
NEW JERSEY COURT OF ERRORS AND APPEALS.

JACOB ARNWINE, appellant,

and

JOHN A. CARROLL, appellee,

} On appeal.

STATE OF THE CASE.

IN CHANCERY OF NEW JERSEY.

To his Honor Oliver S. Halsted, esquire, Chancellor of the State of New Jersey.

Humbly complaining, showeth unto your Honor your orator, Jacob Arnwine, of the county of Hunterdon, and state of New Jersey, son of John Arnwine, senior, and Elizabeth his wife; that in the lifetime of the said John Arnwine, senior, a certain tract of land, containing one hundred and twelve acres of land, more or less, was purchased by your orator and his father, John Arnwine, senior, of one Zebulon Stout, lying in the township of (then Amwell) now Delaware; that your orator at that time being in difficulties, the deed for said property was made to the father of your orator, the said John Arnwine, senior, but one hundred and seventy-two pounds seven shillings and six pence of the purchase money was paid by your orator; that your orator entered into possession of said property, and continued thereon until after the death of the father of your orator, the said John Arnwine, senior, who died intestate, and without having executed any conveyance of the said property, or any part thereof, to your orator; that such proceedings were had by the heirs of the said John Arnwine, senior, after his death, that your orator was turned out of the possession of the said property, and lost the whole of the purchase money paid by him for the said property; that said John Arnwine, senior, and Elizabeth his wife had always promised your orator to make him a deed for the whole property during his lifetime, as he had helped his other sons in that way, but that he died without having carried their intention into effect. 10

And your orator further showeth unto your Honor, that in consideration of the above stated circumstances, and of the natural love and affection felt towards your orator by the said Elizabeth Arnwine, your orator being her youngest child—the said Elizabeth being, after the death of her said husband, John Arnwine, senior, seized and possessed in fee simple of a certain valuable tract of 30 land in the said township of (then Amwell) now Delaware, containing one hundred and nineteen and one half acres of land, besides other property, which said land, at the time of the death of the said Elizabeth Arnwine, in the year of our Lord eighteen hundred and thirty-seven, was of the value of six thousand dollars, always promised and agreed with your orator, that she would

make him up the loss he had sustained so as aforesaid, and leave him sufficient to make his portion equal to that received by his brothers and sisters from the estate of, and from their father in his lifetime.

And your orator further showeth unto your Honor, that your orator being indebted to divers persons, and being of an improvident nature and disposition, the said Elizabeth Arnwine, in order to secure to him, for his own use and support, the sum of two thousand dollars, on the fifteenth day of September, in the year of our Lord eighteen hundred and thirty, made and executed to one John A. Carroll a certain deed of conveyance in fee simple for the said tract of land so lying in the said township of (then Amwell) now Delaware, for the consideration, expressed in said deed, of two thousand dollars, acknowledged therein to be paid to her by the said John A. Carroll before the execution and delivery thereof, and acknowledged the same before Cornelius Lake, one of the commissioners for taking the acknowledgment and proof of deeds in and for said county of Hunterdon, and recorded in the clerk's office of the said county in the Record of Deeds, volume forty-nine, folios one hundred and forty-four, &c., and to which your orator for greater certainty prays leave to refer.

And your orator further shows unto your Honor, that the said John A. Carroll was the grandson of the said Elizabeth Arnwine, and had resided with the said Elizabeth Arnwine from his birth, and in whom she placed great confidence, and that she accordingly made him the said deed so as aforesaid; but with the express agreement and understanding that he, the said John A. Carroll, should pay to your orator, upon and after the death of his mother, the said Elizabeth Arnwine, the sum of two thousand dollars, in such sums and at such times as your orator might require, and which said promise and agreement was the only actual consideration of said deed.

And your orator further shows unto your Honor, that the said sum of two thousand dollars, the consideration mentioned in the said deed as being paid, never was paid by said John A. Carroll to the said Elizabeth Arnwine, or any part thereof, at the time of the making the said deed, or at any other time; but that on the making thereof, the said John A. Carroll made and executed a lease to the said Elizabeth Arnwine for the said premises so conveyed as aforesaid, giving her the use thereof for and during the term of her natural life; and as your orator has been informed, and verily believes, also at the same time of the execution of said deed, made and executed his bond, conditioned for the payment to your orator of the said sum of two thousand dollars, upon the decease of the said Elizabeth Arnwine, in such sums and at such times as your orator might require.

And your orator further shows unto your Honor, that the said Elizabeth Arnwine continued to reside upon said property until the _____ day of January, in the year of our Lord eighteen hundred and thirty-seven, when she departed this life, and until said period received the rents, issues, and profits thereof; that upon

her death-bed, and shortly before she expired, she called upon the said John A. Carroll to remember his promise to pay Jacob Arnwine, your orator, the said sum of two thousand dollars, and that said John A. Carroll, at that time, again promised her, the said Elizabeth Arnwine, to pay your orator the said sum of two thousand dollars, so as aforesaid.

And your orator further shows unto your Honor, that the said Elizabeth Arnwine, in and by her last will and testament aforesaid, with the exception of the sum of five dollars, devised to each of her children, bequeathed and devised the whole of her property to the said John A. Carroll. 10

And your orator further shows unto your Honor, that he applied to the said John A. Carroll for payment of the said sum of two thousand dollars, so as aforesaid to be paid to your orator by him on the death of Elizabeth Arnwine, and that said John A. Carroll, when he was first applied to by your orator, did not deny his liability to pay the same, but objected to the payment at that time, because of the *caveat* filed against the will of the said Elizabeth Arnwine, and promised payment of the same to your orator when the will should be admitted to probate; and said John A. Carroll did at divers times furnish to your orator grain, and pay money for your orator, and at his request, within six years last past, as part payment of, and on the account of the sum of two thousand dollars so to be paid as aforesaid to your orator by the said John A. Carroll, for and in consideration of the land so as aforesaid conveyed to him by Elizabeth Arnwine, and your orator well hoped that the said John A. Carroll would have continued to pay, at the request of your orator, the whole of the said sum of two thousand dollars, and the interest thereon, agreeably to the trust reposed in him by said Elizabeth Arnwine, and his agreement with her, as in equity and good conscience he ought to have done; but to do which, notwithstanding his promises to your orator, he has totally neglected and refused. 20

And your orator further showeth unto your Honor, that your orator, being arrested on an execution issued out of the court for the trial of small causes, before Peter H. Dilts, one of the justices of the peace in and for the county of Hunterdon, at the suit of one Richard Bennett, did apply to the inferior court of common pleas of said county of Hunterdon for the benefit of the acts of the legislature of the state of New Jersey, made and provided for the relief of persons imprisoned for debt, was, on the twenty-third day of March, in the year of our Lord one thousand eight hundred and thirty-nine, by the said court, discharged from imprisonment as an insolvent debtor, having first executed to one Elisha Warford, the assignee appointed by said court according to law, an assignment of all and singular the real and personal estate of your orator, whatsoever and wheresoever (except such as the law allowed poor debtors having a family to retain for the use of the family) in trust for the use and benefit of all the creditors of your orator, according 40

to the form, force, and effect of the acts of the legislature in such case made and provided.

