 1804.

(4.) The fourth, a lot of land, situate in the township of Upper Penns Neck, in said county, and called, in the division of certain real estate between the said Seneca Sinnickson and Philip Curriden, lots No. 1 and 3, and bounded by lands of Holton, Conrad, Whitsell, and others, containing seventy-three acres and fifteen hundredths of an acre, more or less, ("being the share which was laid off to the said Seneca of a certain tract, and devised to him by the said Copner, after the decease of his two sisters, as, by his 30 said will and division thereof, will appear.")

(5.) A lot of land situate in the township of Lower Penns Neck aforesaid, and bounded by lands late of Andrew Sinnickson and Thomas Sinnickson, deceased, containing fifty acres of land, be the same more or less.

(6.) A lot of "marsh meadow," bounded by lands late of Andrew Sinnickson and Thomas Sinnickson, deceased, and by Salem creek, (also situate in the township of Lower Penns Neck aforesaid,) containing forty acres, more or less; the two last named lots being the same which Henry Freas, sheriff of said county, by deed 40

dated the 15th day of February, A. D. 1811, conveyed to the said Seneca Sinnickson in fee.

(7.) A lot of land in the township of Lower Penns Neck aforesaid, bounded by lands of Vining Hill and others, containing fifty-two rods, more or less, being the same which Vining Hill conveyed to the said Seneca Sinnickson, by deed dated the 13th day of December, A. D. 1814.

(8.) All those two undivided third parts or shares of, in, and to all that farm or tract of land called the Brick-house plantation or farm, situate in the township of Lower Penns Neck aforesaid, bounded by lands late of John Sinnickson, deceased, and now in the possession of Doctor Thomas Rowan, land of John Sinnickson, junior, and the land first above described, containing one hundred and eight acres, more or less, being the same which by law descended to the said Seneca Sinnickson from his father, Andrew Sinnickson, deceased.

(9.) All the residue and remainder of the said Seneca Sinnickson of, in, and to all or any other tracts or lots of land and real estate whereof the said Joseph Copner died seized, situate in the county of Salem aforesaid, and to which the said Seneca Sinnickson was entitled, or at any time thereafter might or ought to have or claim by virtue of the said will of the said Joseph Copner, deceased, or by any other title or means whatsoever: together with all and singular the rights, members, privileges, hereditaments, and appurtenances of the said Seneca Sinnickson, either in law or in equity, of, in, and to the said land and premises above mentioned or intended to be conveyed, with the reversions and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, use, property, claim, and demand whatsoever, as in and by the said deed of conveyance, duly recorded in the clerk's office of the county of Salem, in Book A. C. of Deeds, folios 205, 206, 207, and 208, a certified copy whereof, marked "*Exhibit No. 1*, of defendants," was produced before me.

And I do further report, that I am satisfied the said deed, though absolute on its face, was intended by the parties to be a conveyance to Richard Bruere in trust of the premises, to enable him, from the net receipts of the rents and income over and above the necessary annual expenditures on the same, to pay to Richard Bruere the amount of moneys, principal and interest, which he had advanced to the said Seneca Sinnickson, or should advance to or for him; and that afterwards, namely, on the twenty-second day of April, in the year of our Lord one thousand eight hundred and thirty-one,

(1831,) the said Richard Bruere, by deed under his hand and seal, duly executed and acknowledged, reconveyed to the said Seneca Sinnickson so much of the property so conveyed to him as aforesaid by the said Seneca Sinnickson, as in the said deed of reconveyance is mentioned and set forth, that is to say, all his, the said Richard Bruere's, right, title, and interest of, in, and to a certain tract of fifty acres of meadow on the south side of Cobb's island, devised to the said Seneca Sinnickson in and by the last will and testament of Joseph Copner, deceased, bearing date on the fourteenth day of the fourth month, June, in the year of our Lord one 10 thousand eight hundred and nine, situate in the township of Lower Penns Neck, in the county of Salem, in the state of New Jersey, and also of, in, and to the home plantation, including all the lots purchased thereto, mentioned and described in the said last will and testament of the said Joseph Copner, and whereof Samuel Copner, the son of the testator aforesaid, was possessed by his tenant, Henry Snitcher, at the time of his death, which plantation and lots are situate in the said township of Lower Penns Neck; and also twelve acres of meadow land, situate in the township of Lower Penns Neck aforesaid, adjoining, on the west, on Fishing 20 island, which was the property of the said Joseph Copner at the time of his death, and purchased by him of Samuel Sharp and Andrew Stanley; and also of, in, and to four acres of land, situate in the township of Lower Penns Neck aforesaid, now or late in the possession of Rebecca Drew and Ann Hill, or one of them, whereof the said Joseph Copner died possessed; and also of all the residue of the lands whereof the said Joseph Copner was seized and possessed at the time of the execution of his said last will and testament, and which was by him therein bequeathed to the said Seneca Sinnickson, under the claim therein, directing "all 30 the remainder of the rents, profits, and residue of my estate, after the payment of my just debts, be equally divided between my wife Jane, my son Samuel, and my two grandchildren Sinnick and Jane Sinnickson, share and share alike," and also to which the said Seneca is entitled as heir-at-law of the said Jane Copner, the widow, and Samuel Copner, the son, of the said testator, or either of them: together with all and singular the buildings, improvements, ways, woods, waters, watercourses, rights, liberties, privileges, hereditaments, and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainders, rents, 40 issues, and profits thereof, and of any part and parcel thereof; and also all the estate, right, title, interest, use, possession, property,

when the lands aforesaid were conveyed by said complainant to the said Richard Bruere; and that since the said James B. Sinnickson came of age, he has filed a bill in this court against said defendants for an account and payment of his share of the net profits of said farm, and which matter has also been referred to me to report and state an account of the same, which I have accordingly done at the same time with this report; by which account and report I find due to the said James B. Sinnickson, for his share of the said net rents and profits at the date of said report, the sum of twenty-four hundred and eighty-six dollars and five cents, 10 (\$2486.05,) as will more fully appear by said report and schedule thereunto annexed; and I do further certify that I know of no other special matter which I deem for the benefit of either of said parties to report.