And your orator further shows unto your Honor, that the whole amount of the indebtedness of your orator, at that time, to all his creditors, was the sum of sixty-five dollars and twelve and one half cents; that said indebtedness has been paid off and satisfied since said period, with one or two trifling exceptions owing to the death or absence of the parties; and that the said Elisha Warford, to whom said assignment was made, did, for valuable consideration to
 10 him in hand paid by your orator, on the sixth day of September, in the year of our Lord eighteen hundred and forty-nine, reassign to your orator, by his assignment under his hand and seal, duly executed according to law, all and singular every thing conveyed to him by your orator by the assignment of your orator to said Elisha Warford, bearing date said twenty-third day of March, A. D. eighteen hundred and thirty-nine, to which said assignment of the said Elisha Warford to your orator, now in his possession and ready to be produced as this honorable court shall direct, as also the receipts of the creditors of your orator, your orator for greater certainty
 20 prays leave to refer.

But now so it is, may it please your Honor, that the said John A. Carroll, combining and confederating to and with divers other persons at present unknown to your orator, but whose names when discovered your orator prays may be inserted herein as defendants, and they made parties hereto, with proper and apt words to charge them, how to injure and oppress your orator, the said confederates, respectively, do now absolutely refuse to pay, or secure the payment to your orator of the balance of the said sum of two thousand dollars, so as aforesaid due to your orator from the said John A.
 30 Carroll, together with the interest due thereon, or of any part of said sum,—sometimes pretending and giving out in speeches that the said John A. Carroll, at the time of the making the deed aforesaid, paid the said Elizabeth Arnwine the said sum of two thousand dollars, mentioned and expressed in said deed as the consideration or purchase money, and that said sum was all he, the said John A. Carroll, was to pay for the same; and that the said John A. Carroll did not give or execute any bond conditioned to pay to your orator, at any time or in any way, the sum of two thousand dollars, so as aforesaid due to your orator, or any other sum; and that said
 40 John A. Carroll never agreed, to and with said Elizabeth Arnwine, to pay, or cause to be paid to your orator, the said sum of two thousand dollars at the decease of the said Elizabeth Arnwine, or at any other time or any other sum, at that or any other time; and that said John A. Carroll did not take and receive said land, so conveyed to him by said Elizabeth Arnwine, in trust to pay to your orator the sum of two thousand dollars, or any other sum, at the decease of the said Elizabeth Arnwine, or at any other time, or any part thereof, at and when your orator might need and require the same, after the decease of his mother, the said Elizabeth Arn-
 50 wine; and that if your orator ever was entitled to receive said

sum, that he has conveyed and assigned the same to the said Elisha Warford, and is thereby and therefor cut off from all right and title to the same, or any claim or demand therefor; whereas your orator expressly charges the truth to be, that said John A. Carroll did not, at the time of the making of the said conveyance to him by the said Elizabeth Arnwine of the said farm, pay the consideration or purchase money expressed in said deed of conveyance, or any part thereof, or at any other time; that said farm was, at the time of the making the said conveyance, worth the sum of six thousand dollars, and was of said value of six thousand dollars, or more, at the time of the decease of the said Elizabeth Arnwine; that said John A. Carroll received the same to hold in trust to and for the benefit of your orator to the extent of two thousand dollars, to be paid by him, the said Carroll, to your orator after the decease of the said Elizabeth Arnwine, mother of your orator; that said deed was made to said John A. Carroll by said Elizabeth Arnwine for the express purpose of securing to your orator, for his own benefit, maintenance, and support, the said sum of two thousand dollars after her decease, and to prevent its being improvidently squandered or lost by your orator, or taken by his creditors, said Elizabeth Arnwine having great confidence in said John A. Carroll, and believing he would faithfully execute the trust she reposed in him, and carry out her intentions of making your orator as well off as his brothers and sisters had been made by his father in his lifetime; that said John A. Carroll did, at the time of the making of said deed, execute a bond conditioned for the payment of said sum to your orator so as aforesaid, and that said bond has been lost and destroyed, either accidentally or by design; that said John A. Carroll did again, at the death-bed of the said Elizabeth Arnwine and shortly before her dissolution, renew and repeat his agreement with said Elizabeth Arnwine to pay to your orator said sum of two thousand dollars, in consideration of the farm so as aforesaid conveyed to him by the said Elizabeth Arnwine, and for which purpose of securing the payment to your orator, the said farm was conveyed to and held in trust by said John A. Carroll; that said John A. Carroll has, since the decease of said Elizabeth Arnwine, promised your orator to pay him said sum, and within six years last past has paid for your orator, and at his request, money on account of said sum, and furnished to your orator grain in part payment thereof, but in the whole to small amount; that your orator's right to receive said sum is as fully vested in him as it was before the aforesaid assignment to said Elisha Warford by the reassignment, so as aforesaid to your orator, and that he is fully entitled to demand and receive the same.

All which actings, doings, and pretences of the said confederates are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator: in tender consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rules of the common law, and is only relievable in a court of equity, where matters of this nature

are properly cognizable and relievable—To the end, therefore, that the said John A. Carroll and his confederates, when discovered, may, respectively, full, true, direct, and perfect answers make, upon their respective corporal oaths, according to the best of their respective knowledge, information, and belief, to all and singular the matters and charges aforesaid, and that as fully and particularly, in every respect, as if the same were again repeated, and they thereunto particularly interrogated : and more especially, that the said John A. Carroll and his confederates, when discovered,

10 may respectively set forth and discover, according to the best of his and their knowledge, remembrance, information, and belief, whether said Elizabeth Arnwine did not make said deed, so as aforesaid for said farm, to said John A. Carroll, or any other, and what deed, and whether he paid said Elizabeth Arnwine the consideration expressed and mentioned therein, as paid to and received by her therefor, or any other, and what sum ; and whether said farm, so conveyed to him, the said John A. Carroll, by the said Elizabeth Arnwine, was not, at the time of such conveyance, of the value of six thousand dollars, or of any other, and what value ; and whether

20 it was not equally valuable at the time of the death of the said Elizabeth Arnwine, or of what value ; and whether he, the said John A. Carroll, did not agree, to and with said Elizabeth Arnwine, at the time of the conveyance of said farm to him, to pay to your orator the sum of two thousand dollars at the decease of said Elizabeth Arnwine, or any other, or what sum, in consideration of the farm so conveyed to him by said Elizabeth Arnwine, or any other, and what consideration ; and whether he, the said John A. Carroll, did not take and receive said farm, so conveyed to him by Elizabeth Arnwine, in trust, to hold the same to and for the use and

30 benefit of your orator, to the extent of the payment to your orator by him of the sum of two thousand dollars, or any other, and what sum ; and whether he, the said John A. Carroll, did not execute a bond at the time of the conveyance to him of said farm, or of any other, and what time, conditioned for the payment to your orator of the sum of two thousand dollars, or any other, and what sum, and deliver the same, in and for the consideration or purchase money of and for said farm, to the said Elizabeth Arnwine or to Cornelius Lake, or any other, and what person, to hold for the benefit of your orator ; and whether said Elizabeth Arnwine had not said