All which is respectfully submitted.

RICHARD W. HOWELL, M. C.

Dated at Camden, this twenty-fourth day of June, A. D. 1854.

Schedule referred to in the foregoing report, and making part thereof.

1824.			
June 10,	To cash, as per note of this date,	\$250 00	20
	“ interest on ditto to March 25, 1825,	11 87	
Sept. 15,	“ cash paid Jonathan,	1320 17	
	“ interest to March 25, 1825,	41 80	
“ 23,	“ cash paid Joseph Kille,	4396 68	
1825.	“ interest to March 25, 1825,	133 36	
Mar.	“ cash paid Hannah Hutchins,	150 00	
	“ “ “ for visiting estate three times,	30 00	
	“ amount paid J. B. Sinnickson, one-third of Homestead farm (rent) \$129, less commis- sion of expenses \$25,	104 00	30
		<hr/>	\$6437 88
	By cash received from N. Garrison, for rent,		295 46
			<hr/>
	To balance due March 25, 1825,		\$6142 42
Dec. 12,	“ mare colt of E. Williams,	\$25 00	
	“ cash paid Hannah Hutchins,	90 00	
1826.	“ “ “ G. D. Wall, fee against Penton,	20 00	
Mar. 25,	“ amount paid J. B. S., one-third rent of H. farm, \$108.33, less \$25,	83 33	
	“ one year's interest on \$6142.42,	368 54	
		<hr/>	586 87 40
			<hr/>
			\$6729 29

	By cash received from N. Garrison, for rents this year,		\$738 00
			<u>\$5991 29</u>
1827.	To balance due March 25, 1826,		
Mar. 23,	" cash paid Hannah Hutchins,	\$90 00	
	" " " Wm. Rogers, for rails,	200 00	
	" " " S. Sinnickson, at Mt. Holly,	50 05	
	" amount paid J. B. S., one-third rent of H. farm, \$108.33, less \$25,	83 33	
10	" 1 year's interest on \$5991.29,	359 48	
		<u>782 86</u>	
			<u>\$6774 15</u>
	By cash received of N. Garrison, for rent,		521 70
			<u>\$6252 45</u>
1828.			
Mar.	To 1 new farm wagon with top,	\$65 00	
	" cash paid G. D. Wall, fee against Lummis,	10 00	
" 28,	" " " Hannah Hutchins,	90 00	
20 April 10,	" " " James Bruere,	306 00	
Mar.	" amount paid J. B. S., one-third rent of H. farm, \$111.66, less \$25,	86 66	
	" 1 year's interest on \$6252.45,	375 15	
		<u>932 81</u>	
			<u>\$7185 26</u>
	By cash of Clement & Scull, for N. Garrison, August 9, 1825,		\$125 00
	" interest to March 25, 1828,	20 00	
30	" cash received of Garrison, rents this year,	683 33	
April 12,	" " " " S. Sinnickson,	182 00	
		<u>1010 33</u>	
			<u>\$6174 93</u>
1829.	To balance due March 25, 1828,		
Mar. 23,	" cash paid Hannah Hutchins' mortgage,	\$1586 25	
	" interest on ditto to March 25, 1832,	286 06	
" 25,	" amount paid J. B. S., one-third rent of H. farm, \$100, less \$25,	75 00	
	" interest on ditto to March 25, 1832,	13 50	
Aug. 21,	" cash paid James Bruere,	36 00	
40 1830.	" interest on ditto to March 25, 1832,	5 60	
Mar. 25,	" amount paid J. B. S., one-third rent of H. farm, \$100, less \$25,	75 00	
	" interest on ditto to March 25, 1832,	9 00	
July 27,	" cash paid James Bruere,	279 00	
1831.	" interest on ditto to March 25, 1832,	27 80	
Jan. 14,	" cash paid Abner Penson,	40 00	
	" interest on ditto to March 25, 1832,	2 87	
Mar. 25,	" amount paid J. B. S., one-third rent of H. farm, \$100, less \$25,	75 00	
50	" interest on ditto to March 25, 1832,	4 50	

Mar. 25,	To amount paid J. B. S., one-third rent of H. farm, \$91.66, less \$25,	\$66 66	
	" 4 year's interest on \$6174.93,	1482 00	
		<hr/>	\$4,064 24
			<hr/>
1829.	By cash received from N. Garrison, for rent,	\$21 00	\$10,239 17
1830.	" " " " " " "	424 50	
1831.	" " " " " " "	621 60	
1832.	" " " " " " "	808 29	10
		<hr/>	1,875 39
			<hr/>
1833.	To balance due March 25, 1832,		\$8,363 78
Mar. 6,	" cash paid Sinnickson,	\$100 00	
	" interest on ditto to March 25, 1835,	12 32	
" 25,	" amount paid J. B. S., one-third rent of H. farm, \$91.66, less \$25,	66 66	
1834.	" interest on ditto to March 25, 1835,	8 00	
Feb. 19,	" cash loaned S. Sinnickson,	360 00	20
	" interest on ditto to March 25, 1835,	23 76	
Mar. 25,	" amount paid J. B. S., one-third rent of H. farm, \$91.66, less \$25,	66 66	
	" interest on ditto to March 25, 1835,	4 00	
Sept. 9,	" cash paid J. Gaskill & Son,	50 00	
	" interest on ditto to March 25, 1835,	1 63	
May 27,	" cash paid for Isaac Smith,	418 25	
1835.	" interest on ditto to March 25, 1835,	20 77	
Feb. 19,	" cash paid for S. Sinnickson,	95 37	
	" interest on ditto to March 25, 1835,	56	30
Mar. 25,	" amount paid J. B. S., one-third rent of H. farm, \$100, less \$25,	75 00	
	" 3 years' interest on \$8363.78,	1505 48	
		<hr/>	2,808 46
			<hr/>
			\$11,172 24
1833.	By cash received from N. Garrison, for rent,	\$334 88	
1834.	" " " " " " "	424 00	
1835.	" " " " " " "	842 00	
		<hr/>	1,600 88 40
			<hr/>
			\$9,571 36
1836.	To balance due March 25, 1835,		
Mar. 25,	" amount paid J. B. S., one-third rent of H. farm, \$100, less \$25,	\$75 00	
	" 1 year's interest on \$9571.36,	574 23	
		<hr/>	649 28
			<hr/>
			\$10,220 64
	By cash received from N. Garrison for rent,	800 00	
		<hr/>	
	To balance due March 25, 1836,		\$9,420 64 50