40 bond in her possession at the house on said farm where he resided at the time of her death, and whether he, the said John A. Carroll, and the said Elizabeth Arnwine did not reside together at the time of her decease, and what became of said bond ; and whether he, the said John A. Carroll, did not at the death-bed of the said Elizabeth Arnwine, his grandmother, and shortly before her dissolution, or at any other and what time during her last illness, agree with and acknowledge to her that he was to pay unto your orator, in consideration of the farm she had deeded to him, or any other and what consideration, the sum of two thousand dollars, or any

50 other, or what sum ; and whether he did not then and there ac-

knowledge the trust reposed in him by her, and agree to execute the same, and faithfully promise and agree then and there to pay to your orator two thousand dollars at the decease of her, the said Elizabeth Arnwine, or at any other, or what time; and whether he, the said John A. Carroll, has not, since the decease of the said Elizabeth Arnwine, informed your orator that he, the said Carroll, was to pay your orator the sum of two thousand dollars, and promise and agree to pay your orator said sum, in consideration of the farm conveyed to him by the mother of your orator, so as aforesaid, for the benefit of your orator; and whether he, the said Carroll, has not paid money for, and at the request of your orator, on account of the sum of two thousand dollars so due from him to your orator, or any other and what sum; and whether he, the said John A. Carroll, has not admitted, to any person or persons, that he did agree, to and with Elizabeth Arnwine, in consideration of her conveying the said farm to him so as aforesaid, or any other, or what consideration, to pay to your orator the sum of two thousand dollars, or any other, and what sum, at the death of said Elizabeth Arnwine, or at any other, and what time; and whether your orator was not to have the sum of two thousand dollars out of said farm, or any other, and what sum; and whether the object and express intention of the said Elizabeth Arnwine, in conveying the said farm to him, the said John A. Carroll, was not to secure to your orator the sum of two thousand dollars, or any other, and what sum, beyond the reach of the creditors of your orator, and for his maintenance and support; and whether the said John A. Carroll did not refuse and neglect to comply with your orator's request, and for what reason, and whether such refusal was grounded on the pretences herein before charged, or any and which of them, or any other, and what pretences particularly. And that the said John A. Carroll may be decreed to pay to your orator, or secure to be paid for his benefit, said sum of two thousand dollars, together with the interest thereon from the time of the decease of the said Elizabeth Arnwine, and that may become due and payable thereon, together with all the costs and charges in this behalf expended, by a day, to be appointed by this honorable court, or that he be decreed to give up said farm into the hands of some person or persons, to be appointed by this honorable court, until the proceeds thereof shall be sufficient to pay and satisfy said amount to your orator. And that your orator may have such further relief, or may have such other relief as the nature of his case shall require, and as shall be agreeable to equity and good conscience. And that the state's writ of subpœna, issuing out of and under the seal of this honorable court, may be directed to the said John A. Carroll, therein and thereby commanding him, on a certain day under a certain penalty, therein to be specified, to be and appear before your Honor, in this honorable court, then and there to answer all and singular the premises contained in this, your orator's bill of complaint, 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 orator, &c.

GEORGE A. ALLEN,

Solicitor for, and of counsel with complainant.

IN CHANCERY OF NEW JERSEY.

The answer of John A. Carroll, defendant, to the bill of complaint of Jacob Arnwine, complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception, which
 10 can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith, that he knows not, and has not been informed, save by the complainant's bill, and cannot set forth as to his knowledge, belief, or otherwise, whether the said complainant and his father, John Arnwine, senior, purchased the said tract of land, containing one hundred and twelve acres, of one Zebulon Stout, nor whether the said
 20 complainant paid the sum of one hundred and seventy-two pounds seven shillings and six pence, or any other sum, of the purchase money of the said tract; but he has been informed, and believes, that the said John Arnwine, senior, purchased the said tract of land, and held the deed for the same in his own name and right.

And this defendant, in further answering saith, that he admits that the said complainant went into the possession of the said tract of land, as stated in his said bill; but this defendant believes that such possession was with the consent and permission of the said John Arnwine, senior, his father, and continued thereon until after
 30 the death of the said John Arnwine, senior, who died intestate and seized of the said tract of land, never having conveyed the same, or any part thereof, to any person.

And this defendant, in further answering saith, that George Arnwine, administrator of the said John Arnwine, senior, deceased, by virtue of an order of the Orphans' Court of the county of Hunterdon, made on the fourth day of May, eighteen hundred and twenty-one, did sell the said tract of land, as land of which the said John Arnwine, senior, deceased, died seized, to pay the debts of the said John Arnwine, senior, deceased, to one Elijah Wilson,
 40 without any objection, as far as this defendant knows, being made, or any claim of right or interest set up on the part of the said complainant, and did convey the same to him, the said Elijah Wilson, pursuant to acts of the legislature of New Jersey in such case made and provided, by deed, dated the eleventh day of September, in the year of our Lord one thousand eight hundred and twenty-

one, as by reference to the said order and deed of conveyance so as aforesaid given by the said George Arnwine, administrator as aforesaid to the said Elijah Wilson, will appear.

And this defendant, in further answering saith, that afterwards, to wit, on the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and twenty-three, Edward Welsted, esquire, high sheriff of the county of Hunterdon, by virtue of an execution, commonly called *feri facias*, issued out of the Court of Common Pleas of the said county of Hunterdon, upon a certain judgment then lately had and obtained before the said Court of Common Pleas, at the suit of one Mehetable Quick against the said complainant and one Jemima Hull, which said execution was issued in the term of May, eighteen hundred and twenty-three, did sell all the estate, right, title, and interest of the said complainant, if any he had, in and to the said tract of land, pursuant to the acts of the legislature of the state of New Jersey in such case made and provided, to the said Elijah Wilson and George Arnwine, and did convey the same to them by deed, duly executed according to the acts aforesaid, bearing date the twenty-second day of January, eighteen hundred and twenty-four, as by reference to the said judgment, execution, and deed, certified copies from the records of which are in this defendant's custody, and ready to be produced, if necessary, will appear. 10

And this defendant, in further answering saith, that he admits that such proceedings were had by the said George Arnwine and Elijah Wilson, by virtue of the said conveyances so as aforesaid made by the said George Arnwine, administrator as aforesaid, and by the said Edward Welsted, high sheriff as aforesaid, that the said complainant was turned out of the possession of the said tract of land, his whole interest in the said property having been sold by the said sheriff to pay and satisfy the said judgment. And this defendant submits that the said complainant did not lose the purchase money paid by him for the said property, if any was so paid by him, but that the whole right or interest of the said complainant to and in the said tract of land was disposed of in the payment of the said judgment against the said complainant. 30

And this defendant, in further answering saith, that he cannot answer whether the said John Arnwine, senior, and Elizabeth his wife had always promised to convey the said tract of land to the said complainant, but this defendant does not believe that any such promise was ever made. 40

And this defendant, in further answering saith, that he admits it to be true, as stated in the said bill, that the said Elizabeth Arnwine, after the death of the said John Arnwine, senior, deceased, was seized and possessed in fee simple of the said tract of land of one hundred and nineteen and a half acres, situate in the township of Amwell (now Delaware), and also had other property; and that the said last mentioned tract of land, at the time of the death of the said Elizabeth Arnwine, in the year eighteen hundred and thirty-seven, was of the value of six thousand dollars, or there- 50

about; but this defendant is not able to answer whether or not the said Elizabeth Arnwine ever promised and agreed to and with the said complainant to make him up his alleged loss in the first mentioned tract of land, or to leave him sufficient to make his portion equal to that received by his brothers and sisters, from the estate of the said John Arnwine, senior, deceased, as is stated in the complainant's bill, but this defendant does not believe that any such promise or agreement was ever made; and this defendant submits, that if any such promise or agreement was made by the said Elizabeth Arnwine, the circumstances of the sale of the said first mentioned tract of land could form no consideration for such promise or agreement.