1837.				
Mar. 25,	To amount paid J. B. S., one-third rent of H. farm, \$108.33, less \$25,	\$83 33		
	" 1 year's interest on \$9420.64,	565 24		
		<hr/>		\$648 57
				<hr/>
				\$10,069 21
May.	By cash received from N. Garrison, for rent,			600 00
				<hr/>
				\$9,469 21
1838.	To balance due March 25, 1837,			
10 Mar. 25,	" amount paid J. B. S., one-third rent of H. farm, \$108.33, less \$25,	\$83 33		
	" 1 year's interest on \$9469.21,	568 15		
		<hr/>		651 48
				<hr/>
				\$10,120 69
	By cash received from N. Garrison, for rent,			652 50
				<hr/>
				\$9,468 19
1839.	To balance due March 25, 1838,			
20 Mar. 25,	" amount paid J. B. S., one-third rent of H. farm, \$108.33, less \$25,	\$83 33		
	" 1 year's interest on \$9468.19,	568 09		
		<hr/>		651 42
				<hr/>
				\$10,119 61
	By cash received of N. Garrison, for rent,			685 00
				<hr/>
				\$9,434 61
1840.	To balance due March 25, 1839,			
Mar. 25,	" amount paid J. B. S., one-third rent of H. farm, \$108.33, less \$25,	\$83 33		
	" interest to March 25, 1848,	40 00		
30 Aug.	" cash paid S. Brown, sheriff,	60 62		
1841.	" interest to March 25, 1848,	27 65		
Mar. 25,	" amount paid J. B. S., one-third rent of H. farm, \$108.33, less \$25,	83 33		
	" interest on ditto to March 25, 1848,	35 00		
1842.	" amount paid J. B. S., one-third rent of H. farm, \$108.33, less \$25,	83 33		
Mar. 25,	" interest on ditto to March 25, 1848,	30 00		
1843.	" amount paid J. B. S., one-third rent of H. farm, \$108.33, less \$25,	83 33		
Mar.	" interest on ditto to March 25, 1848,	25 00		
40 April 3,	" J. B. Sinnickson's note,	90 00		
1844.	" interest on ditto to March 25, 1848,	26 85		
Mar. 25,	" cash paid for repairs on H. farm, two-thirds to J. B. S.,	7 15		
	" interest on ditto to March 25, 1848,	1 72		
1845.	" cash paid for repairs on H. farm, two-thirds to J. B. S.,	100 00		
Mar. 25,	" interest on ditto to March 25, 1848,	18 00		
	" J. B. Sinnickson's note, due this day,	200 00		
50 June 16,				

1846.	To interest on ditto to March 25, 1843,	\$33 30	
Mar. 25,	" cash J. B. S., for two-thirds repairs on H. farm,	51 71	
1847.	" interest on ditto to March 25, 1843,	6 20	
Mar. 25,	" cash paid J. B. S., for two-thirds repairs on H. farm,	37 77	
	" interest on ditto to March 25, 1843,	2 26	
1847.	" cash paid Eakin, attorney's fees, \$10 and \$5,	15 00	
1843.	" amount paid J. B. S., two-thirds repairs H. farm,	161 57	10
	" this amount for compensation for expenses and services rendered the several estates, 24 years, at \$25 per year,	600 00	
	" interest on \$9434.61, from March 1, 1839, to March 25, 1843,	5094 63	
1829.			
April 29,	" cash paid G. D. Wall (costs), omitted under proper date,	41 67	
	" interest on ditto to March 25, 1843,	47 26	
		<hr/>	\$7,036 73 20
1840.			\$16,521 34
May.	By cash of William Casperson,	\$201 00	
Sept.	" " D. Fogg,	212 00	
	" amount received of N. Garrison in grain, \$91, and oats, \$7.50,	98 50	
1842.			
April 12,	" cash from Casperson,	325 00	
	" " " Fogg,	320 00	
Dec. 29,	" " " N. Garrison, per A. L. Eakin,	173 00	
1843.	" " " Uiker, rent of 1842,	123 82	30
	" " " Casperson, cash \$300, balance \$71,	374 00	
1844.	" " balance from Uiker,	95 09	
	" " two-thirds rent from J. B. Sinnickson,	150 00	
1845.	" " from Casperson, for 1844 and 1845,	319 71	
	" " from J. B. Sinnickson,	200 00	
1846.	" " " " "	200 00	
	" " " Casperson,	229 02	
1847.	" " " " "	174 69	
	" " " J. B. Sinnickson,	200 00	40
	" " " Uiker, for 1845, 1846, and 1847,	523 69	
1848.	" cash from Casperson and Uiker,	198 27	
		<hr/>	4,122 79
	To balance due March 25, 1843, to the administrators of Richard Bruere,	\$12,398 55	
	" interest on \$12,398.55 from March 25, 1843, to June 24, 1854,	4,647 40	
		<hr/>	50
	" balance due the administrators of Richard Bruere, June 24th, 1854,	\$17,045 95	

RICHARD W. HOWELL, M. C.

Exceptions taken by the complainant to the report of Richard W. Howell, esquire, one of the masters of this court, made in this cause, dated the twenty-fourth day of June, 1854.

First. For that it appears, in and by the said report, and the schedule thereto annexed, that the said master, in taking and stating said account contained in said schedule, has charged the complainant with money paid James B. Sinnickson for one-third part of the rent of the homestead farm, in each year, from 1824 to 1843, a period of nineteen years, with interest upon each year's rent from the twenty-fifth of March, in each year, until the twenty-fifth of March, 1848: whereas the said master ought not to have charged the said complainant with the said sums of money, nor with interest thereon, nor with either of them, nor any part thereof.

Second. For that it appears, in and by the schedule annexed to said report, that the said master, in taking and stating said account, has debited and charged the complainant from the year 1843 to 1848, a period of six years, with money "paid James B. Sinnickson for two-thirds of repairs on H. farm," with interest on the amount charged in each year from the date of the charge up to March 25th, 1848, whereas the said master ought not to have debited and charged the complainant with the said sums of money, nor with either of them, nor any part thereof.

Third. That the said master has not taken and stated an account "of all the rents, issues, and profits received by the said Richard Bruere, in his lifetime, from the several farms or plantations mentioned in the pleadings in said suit, and of all expenses for repairs or necessary improvements paid by the said Richard Bruere, in his lifetime, or his personal representatives since his death," as, by the order of reference in this cause, he was directed to do: so that said account does not show the amount of rents received or expenses paid, either by the year or in the aggregate, or for any period.

Fourth. That the said master, in said account, has charged the complainant with interest on a balance struck against him, from the year 1848 to the date of said report: whereas no interest should have been charged against said complainant on said balance, or on any amount from that time, the delay in settling said account having been caused by the neglect and default of the said defendants, and not by any neglect or default of said complainant.

Fifth. That the said master, in said account, has charged the

complainant with a large amount in favor of said defendants, as administrators, &c., which the said administrators, in their answer and schedule of account, annexed thereto, never claimed, or pretended to claim, against the said complainant.

Sixth. For that the said master, in said account, has charged the said complainant with the following items, *viz* :

1824. Sept. 15,	Cash paid Jonathan,	\$1320	70	
1825. Dec. 12,	Mare and colt of E. Williams,	25	00	
1827. Mar. 23,	Cash paid Wm. Rogers, for rails,	200	00	
1828. Mar. 1,	One new farm wagon, with top,	65	00	10
1831. Jan. 14,	Cash paid Abner Penson,	40	00	
	Interest thereon to March 25, 1832,	2	87	
1834. May 27,	Cash paid for Isaac Smith,	418	25	
	Interest thereon to March 25, 1835,	20	77	
1843. April 3,	J. B. Sinnickson's note,	90	00	
	Interest on ditto to March 25, 1848,	26	85	
1845. June 16,	J. B. Sinnickson's note,	200	00	
	Interest on ditto to March 25, 1848,	33	30	
1829. April 29,	Cash paid G. D. Wall, costs,	41	67	
	Interest on ditto to March 25, 1848,	47	26	20

Whereas the said master should have disallowed said items, and refused to charge them against said complainant, the same not having been proved as proper and legal charges against said complainant.

Seventh. For that it appears, by the said account, that the said master has not calculated interest according to the legal rule, but has made several rests in said account, and added interest to the principal, and thus cast interest upon interest: whereas the said master should have made a rest in said calculation only when the payments exceeded the interest due; and if the payments at any time did not exceed the interest due, the master should have made no rest in said calculation until the end.

In all which respects the said complainant excepts to the said report, and humbly appeals therefrom to the judgment of this honorable court.

F. KINGMAN,

Solicitor for and of counsel with said complainant.

TESTIMONY.

Nehemiah Garrison, a witness produced, affirmed, (he alleging himself to be conscientiously scrupulous of taking an oath,) being duly affirmed and examined on the part of the defendants, doth declare and say, being shown account book of Richard Bruere, marked *Exhibit No. 3*, says—The account purporting to be an account of real estate, and the account purporting an account between Bruere and myself, as agent for the real estate, are all in the handwriting of Richard Bruere, and generally, with some few exceptions, the residue of the book appears to be in his handwriting; and also an account stated between me and the said Richard Bruere, now exhibited to me, and marked *Exhibit No. 4* of the defendants, is also in the handwriting of the said Richard Bruere. I am well acquainted with the handwriting of the late Richard Bruere; was in constant correspondence with him for some twenty years, and frequently saw him write. And being shown thirty letters, drafts, and receipts, marked *Exhibits*, from 1 *A* to 30 *A* (inclusive) on the part of the defendants, and in date running from 29th April, 1825, to May 9th, 1839, says—these are original papers between me and Richard Bruere; the letters were written by me to Richard Bruere, and generally transmitting drafts, and the receipts are receipts of Richard Bruere. I have also examined letters marked from 1 *B* to 23 *B*, inclusive; these are all in Richard Bruere's handwriting, being letters from him to me, and in date run from May 7th, 1825, to October 7th, 1839. And being shown a package of fourteen letters, marked *Exhibits 1 C* to 14 *C*, of defendants, and running in date from December 12th, 1824, to March 21st, 1837—these are in my handwriting, and are original letters from me to Richard Bruere. And being shown sundry papers, purporting to be sundry accounts and receipts, marked *Exhibits* from 1 *D* to 137 *D*, and running in date from 1825 to 1839, inclusive, says—these are the original accounts and receipts taken and paid my me, as agent of Richard Bruere, and allowed by Richard Bruere in the settlement of the accounts between us, as expenses against the Salem property. Having examined all the papers thus marked as exhibits for the defendants, I have no doubt that they are all the original papers they purport to be. The accounts and receipts, marked as *Exhibits* from 1 *D* to 137 *D*, and Richard Bruere's letters, marked *Exhibits* from 1 *B* to 23 *B*, of defendants, and the same papers which I stated, in a previous ex-

amination, to be the papers which Richard Bruere took away with him, in order, as he said, to be more satisfactory to some person or persons, or words to that effect. I cannot recollect whether Mr. Bruere had an account current with him at the time he settled with me or not; I know he had a paper upon which he was figuring, and which was referred to on a former examination. When I gave up my agency, I think David Fogg was on the Lummis farm, I think Josiah Garrison was on the Stanley farm, and the Caspersons were on the Homestead or Brick-house farm, the same farm of which James B. Sinnickson owned one-third of, commonly called the Homestead farm. In the final settlement between me and Richard Bruere, the rents there stated were then actually received; there were some deductions in the rents, from time to time, on account of the banks having gone down.