And this defendant, in further answering saith, that one John Opdyke, the father of the said Elizabeth Arnwine, conveyed to her the said last mentioned tract of land, for her sole use and benefit, and so ordered and disposed of said land, by the said conveyance, that neither the said John Arnwine, senior, her husband, nor his heirs should have any interest in, or control over it; but that the said tract of land should be and remain her sole property, and subject to her exclusive disposal, as in and by the said conveyance will more fully appear.

And this defendant, in further answering saith, that he admits that the said complainant was indebted to various persons and was of an improvident nature, and was frequently arrested, and several times imprisoned for his debts; and that defendant also admits that on the fifteenth day of September, in the year of our Lord one thousand eight hundred and thirty, the said Elizabeth Arnwine executed to this defendant a deed of conveyance in fee simple for the said last mentioned tract of land, and that the sum of two thousand dollars, was expressed in the said deed as the consideration therefor, and was therein acknowledged to be paid to the said Elizabeth Arnwine by this defendant; and that the said deed was duly acknowledged, before the said Cornelius Lake, and recorded, as stated in the complainant's said bill; but for greater certainty, as to the date and contents of the said deed, this defendant prays leave to refer thereto, when the same shall be produced.

But this defendant denies that the said deed was executed by the said Elizabeth Arnwine in order to secure to the said complainant, for his use and support, or for any such purpose, the sum of two thousand dollars or any other sum; and this defendant also expressly denies that there was ever, at any time, any understanding or agreement, express or implied, between the said Elizabeth Arnwine and this defendant, that this defendant should pay to the said complainant, in such sums and at such times as the said complainant might require, or in any other manner, upon and after the death of the said Elizabeth Arnwine, or at any other time, the sum of two thousand dollars, or any other sum; and he also denies that any such promise or agreement was made as the consideration for the said deed so as aforesaid executed by the said Elizabeth Arnwine to this defendant.

And this defendant, in further answering saith, that he denies that he took the said tract of land, so as aforesaid conveyed to him by the said Elizabeth Arnwine, in trust, to hold the same to and for the use and benefit of the said complainant to the extent of two thousand dollars, or upon any other trust, to pay any sum to the said complainant, or upon any trust whatever; but on the contrary, he took the same absolutely in fee to himself, his heirs and assigns, for ever.

And this defendant, in further answering saith, that he admits that he was the grandson of the said Elizabeth Arnwine, and had resided with her from his very early childhood; that the said Elizabeth Arnwine brought him up, and had great affection for him, and held him in great confidence and esteem; and this defendant further admits, that at the time of making the said deed by the said Elizabeth Arnwine to this defendant, this defendant made and executed a lease to the said Elizabeth for the same premises, giving her the use thereof for and during her natural life, as stated in the said bill. 10

And this defendant further admits, that the said Elizabeth Arnwine continued to reside upon the said last mentioned tract of land until the sixteenth day of January, in the year of our Lord one thousand eight hundred and thirty-seven, when she departed this life. 20

And this defendant, in further answering saith, that he continued to reside with the said Elizabeth Arnwine, and carried on and farmed the said premises, and took care of and supported the said Elizabeth Arnwine, who was aged and infirm, until her death, and received the rents, issues, and profits of the said premises, except what was necessary for the support and maintenance of the said Elizabeth Arnwine; and that this defendant and the said Elizabeth Arnwine continued to live together upon the said premises in the same manner after the execution of the said deed and lease as they had done before. 30

And this defendant, in further answering saith, that he admits that the said sum of two thousand dollars, the consideration mentioned in the said deed, was not all paid by this defendant to the said Elizabeth Arnwine; but that, at the time of the execution of the said deed to this defendant, he paid a small sum of money to the said Elizabeth Arnwine, the amount of which this defendant does not now remember, as part of the consideration of the said deed of conveyance. 40

And this defendant, in further answering saith, that the true consideration of the said deed to this defendant was the love and affection which the said Elizabeth Arnwine had for this defendant, and her desire to provide for his welfare; that it was the intention of the said Elizabeth Arnwine to give the said premises wholly and exclusively to this defendant, reserving to herself the use thereof during her natural life for her maintenance and support; and that, fearing that a devise of the same to this defendant in her last will and testament might be subject to legal difficulties and controver- 50

sies, she conveyed the said premises to this defendant as aforesaid, and took from him the said lease for her natural life.

And this defendant, in further answering saith, that at the time of the said conveyance by the said Elizabeth Arnwine to this defendant, the said premises were not worth six thousand dollars, but that they were worth four thousand five hundred dollars, or thereabouts; and that this defendant, after the said conveyance and before the decease of the said Elizabeth Arnwine, erected new buildings, and repaired the old ones, and repaired the fences on the said premises, so that they were greatly increased in value at the time of the said Elizabeth's death.

And this defendant, in further answering saith, that he denies that at the time of the execution of the said deed from the said Elizabeth Arnwine to this defendant, or at any other time, this defendant made and executed his bond, conditioned for the payment to the said complainant the sum of two thousand dollars, or any other sum, upon the decease of the said Elizabeth Arnwine, or at any other time, at such times and in such sums as the said complainant might require, or in any other manner; and he also denies that he ever made or delivered any such bond as and for the consideration or purchase money of and for the said farm and premises to the said Elizabeth Arnwine or the said Cornelius Lake, or to any other person, for the benefit of the said complainant, or for any such purpose. And this defendant further denies that the said Elizabeth Arnwine had any such bond in her possession at the house on the said farm and premises, or at any other place, at the time of her decease, or at any other time.

And this defendant, in further answering saith, that he denies that the said Elizabeth Arnwine, upon her death-bed and shortly before she expired, or at any other time, called upon this defendant to remember any promise by him to pay to the said complainant the said sum of two thousand dollars, or any other sum; and he also denies, that at that time this defendant again promised, or ever promised the said Elizabeth Arnwine to pay to the said complainant the said sum of two thousand dollars, or any other sum; and he also denies that he, at that time or ever, agreed with or acknowledged to the said Elizabeth Arnwine that he, this defendant, was to pay to the said complainant, in consideration of the said farm, or for any other consideration, the sum of two thousand dollars, or any other sum, or that this defendant ever acknowledged any such trust reposed in him by the said Elizabeth Arnwine, and agreed to execute the same.