And being cross-examined by Frederick Kingman, esq., on the part of the complainant—I had nothing to do with any of the property conveyed by Richard Bruere to Seneca Sinnickson, other than the three farms heretofore referred to. I paid the taxes of the wood tract in Upper Penns Neck, and got some rails there; I also got my wood there.

NEH. GARRISON.

Affirmed and subscribed to this 1st day of December, A. D. 1853, before me.

RICHARD W. HOWELL, M. C.

Seneca Sinnickson, of the township of Springfield, in the county of Burlington, a witness produced, and affirmed, (he alleging himself to be conscientiously scrupulous of taking an oath) and examined on his *voir dire*, doth declare and say—I am the father of James B. Sinnickson, the complainant in this cause; I was not his guardian during his minority; I never entered as guardian for him; I did not act as his guardian in relation to his property; I have no interest in the event of this suit. When Mr. Bruere went into the possession of the property, James B. Sinnickson was about three years old; Mr. Bruere did not go into possession of the part of the property left to James by his aunt with my consent; I think one Mr. Fox and one Mr. Dare were in possession of James' part of the property before Richard Bruere went into possession of it; the rent was not due at the time; what rent they paid they paid to Richard Bruere; the first rent for James' part that became due after the death of his aunt they paid to Richard Bruere.

Being now affirmed and examined on the part of the complainant, doth declare and say—I never settled the estate of Jane Sinnickson as the executor of that estate; I made a conveyance shortly after the death of Jane Sinnickson, and before the settlement of her estate, of the two-thirds of the Homestead farm to Richard Bruere; one-third of that farm was Jane Sinnickson's at the time of her decease; Richard Bruere went in and collected the rents of the one-third of that farm, as well as those of the two-thirds. Some time afterwards, when James B. Sinnickson came of age, Richard Bruere asked what was to be done with the rents of the farm, and James' mother concluded he had better keep them until James should become better acquainted with the business, and he concluded to do so, as it would be safest. I should think James was about three years old when Richard Bruere went into possession of the farm, perhaps between three and four years old, I can't say certain. I heard James B. Sinnickson and Richard Bruere in conversation together about the rents of the one-third of the farm; this was after James moved on to the farm. Richard Bruere said that there was considerable money in his hands, accruing from the rents, issues, and profits of the farm, but that he was not prepared to settle them at that time; that James could go on the farm, and occupy Richard's two-thirds and his own one-third. Richard Bruere, during the minority of James B. Sinnickson, rented out the whole of that farm, and took the whole charge of it. I never collected the rents of that farm for James; I never became the guardian of James B. Sinnickson; I never expected Richard Bruere to pay to me the rents of the one-third of that farm, as the guardian of James B. Sinnickson; I have no account against the estate of Richard Bruere for the rents of the one-third of that farm. I think it was first began to collect the rents of that farm. I think James came of age in the year eighteen hundred and forty-three (1843). James went on to the farm in the year eighteen hundred and forty-three. I think that farm rented for five hundred dollars; I think Fox and Dare agreed to pay five hundred dollars a year, or so much produce, for the whole of the farm. The lease to Fox and Dare was made, I think, by me and my sister; I think that lease was for one year; I think Richard Bruere put some repairs upon the property during the time he held it; I think he put a new roof on the barn; I know of no other repairs he did; he was not to do any repairs on that farm without my consent; I think James, after he came of age, and executions were issued against him, applied to Richard

Bruere for money to pay them off; Richard Bruere wanted to know what executions these were, and for what amount, but James would give him no satisfaction. In the intermediate time, they sold all his moveable estate, and there remained in the sheriff's hands, after paying off the executions, a balance of eighty-two dollars. I recollect the time when the real estate was to be sold; that was after the personal estate was sold. Richard Bruere commissioned me to go down to Salem, to see if I could not persuade the sheriff to put off the sale for a short time; I took a letter to the sheriff, and, by my persuasion, he put off the sale for a week or two. In 10 the intermediate time, we went around to his creditors, and some threw off seventy-five dollars, some fifty, some one hundred dollars, off the amount of their executions, and assigned over their judgments and executions to Richard Bruere. The judgments were in favor of John Gibbs, Doctor Thomas Roane, Minor Harvey, and there was a note of Thomas Lambson against James B. Sinnickson for two hundred dollars, and he threw off seventy-five dollars from the amount. After their judgments were bought up, we concluded to let the landed estate be sold by the sheriff, for the reason 20 that we expected there were more executions against him, and if they should come on they would cause the property to be sold in any event; there was, however, but one little execution that come out besides. We agreed among us that it would be best to have the property sold, and that Richard Bruere should purchase it, and Richard was to hold it for James; that was the understanding between us. Mr. Bruere said there was money enough in his hands to satisfy all the executions, and that he would reconvey the property when desired to do so; this conversation took place between the sales of the personal and real estate. I advised Richard Bruere, after James become of age, to hold on to the rents, until he, James, 30 should have more knowledge of business. I attended the sale of that farm; there were a good many purchasers there; there was but very little bidding. I think Richard Bruere's bid was eleven hundred and twenty dollars for the one-third of the farm, which was a very low price for it—a mere nothing; I should suppose that the whole of that farm was worth seventy-five dollars per acre; there was one hundred and eighteen acres of upland, and fifty acres of meadow, in that farm at that time; James was at that time inexperienced in business, and knew but little about it. I am certain that the understanding between Richard Bruere and myself 40 was, that he should transfer that property back to James as soon as those executions were satisfied; I mean the one-third of the farm

sold by the sheriff. I think there was a time fixed between Richard and James for the settlement of their affairs; I think it was the fall before Richard Bruere died. Richard, James, and I were down in Salem county ascertaining some lines of woodland; some people had been cutting over; Richard stated that he had not his papers with him, or he would have settled on the spot at that time; I think they then fixed on a time to meet at my house for the purpose; Richard came to my house at the time fixed, but James did not attend; Richard died in the next January; during Richard's
 10 visit to my house, there was a conversation between me, Richard, and my wife, upon the subject of the property, and my wife remarked that he could leave it to James in his will, and that that would obviate the necessity of a reconveyance, and Richard replied that he could do so. James never saw his uncle Richard after that time; he was not up until after his uncle Richard's death.

And being cross-examined by Peter D. Vroom, esq., solicitor, &c., of defendant, says—After James became of age he took possession of the whole farm, that is, in the following spring; he went into possession in the spring of eighteen hundred and forty-three;
 20 I cannot say whether he went into possession of the two-third parts under a lease from his uncle Richard or not; I should suppose the whole property was worth five hundred dollars a year at the time James went into the possession; I think James agreed to pay his uncle one hundred and fifty dollars for the privilege of going on to the farm; I do not know whether that was for the whole rent, or what it was for; James continued in possession up to the time of the sheriff's sale, and still continues in possession; I do not know whether James paid any rent at all to Richard after the sale; I know that James did not take a lease from Richard Bruere for the
 30 farm after the sheriff's sale. I have a suit now pending in Chancery against the estate of Richard Bruere; in that suit there is a claim for the rents, issues, and profits of that and other farms; in that suit I have not made claim for the rents of the whole of that farm; one-third of the rents of that farm I do not claim, but two-thirds of them I do claim; my claim against the estate of Richard Bruere is for two-thirds of the rents of that farm; I claim the same rent from the estate of Richard Bruere for the farm, for the whole time that he had it in possession, that it rented for at the time he, Richard, went into possession of it. James B. Sinnickson's moveable
 40 property was sold about three months before his real estate; the moveable property was sold in September, and the real estate on 26th March following; the personal property brought enough to pay the executions that were then in the sheriff's hands, and left a

balance of eighty-three dollars over. I do not know how long it was after that before other executions came into the sheriff's hands against him; I speak from the sheriff's statement; those executions were paid out of the proceeds arising from the sale of the personal property; one of the executions thus paid off was Minor Harvey's, another Dr. Roane's; John Gibbs was partly paid off. After the sale of the personal property, and between the sale of that and of the real estate, I went round among the creditors to endeavor to get them to throw off something; I went to John Gibbs and Thomas Lambson; I do not know whether Lambson was or was not a judgment creditor—I guess not; I also went to Minor Harvey, John Steelman, and several others; several of them agreed to throw off something; we went to these creditors for the purpose of having the land saved, and not sold, and they agreed to make those deductions that I have spoken of, and did make them. The balance of their claims were paid to them by Richard Bruere before the sale of the land, or to some of them; they rebated, and we put the amount deducted into our own pockets. After this was done, we found there were other executions, and we concluded to have the land sold, and be done with it. I cannot tell who held those other executions I have spoken of without the statement. 10

And being further examined in chief, says—When I spoke of our having put the amount which the execution creditors threw off into our own pockets, I meant into Richard Bruere's pocket. I was present when the amount was paid to John Gibbs, and saw the money paid; Gibbs threw off fifty dollars; I was present when Thomas Lambson was paid, he threw off seventy-five dollars, I think.

And being again cross-examined by P. D. Vroom, he says—The payment was made to Gibbs before the sale of the land; it was made between the sale of the personal property and the land; I do not know whether Gibbs gave a receipt or not; I think I have Gibbs' receipt too. The money was paid by Mr. Bruere; I was by when the payment was made by Bruere to Gibbs; I think it was made in Mount Holly; I cannot recollect how much money was paid by Bruere to Gibbs; I think his claim was for about five hundred dollars; Mr. Stratton was the attorney; I had the business to settle, and the receipt for it is in his handwriting; I do not remember the date of the receipt given by Mr. Gibbs or his attorney; I think the judgment was assigned over to Mr. Bruere by Mr. Gibbs. Lambson's note was taken up when the money was paid, and handed over to Bruere by Eakin, his attorney. And being 30 40

shown paper marked "*Exhibit No. 1* on the part of the defendants," says, that it is in the handwriting of John Gibbs; the whole receipt is in his handwriting. And being shown paper marked "*Exhibit No. 2* on the part of the defendants," says, that this is the Lambson note of which I have been speaking. I don't think I saw any of the creditors paid by Mr. Bruere, except Lambson and Gibbs; I do not know of Richard Bruere having paid any money to my son, James B. Sinnickson, after he came of age; my son requested payment of Richard Bruere after he came of age, in my
 10 hearing; I do not know of James borrowing money of his uncle Richard after he came of age; I do not know of his having given his uncle any note; I know of his having given him one note, for six hundred dollars, which was without consideration; James received no value for it; I was by when that note was given—it was given in February, in the year eighteen hundred and fifty-two; it was given at my house; I think Richard Bruere drew the note himself; that note was never taken up that I know of; it was agreed it should be given up; that note was given to cover some of my property. And being shown a paper marked "*Exhibit No. 3* on
 20 the part of the defendants," says, that this paper is in the handwriting of James B. Sinnickson. And being shown paper marked "*Exhibit No. 4* on the part of the defendants," says, I have some doubts about this paper being in the handwriting of James B. Sinnickson. Joseph Sinnickson and James B. Sinnickson occupied the farm together for some time after Richard Bruere bought it.