And this defendant, in further answering saith, that he admits it to be true, as stated in the said bill, that the said Elizabeth Arnwine, in and by her last will and testament, bequeathed and devised the whole of her property to this defendant, with the exception of the sum of five dollars bequeathed to each of her said children.

And this defendant, in further answering saith, that he denies that the said complainant ever applied to this defendant for the pay-

ment of the said two thousand dollars, or that this defendant ever tacitly, or otherwise, admitted his liability to pay the same, or that he ever promised the said complainant to pay the same to him, or any part thereof, either when the will of the said Elizabeth Arnwine, to which the said complainant caveated, should be admitted to probate, or at any other time; and this defendant further denies that he, at divers times or at any time, furnished grain or paid money to the said complainant, at his request or otherwise, either within six years last past or at any other time, as part payment of, and on account of the said sum of two thousand dollars, so as 10
aforesaid claimed by the said complainant from this defendant.

And this defendant, in further answering saith, that, to the best of this defendant's recollection, the said complainant never mentioned to this defendant that he claimed the said sum of two thousand dollars, or any other sum, from this defendant until lately, after he had commenced a suit to recover the same; and that always, whenever the said complainant mentioned the subject, this defendant denied all liability to pay the same, or any part thereof; that the said complainant never requested this defendant to pay him any grain or money, as part payment or on account of the said sum 20
of two thousand dollars.

And this defendant, in further answering saith, that about four years ago this defendant did let the said complainant have a small quantity of grain; but that it was upon an express contract, made at the time between the said complainant and this defendant, that the said complainant, in consideration thereof, would work for this defendant, the next following spring, sufficient to pay for the said grain; and that no allusion whatever was made at that time, by either the said complainant or this defendant, to the said sum of 30
two thousand dollars.

And this defendant, in further answering saith, that he denies that he ever admitted to any person or persons that he did agree with the said Elizabeth Arnwine, in consideration of her conveying the said farm to him, or for any consideration, to pay to the complainant the said sum of two thousand dollars, or any other sum, upon the death of the said Elizabeth Arnwine, or at any other time; and he also denies that the said complainant was to have two thousand dollars out of the said land: on the contrary, this defendant says that it was the express intention of the said Elizabeth Arnwine to convey, and she did convey to this defendant, an abso- 40
lute estate in fee simple in the said farm, without any reservation, provision, understanding, trust, or agreement that this defendant was to pay the sum of two thousand dollars, or any other sum, to the said complainant or for his benefit.

And this defendant, in further answering saith, that the said complainant, from the time of the said Elizabeth Arnwine's death, on the sixteenth day of January, eighteen hundred and thirty-seven, until about the first day of February, in the year eighteen hundred and forty-eight, never claimed or demanded the said sum of two thousand dollars, or any other sum, from this defendant, by virtue 50

of any promise or agreement made by this defendant to the said Elizabeth Arnwine, as in the said bill set forth, although this defendant and the said complainant have always resided near each other, and there has never existed any disability on the part of the said complainant to make such claim and demand: and this defendant therefore submits to this honorable court, that the said complainant's claim, set forth in his said bill, is a stale claim, and ought to be barred by length of time and the said complainant's neglect to demand the same, even if the said complainant had ever had
 10 any legal or equitable cause to make such claim upon this defendant.

And this defendant, in further answering saith, that by an act of the legislature of the state of New Jersey, passed the sixteenth day of April, eighteen hundred and forty-six, entitled, "An act for the limitation of actions," it was enacted, that all actions of debt founded upon any lending or contract without specialty shall be commenced and sued within six years next after the cause of such actions shall have accrued, and not after: and it was further enacted, that if any person or persons, who is, are, or shall be entitled
 20 to any such action, is, are, or shall be, at the time of any such cause of action accruing, within the age of twenty-one years, feme covert, or insane, that then such person or persons shall be at liberty to bring the said action, so that the same be brought within six years after such disability is removed; and that if the said complainant ever had any cause of action or suit against this defendant for or concerning any of the matters in the said bill of complaint mentioned, which this defendant expressly denies, such cause of action or suit did accrue or arise above six years before the filing of the complainant's bill of complaint, and above six years before
 30 the serving or suing out process against this defendant to appear to and answer the same bill; and that the said complainant hath not, at any time since the death of the said Elizabeth Arnwine, been under any of the disabilities mentioned or described in the said act. And this defendant further says, that he, the said defendant, neither at any time within six years before exhibiting the said bill, or serving or suing out process against this defendant to appear to and answer to the same, nor at any other time, did promise or agree to pay, or any ways to satisfy the said complainant the said sum of two thousand dollars, or any other sum, for or by reason of any
 40 matter or thing in the said complainant's bill charged or alleged. This defendant therefore respectfully submits, that the said complainant ought not to recover the said sum of two thousand dollars, or any part thereof, from this defendant, as the same is barred by the said "Act for the limitation of actions."

And this defendant, in further answering saith, that by another act of the said legislature, passed the twenty-sixth day of November, seventeen hundred and ninety-four, entitled, "An act for the prevention of frauds and perjuries," it was enacted, among other things, that no action shall be brought upon any contract or sale of
 50 lands, tenements, or hereditaments, or any interest in or concern-

ing them, or upon any agreement that is not to be performed within one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized. And it was further enacted, that all declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing signed by the party who is or shall be by law enabled to declare such trusts, or by his or her last will in writing, or else they shall be utterly void and of no effect, as by the said act will appear. And this defendant further says, that neither he, this defendant, nor any other person by him lawfully authorized, did ever make or sign any contract or agreement, or any memorandum or note thereof, in writing, or in any other manner, with the said Elizabeth or the said complainant, to pay two thousand dollars, or any other sum, to the said complainant in consideration of the said deed from the said Elizabeth Arnwine to this defendant, or to receive the said deed in order to secure the said sum to the said complainant, as set forth in the said bill, or to take the said farm charged with the payment of two thousand dollars, or any other sum, to the said complainant. And this defendant further says, that the declaration or creation of the said trust or confidence, with which the said Elizabeth Arnwine charged this defendant, (which this defendant expressly denies) in conveying the said farm to him upon the trust or agreement that he should pay the said two thousand dollars to the said complainant, as stated and alleged in the said bill of complaint, was never manifested or proved by any writing signed by the said Elizabeth Arnwine, nor by her last will in writing, nor by any other person; and this defendant therefore respectfully submits that the said complainant ought to be barred from enforcing any such pretended trust or confidence as is set forth and alleged in the complainant's said bill. 10 20 30

And this defendant, in further answering saith, that he admits it to be true, as stated in the said bill, that the said complainant, being arrested on an execution at the suit of Richard Bennet, did apply to the Inferior Court of Common Pleas of the county of Hunterdon for the benefit of the acts of the legislature of this state made and provided for the relief of persons imprisoned for debt, and was discharged from imprisonment, as an insolvent debtor, at the time in that behalf alleged in the said bill, he having first executed to one Elisha Warford, the assignee appointed by the said court, according to law, an assignment of all and singular the real and personal estate of the said complainant, whatsoever and whosoever (except such as the law allowed poor debtors having a family, to retain for the use of the family) in trust and for the use and benefit of all the creditors of the said complainant, according to the force, form, and effect of the said acts. 40

And this defendant, in further answering saith, that he admits that the whole amount of indebtedness of the said complainant, at 50

that time, to all his said creditors, as reported upon the said petition for the benefit of the insolvent laws, and sworn to, was the sum of sixty-five dollars and twelve and a half cents; but this defendant denies that the said indebtedness has been paid and satisfied since said period, with one or two trifling exceptions; on the contrary, that several of the creditors of the said complainant, reported in the said application, to wit, James N. Reading, Richard Bennet, and others, have never been paid: and this defendant submits, that if any thing is due to the said complainant, for or on account of the matters and things alleged in the said bill of complaint, the said Elisha Warford, the said assignee, ought to have and hold the same in trust for the said creditors.

And this defendant, in further answering saith, that the said complainant presented his said application for the benefit of the insolvent laws to the said Court of Common Pleas of the county of Hunterdon at the term of February, in the year eighteen hundred and thirty nine, two years after the death of the said Elizabeth Arnwine, yet that in the inventory of his estate, attached to the said application, and sworn to in open court by the said complainant, the claim or demand which he now alleges was due to him from this defendant upon the death of the said Elizabeth Arnwine is not included or in any way mentioned or referred to, as by the application and proceedings, copies whereof are now in this defendant's custody, and ready to be produced if necessary, will appear.

And this defendant, in further answering saith, that he supposes it to be true, as stated in the said bill, that the said Elisha Warford, to whom the said assignment was made, did reassign to the said complainant all and singular every thing conveyed to him by the said complainant, but for the true date, contents, and character of the said assignment, this defendant prays leave to refer himself to the instrument of reassignment, when the same shall be produced.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true, to the knowledge and belief of this defendant: all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

Sworn, &c.

JOHN H. WAKEFIELD,

Solicitor for, and of counsel with defendant.

TESTIMONY FOR COMPLAINANT.

Elisha Warford deposeth and saith—I was acquainted with Elizabeth Arnwine, in her lifetime, about thirty years; I was also acquainted with her husband, John Arnwine. I believe Jacob Arnwine, the complainant, did not get any of his father's, John Arnwine's, estate; he did not get what he ought to have got; he might have got a ^{horse} house or two. The farm where John Gordon now lives, in the township of Delaware, Jacob Arnwine, the complainant, lived on at an early day, forty-one years ago. I have heard his father, John Arnwine, and his mother, Elizabeth Arnwine, repeatedly say that the complainant was to have this farm. The complainant did not get the farm; I have heard John Arnwine, his father, and Elizabeth, his mother, and my first wife, say that Jacob gave a bald mare towards the first payment on this farm; the bald mare was rated at fifty pounds. I know nothing of complainant's paying any money, except from hearsay; I often had conversations with Elizabeth Arnwine, the complainant's mother, about his circumstances and misfortunes. It appeared that, by some bad luck or other, complainant was put in jail for debt, and remained there some time; I think he was put there by Elijah Wilson and his brother George Arnwine. While he was thus in jail, I frequently saw his mother, Elizabeth Arnwine; we lived close together. She had made a will at that time; she never told me exactly how it was; she signified as much as if the complainant had a good chunk of her estate; she did not say so. But she destroyed this will, saying that his creditors would get all she gave him, and for that reason she destroyed it. About a year or more after this, and after complainant got out of jail, she said that Elijah Wilson and George Arnwine had lawed complainant nearly out of joint; and said she wanted to help him, and meant to, and wanted to put something in my hands to help him at a future day. I refused to take it in my hands; I don't recollect that she mentioned how much she wanted to put in my hands. Some time after she tried me again. I refused her again; she did not like it right well; she said she wanted me to deal it out to him as he wanted it; I said I did not wish to do it, for if complainant knew I had it, he would haunt me till he got the last dollar. She said she intended to help him till he was better off than he had been; I told her to give it to him herself. She said she did not intend that Jemima Hull should ever waste it; this Jemima Hull was a woman the complainant at this time lived with. She said, if I would not take it, she would put it into the hands of one that would. She said that Wilson and his brother George had lawed him out of this (Gordon) farm, and she meant to make him as well off as if they had let him alone; this was said by her years after the death of John Arnwine, the father of complainant. Elizabeth Arnwine at this time owned a farm in the township of Amwell, now in the possession of the defendant,

containing one hundred and twenty or thirty acres; this farm, at the time of her death, was worth six thousand dollars; it is worth a good deal more now. I remember when she made a deed for this farm to defendant; it was worth about the same at this time. I own land in that vicinity, and I think that my estimate of the value of this farm is pretty nearly correct. The Gordon farm, at the time of the conversations with Elizabeth Arnwine, was worth from two thousand to twenty-five hundred dollars; at this day it would fetch five thousand dollars very easily.

- 10 Last winter a year, or two years, I sat down to dinner with defendant at the court house in Flemington; I told defendant I thought he ought to give complainant something; that he was poor. Defendant replied to me, what good would it do him if I did. I said, if you did agree to do it, you ought to do it. He did not say that he did agree or not; that he would or would not do it; but simply, what good would it do if I did. Defendant, I expect, was poor when Elizabeth Arnwine made a deed to him of the farm before spoken of. I have known defendant from a boy; Elizabeth Arnwine brought defendant up from infancy. He was with the
- 20 family before old John Arnwine died; defendant continued to live on the property till the death of Elizabeth Arnwine. Defendant might have had money; it is likely the old woman might have given him what he made; I think it is likely she did; she gave him two colts she bought of me; she might have given him other things that I know nothing about. This was before he was twenty-one years of age. She also gave him a wagon and harness.

The deed made by Elizabeth Arnwine to defendant, before spoken of, was made a short time after he was twenty-one years of age.

- 30 [The testimony of this witness, so far as it relates to conversations with John Arnwine and Elizabeth Arnwine, and their declarations to him, are excepted to on the part of the defendant.]

And being cross-examined on the part of the defendant, saith— That, at the time before spoken of, complainant lived on the Gordon farm from 1804 till he was put in jail, say twenty-five years ago. Elijah Wilson bought this farm at the sale of it by George Arnwine, the administrator of John Arnwine, and it was said that they owned the farm together; the Gordon farm was a part of the estate of John Arnwine, but complainant claimed title to it; he

40 was ejected by Wilson and Arnwine.

rehabilitate
I don't know that complainant's father paid his debts for him; his mother might have done so; I rather think his father gave him the use of the place where he lived. The Gordon farm was sold by the sheriff on a judgment of one Henry Quick against complainant; this was after the sale by George Arnwine, as administrator of John Arnwine; this sale by the sheriff was twenty years ago, may be more.

- I don't know that complainant got a dollar of his father's estate, or that he did not. If he got his share, he ought to have got the
- 50 worth of the Gordon farm, but I don't know that he did, or did not.