And being further examined in chief, says—It strikes my mind that the Lambson note was taken up and put into a judgment by Mr. Eakin. In regard to the six hundred dollar note, Richard Bruere and James Bruere entered judgments against me, and had
 30 my personal property sold by the sheriff, and they agreed that James B. Sinnickson should buy all that was sold; James made answer, and said, "Why, uncle, I am not able to pay for it;" they said to him, whatever you buy, we shall not hold you accountable to pay for. This note was given after the sale; James B. Sinnickson bought that day, at the sale, the whole of my moveable property, and gave two notes, one to his uncle Richard, and one to his uncle James Bruere; the amount of the one he gave to his uncle Richard was six hundred dollars, and the amount of the one he gave to James was four hundred dollars; James B. Sinnickson
 40 refused to give these notes, unless they agreed not to hold him accountable for them. His uncle James Bruere afterwards gave his note up to him; Richard Bruere, at that time, promised to give the one he held up also; the notes were given to satisfy the sheriff;

James B. Sinnickson never received any consideration for these notes, and it was never intended that he should pay them.

And being again cross-examined on the part of the defendants, says—James B. Sinnickson bought my personal property at the sheriff's sale; I do not know that Richard and James Bruere gave the sheriff any receipt for the money. The sheriff sold to the amount of these notes; the sheriff gave a receipt in full to James B. Sinnickson; the property was left in my possession; I hold it as my property now.

Question by Mr. Vroom. Did you ever pay James B. Sinnickson any thing for the property?

Answer by the witness. I do not know that I am called upon to answer that question.

Question by Mr. Vroom. Did you ever pay James B. Sinnickson any thing for the property?

Witness declines answering the question.

Question by Mr. Vroom. Did James and Richard Bruere receive any thing from the sale of the personal property, except James B. Sinnickson's notes?

The witness declines answering the question.

20

Question by Mr. Allen, for complainant. At the time you gave these judgments to James Bruere and Richard Bruere, did you owe them any thing? (Objected to by Mr. Vroom).

Answer by witness. I did not; these judgments were given to cover my property.

And being again cross-examined on the part of the defendants, says—I do not recollect what the amount of the judgments to James and Richard Bruere was; I should think it was six months before the sale that these judgments were entered; these judgments were by confession; I do not remember of any bonds or warrants of attorney; the judgments were confessed at Mount Holly; they were both done at the same time; I never confessed any other judgments to them; the confession of the judgments was prepared by General Wall.

SENECA SINNICKSON.

Affirmed, examined, and subscribed this 14th day of May, A. D. 1851, before me.

RICHARD W. HOWELL, M. C.

It is hereby agreed by the counsel of the respective parties that the original evidence in the cause may be referred to and used upon the argument of this case.

40

It is admitted that the schedule annexed to the master's report is a correct transcript from the book of account proved to have been the book of account of original entries of Richard Bruere, except that the items for interest are calculated differently by the master, and the items which are allowed to James B. Sinnickson for his share of one-third of the Brick-house farm, which last mentioned items are to the same amount charged by the master, in the suit of James B. Sinnickson against Richard Bruere's administrators, on account of the rent and profits of said one-third of said farm.

- 10 And it is also admitted that James B. Sinnickson's one-third of the Brick-house farm was never divided off from the rest; but that the whole rented together, and the account of the rents and expenditures of the said entire farm, as well as of the other farms conveyed by Seneca Sinnickson to Richard Bruere, were kept together by Richard Bruere in his book of account.

- It is also admitted that no exceptions were taken before the Chancellor to the decree, other than those embraced in the exceptions to the report, and that there was no controversy before the master or the Chancellor, as to the occupancy and renting and taking charge of the whole of the property conveyed by Seneca Sinnickson to Richard Bruere up to the time of Richard Bruere's death, by him, Richard Bruere, and by his administrators afterwards, till the injunction was granted and receiver appointed.
- 20

FINAL DECREE.

- This cause coming on to be heard before the Chancellor, in the presence of F. Kingman, solicitor and of counsel with the complainant, and of J. F. Randolph, solicitor and of counsel with the defendants, and upon reading the report made in this cause by Richard W. Howell, one of the masters of this court, bearing date the twenty-fourth day of June, in the year eighteen hundred and fifty-four, in pursuance of an order of reference heretofore made in this cause, by which report it appears that, (as in said report).
- 30

And it further appears by said report, that said master had stated an account between said complainant and the said Richard Bruere during his lifetime, and the said administrators since his death, by which account there appears to be due from the complainant to the estate of Richard Bruere, deceased, at the date of said report, the sum of sixteen thousand five hundred and seventy-seven dollars and thirty-seven cents. And the counsel of the com-

plainant objecting to the following items, as having been inadvertently included in the credit side of said account, viz. "1843, April 3, J. B. Sinnickson's note for ninety dollars," also "twenty-six dollars and eighty-five cents for interest thereon," and, "1844, June 16, J. B. Sinnickson's note for two hundred dollars," and "thirty-three dollars and thirty cents for interest thereon," making in the aggregate the sum of three hundred and fifty dollars and fifteen cents—it is ordered that the same be disallowed in said account, and deducted from the balance reported due, by consent; and also, that the complainant be allowed the sum of one hundred and nine- 10
 teen dollars and forty cents, being so much overcharged on repairs of farm whilst in possession of James B. Sinnickson, making, in all, to be deducted four hundred and sixty-eight dollars and fifty-five cents, and leaving the balance reported due to be sixteen thousand five hundred and seventy-seven dollars and thirty-nine cents. And both parties having taken exceptions to other parts of the said report, and the same having been argued before the Chancellor, and by him considered, the same were disallowed by the Chancellor, on both sides, with costs.