It was about twenty-five years ago, when complainant was in jail, that complainant's mother talked about destroying her will, &c., as before stated. It was about a year or two after, when he was out of jail, when she first talked about putting money in my hands for complainant; she spoke to me two or three times about my taking money for the benefit of complainant; there might have been three months or a year between the times.

Elizabeth Arnwine died a dozen or fifteen years ago; she lived five, six, or seven years after this last conversation spoken of. I guess she paid money for complainant in her lifetime; she once paid money to John Sergeant. Sometimes one and sometimes another would help complainant when he was in difficulties; he was frequently in difficulties; I think she paid several small matters for him at different times. I have never heard her say that she had helped him as much as his share would be, but she said she had helped him a good deal; she said she never meant to help him so that Jemima Hull would get at it. I have heard her find fault with complainant's wasting, &c., but I never heard her say that he had wasted his share. She never liked this Jemima Hull; she considered what she did give him as giving for her benefit. I think she paid Gabriel Huff, former sheriff, fifty dollars on complainant's account.

When complainant first went upon the Gordon farm he did pretty well, but towards the last part of the time he was there he was pretty poor; during the latter part of his time he spent more money than he made. From this time on he likely spent more than he made; he worked pretty well, but he was in the law a good deal.

John and Elizabeth Arnwine left two children. The property would have to be divided into six shares.

And being re-examined on the part of the complainant, saith—That in the conversations with Elizabeth Arnwine, she did not say she wanted me to take money for his benefit, but a part of her estate; this conversation was before she made the deed spoken of to defendant. I don't remember of her ever paying any money for complainant, except to Sergeant and Huff, as before stated; I don't know of her paying any money to Huff, but she said she would. When she paid this money for complainant, he worked the place for her one or two years on shares; whether he got his share or not I can't say.

ELISHA WARFORD.

Elizabeth Warford deposes and saith—That the complainant is my brother, and the defendant my son. Elizabeth Arnwine was my mother; she died on her farm near Head-Quarters, in the township of Delaware; she died in 1817; I do not recollect the year she died; I think she died in 1832; I am bothered; I can't recollect when she died. Upon further reflection (and on the suggestion of the complainant), I think she died in 1837; I was with

her when she died. Mrs. Dilts was also there, and two or three other women, but I don't exactly recollect who they were.

[It is here requested, on the part of the counsel for the defendant, that the witnesses on the part of the complainant may be examined separately, and not in the presence and hearing of each other, and considering that I have no power to make such an order, I decline to make it.—PETER I. CLARK, *Master*.]

[The counsel for the defendant here asks the counsel for the complainant to agree that his witnesses may be examined separately, and not in the presence and hearing of each other; and the counsel for the complainant says he will not consent that the examination of his witnesses shall be thus taken.—PETER I. CLARK, *Master*.]

The witness then proceeds as follows :

I have had frequent conversations with Elizabeth Arnwine relative to complainant and his affairs; she said she had property enough to make him as well off as the rest of them, and she meant to do it; that he had been hard dealt with, had a farm, and bought it, and then he was haverjacked, imprisoned, and wronged out of it, and she considered she was able to make him whole out of her own property, and would do it, in case he would leave off lawing with the administrators of his father's estate. She wished my husband, Elisha Warford, to buy her farm, in order that she might secure to complainant, while she was here, what she wanted him to have out of her property.

I was there at the time of her last sickness; she called defendant to her bed-side. It appeared there was a man came there to get pay for sheep he had sold to defendant, and it aroused her. Defendant came to her, and said, grandmother I want your key. She put her hand in her pocket, and said, what do you want of it? She handed him the key, and said, you are always bothering or meddling with my money. Now, she said, if you have paid the man, put the money back, lock the chest, and give me back the key. Then she called defendant up to the bed-side, and likewise called me to come and sit down by her, which I did. She told me that she found defendant a little hornery in little things that he was to do. Now, says she, he has promised me to pay complainant two thousand dollars. She said she was now at her last sickness; that she would never live to get well. She said to me, Betsey I want you to see to him, (and defendant was present). Defendant said, O! grandmother, I will pay uncle Jacob two thousand dollars honestly. Then she said, how was those poor fatherless children, they were to have so and so, and he had bargained to pay it. Then Mrs. Snooks came in; and then my mother said Mrs. Snooks was to have five hundred dollars, and he had promised to pay it; and his sister Sarah, she was to have five hundred dollars, which he had promised to pay. She also said that defendant's brothers were to have three hundred dollars apiece, which he, defendant, was also to pay, and he promised her he would. She also said defendant had had all the use of her farm, and all the money, rents, and stock.

And then she said to defendant, he would have more than he ought

to have, for he had all the profit every way and every how, and had not supported her, but she had been supported by defendant's sister, who had brought her victuals to her ready cooked, and attended to her and nursed her. And then defendant said, grandmother I will certainly do as I have promised you; I will pay all of them.

[The counsel for the defendant excepts to all of the above conversation between the witness and Elizabeth Arnwine, and the counsel for the complainant excepts to it, so far as it relates to other persons than the complainant.]

The witness then proceeds: On the morning after she died I had 10 a conversation with defendant; he came out in the kitchen at my mother's house. He asked me if I knew he had a deed for my mother's farm. I said, no, you have not, have you? Yes, he had, he said. Then I asked, what is the rest to do? Well, he said, uncle Sam Buchanan was well off; Elisha Warford was well off. Then I said, how is uncle Jacob (complainant) to stand? Why, says he, you know I am to pay uncle Jacob two thousand dollars, and the rest is for me, Samuel, Daniel, Sarah, and James (brothers and sisters of the defendant). He told me firmly this was what he was to do. He said Margaret Snooks was to have five hundred dollars; 20 Margaret Snooks was brought up by my mother from a little child.

Last February, two years ago, I called to defendant, as he was passing the road in a sleigh near Daniel Carroll's house, and I said to him, stop! Said I to him, what is the reason you are cutting up in this way, and have not paid your uncle Jacob? He said, how had complainant lawed him about the caveat? I said that was nothing; you know how you promised your dying grandmother; now I beg of you to live up to what you promised, and pay your uncle, and not cut up this way, for as sure as the world I will have to be subpoenaed, and must tell all about it; and you had better 30 settle it the easiest way you can. He made no answer, cracked his whip, and drove off.

[The counsel for the defendant excepts to the whole of the last testimony of this witness.]

And being cross-examined on the part of the defendant, says— I am on good terms with my son, the defendant; I feel nothing but friendship for him. At the time of my mother's death, and since, we have been friendly; he has not visited me, but I have visited him, since my mother's death. He did not speak to me; I went to him since, to speak to him about my brother Jacob, as I 40 had promised my mother I would, but he always turned his back upon me. We have not been intimate, but we have had no falling out.

After my mother's death, there was a disturbance about her estate, and a caveat against her will, and a lawsuit. I was not in it, and know nothing about it. I do not know who filed a caveat against the will; I don't know whether my husband had any thing to do with the caveat or not; I never knew what was the end of this lawsuit about the caveat.