And it is thereupon, on this second day of December, eighteen 20
 hundred and fifty-four, ordered, adjudged, and decreed by the Chancellor, that the said report, with the above corrections, be in all things confirmed, and that the said premises, lands and tenements, hereditaments and appurtenances, conveyed by the said Seneca Sinnickson to the said Richard Bruere, and by him in his lifetime, and since his death by his heirs, held in trust for the uses and purposes set forth in the complainant's bill of complaint, as well that portion which was reconveyed by the said Richard Bruere to the said Seneca Sinnickson, as the other portions of the same, or so much thereof as may be necessary, be sold to raise and sa- 30
 tisfy the said sum of sixteen thousand five hundred and seventy-seven dollars and thirty-seven cents, with interest thereon from the date of said report, together with the defendants' costs of suit to be taxed, ~~both the complainant and the defendants in this cause, applying for and consenting to such sale for the purposes aforesaid.~~

And it is further ordered, that a writ of *feri facias* do issue, for that purpose, to Richard P. Thompson, esq., one of the masters of this court, commanding him to make sale according to law of the said several tracts of land, in such manner and in such parcel 40
 or parcels as in his judgment will be most for the benefit of the parties interested, for the purpose of raising the aforesaid sum of

sixteen thousand five hundred and seventy-seven dollars and thirty-seven cents, together with interest and costs aforesaid, and that he pay the same to the defendants, Jonathan Bruere and James H. Bruere, jun., administrators of Richard Bruere, deceased, or to their solicitor; and in case more money be raised thereon than is necessary for the purpose aforesaid, that the surplus be brought into court, to abide the order of the court, and that said master make return of his proceedings to this court.

And it is further ordered, adjudged, and decreed, that the several parties in this cause be and stand absolutely debarred and fore-
 10 closed of and from all claim and right whatever of, in, and to the said lands and premises sold as aforesaid.

B. WILLIAMSON, C.

OPINION OF THE CHANCELLOR.

THE CHANCELLOR.—The complainant has filed several exceptions to the master's report. I will notice such of them as were argued.

First exception. The defendants are liable to account for two third parts only of the rent of the homestead farm. The master
 20 having charged the defendants with the whole rent, it was proper that a credit should be given them of one-third of the rent. This mode of stating the accounts was adopted for the sake of convenience, and to render them less complicated. It is not strictly accurate, but the result is the same. The whole farm was worked and rented together, and the accounts of the rents and expenditures were kept together. The accounts are stated as they were kept, deducting out James' one-third. If counsel can point any embarrassment to result from the manner in which this part of the account is stated, it will be ordered to be corrected, otherwise it
 30 will stand, and of course without prejudice to any person's rights not a party to this suit. It was suggested that it might prejudice James B. Sinnickson; but he is not bound by this decree, and the accounts here stated are no evidence as to the amount due him.

The "second exception" involves the same consideration as the "first."

The third exception is not well taken in point of fact. It is true, in stating the account, the master has made some abbreviations not perfectly intelligible without the aid of the vouchers. There is no

allegation that there is any credit given to which the defendants are not entitled. There are vouchers for all of them, except perhaps one or two small items. They are all taken from a regular book of account, kept by Richard Bruere, and in his handwriting, and proved to be correct by his agent, N. Garrison, who transacted the whole business in relation to the farm.

The fourth exception relates to the charge of interest. I think the interest is properly calculated from the year 1848. The accounts were closed between the parties, at the request of the complainant and by the injunction of this court. There was a large 10 balance at that time due the defendant, Bruere, and it is right he should have interest upon it.

The exception filed by the defendants is also overruled.

B. WILLIAMSON, C.

PETITION OF APPEAL.

COURT OF ERRORS AND APPEALS.

BETWEEN

SENECA SINNICKSON, appellant,

and

JONATHAN BRUERE AND JAMES H. BRUERE,
jun., administrators, &c., of Richard Bruere, de-
ceased, et al., appellees,

} On bill, &c. 20

*To the Honorable the Court of Errors and Appeals in the last resort
in all causes of law.*

The humble petition of Seneca Sinnickson, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery, by his Honor Benjamin Williamson, Chancellor of New Jer-

sey, bearing date the second day of December, in the year of our Lord one thousand eight hundred and fifty-four, wherein the said Seneca Sinnickson was complainant, and the said Jonathan Bruere and James H. Bruere, jun., administrators, &c., of Richard Bruere, deceased, and others, were defendants, in this respect, to wit: that the said final decree adjudges that the exceptions taken by said complainant to the report of Richard W. Howell, esq., one of the masters of said court, made in this cause, dated June 24th, 1854, be overruled and disallowed; and that the premises, 10 lands, and tenements, hereditaments and appurtenances, conveyed by the said Seneca Sinnickson to the said Richard Bruere, as well that portion which was reconveyed by the said Richard Bruere to the said Seneca Sinnickson as the other portion of the same, be sold to raise and satisfy the sum of sixteen thousand five hundred and seventy-seven dollars and thirty-seven cents. And your petitioner humbly appeals from the said decree of the Chancellor, upon the ground that the same is erroneous, for that the said exceptions of the said complainant to the said report were well taken, and should have been sustained, and for that the said lands, &c., which 20 were reconveyed by the said Richard Bruere to the said Seneca Sinnickson, are not liable by law to be sold to raise and satisfy any moneys that may be found to be due from the said Seneca Sinnickson to the estate of the said Richard Bruere, deceased: and further, for that the said sum of sixteen thousand five hundred and seventy-seven dollars and thirty-seven cents, with interest thereon from the date of said report, is not due from your petitioner to the estate of the said Richard Bruere, deceased. Your petitioner therefore prays that the said decree of the Chancellor may be reversed, set aside, and for nothing holden, and that your petitioner 30 may have such relief in the premises as to this honorable court shall seem meet.

F. KINGMAN,

Solicitor for and of counsel with appellant.

Dated December 9, 1854.

ANSWER.

These respondents, not confessing or acknowledging all or any of the matters or things to be true, as in and by the said petition of appeal are contained and set forth, for answer thereto say, that they believe it to be true that such decree, as is complained of by the appellant was made, by the Court of Chancery, as, in the said petition of appeal is set forth, but, as to the date, substance, and contents thereof, these respondents humbly crave leave to refer thereto, when the same shall be produced.

And these respondents are advised, and believe that the said decree is agreeable to equity and justice, and they humbly pray the 10 same be affirmed, and that the petition of appeal be dismissed by this honorable court, with costs, to be adjudged to these respondents.

JOS. F. RANDOLPH,
Solicitor and of counsel with the respondents.