My mother's conversation with me about making up to complain- 50

ant what he had lost by being haverjacked, imprisoned, &c., was at different times. Sometimes, during those conversations, defendant was present, sometimes not; he did not take part in these conversations. It was a few days before my mother's death that she called defendant and me to her bed-side, as I have stated; it was hardly a week, I guess five or six days; there was nothing more said in defendant's presence till the morning after her death. At the conversation at the bed-side, there was nothing said about her will. I did not know then that she had a will. She said nothing

- 10 about a deed to defendant. At the time she called me and defendant to her bed-side, there were no other persons in the room. During the conversation, Margaret Snooks came in; she came in towards the end of the conversation, pretty well towards the end of it; she came into the room, and, as I think, sat down; there was no one else in the room; she staid till the rest of the conversation was through. In our conversation the morning after my mother's death, as before detailed, no one was present but defendant and myself. In those conversations I have given the exact words, as near as I can recollect them. I never had a conversation with defendant about this matter of my brother, the complainant, from the morning after my mother's death till I spoke to him in the sleigh, as before stated.

Quest. At the time you spoke to him in the sleigh, did defendant say to you that he heard you were going to swear that he had made such and such promises to his grandmother just previous to her death?—*Ans.* No.

Quest. Did he say to you, at this time, that if you did swear, &c., it was not so; that he had made no such promises?—*Ans.* No.

- And being re-examined on the part of the complainant, says—
30 That at the conversation at her bed-side (as stated), she said that there were writings to show that he, defendant, was to pay to complainant, his brothers and sister, and Margaret Snooks, but there was no words or mention of a will or deed. The reason why I had no conversations with defendant about complainant's affairs, was because I had heard that complainant had gone to defendant's with his team at two different times, and had come away with a load each time, and I expected complainant was getting payment; and it was a satisfaction to me that he was getting what defendant had promised to my mother.

- 40 I went to defendant to have a conversation with him on the subject, when I heard that he sauced his uncle, by telling him to crack his whip, and to go ahead. The reason, therefore, why I did not talk to him about it, was because he would not talk to me.

Complainant lived with his parents till he was twenty-three or four years of age, and worked there. Complainant was the youngest child, and was a favorite child of his mother; she thought more of him than she did of the rest. My parents assisted their other children in getting farms.

- [The whole of this re-examination is excepted to by the counsel
50 for the defendant.]

ELIZABETH WARFORD.

Smith Sutton deposeth and saith—I recollect going to defendant's in company with complainant; this was in March seven years ago, either the middle or latter part of March. I heard a conversation at this time between complainant and defendant. Complainant got some corn and wheat of defendant at this time; he got four bags full in all. Complainant asked him if he had got the price of sixteen bushels of corn he (complainant) had got before. I forget the answer defendant gave to this. Defendant said he would pay him (complainant) what he had promised his grandmother to pay him, as soon as the caveat was decided. Complainant said he did not want this grain to go on the five dollars left him by the will of his mother. Defendant said no, I promised grandmother that I would pay you money, and what I promised her I will do; never mind the five dollars, uncle Jacob. He further said this grain was to go on what he had promised his grandmother to pay him. At this time defendant was very kind and friendly with complainant. He fed us and our horses. From the conversation, I inferred that defendant was to pay complainant a good bunch of money; there was no sum of money mentioned. At this time defendant also promised to fetch to complainant some apple trees from 20 Smith's nursery; he was going to get some for himself.

And being cross-examined on the part of the complainant, says— That this conversation took place in the barn yard and in the wagon house; I was by all the time of the conversation I have stated. The first of the conversation was by complainant's asking if he had got the price of the sixteen bushels of corn. Complainant asked defendant if the caveat was decided; defendant said no. Complainant said it took a damned while to decide it. Then complainant said to defendant, John, you know what you was to do. Yes, said defendant, what I promised grandmother to do I mean 30 to do; then the rest of the conversation was as I have stated it. Defendant said that the grain should go on what he had promised grandmother to pay him, and the rest he would pay him when the caveat was decided. I judged that it was a good bunch of money that defendant was to pay him, for the complainant said he had been lawed out of a farm. Defendant said yes, and they talked over it at that time. Defendant asked complainant if he would come and help him set out these fruit trees; complainant said he would if he had nothing else to do. This caveat I understood to be on the farm, which was started by Elisha Warford, and that it 40 was something which Warford and defendant had something to do with; I never heard but this one conversation between those parties on this subject. The next week was talked about as the time when defendant was to go for the apple trees. At the time of this conversation between the parties at defendant's, we were there more than two hours.

And being re-examined on the part of the complainant, says— That he remembers the time of this conversation, because it was the same spring that he took possession of the place where he now lives.

WM. S. SUTTON.

Elisha Warford deposeth and saith—That a paper shown him, dated September 6th, 1849, is a reassignment, by him to complainant, of all rights, property, and interests which were assigned to him by complainant, by deed of assignment, bearing date the 23d day of March, 1839, which paper is marked *Exhibit A.* for complainant in this cause.

Complainant also exhibits a paper purporting to be a receipt from James N. Reading to complainant, marked *Exhibit B.* for complainant.

- 10 Also two receipts from Francis Tomlinson to complainant, marked *Exhibit C.* for complainant.

Also a receipt from James Scott to complainant, marked *Exhibit D.* for complainant.

Also a receipt from Runk & Kugler to complainant, marked *Exhibit E.* for complainant.

Witness says—I am acquainted with the handwriting of the persons whose names are signed to the above receipts, and believe that they are respectively signed by the persons whose names are attached thereto.

- 20 The complainant also offered a receipt to him from his father, John Arnwine, dated February 21st, 1815, for \$1671.20, *prout* the same, and marked *Exhibit F.* for complainant, of which the witness says—I am acquainted with the handwriting of John Arnwine, deceased, the father of complainant, and that the signature of his name to the receipt last mentioned is his signature.

[This last receipt is excepted to by the counsel for defendant.]

And being cross-examined on the part of the defendant, says—I do not know that complainant did or did not assign to me the claim he is now prosecuting when he assigned to me all his property; nothing else came to my hands. I can't say when Elizabeth Arnwine died; I should think she was dead in 1839. I never tried to collect this claim as his assignee; no property ever came to my hands belonging to him. I don't know that complainant ever mentioned to me, at the time of this assignment, any thing about this claim. I was appointed his assignee under the insolvent laws. Complainant told me, while I was his assignee, that he had a claim against his mother's estate, but I never got any thing for it.

- 40 I can't say when the caveat was filed to the will of Elizabeth Arnwine; Samuel Buchanan, the heirs of George Arnwine, and myself were the caveators. I do not think that complainant had any thing to do with the caveat; I think the caveat was filed in less than a week after the old lady died. We had a trial upon it; had two or three meetings about it, and it was ended in May or June the same year she died. There was no appeal to the prerogative court; the cause went no further. I expect the complainant knew this; he could not miss knowing it. He was among us sometimes, and must have heard all about it. The will of Elizabeth Arnwine was sustained. My wife must have heard something of it; she was not here among us.

- 50 And being re-examined on the part of the complainant, says—

There was a talk of carrying this cause up, and Messrs. Halsted and Wall were to carry it up; they agreed to carry it up, but did not do it. I don't know that I ever told complainant or not that this will cause was ended.

ELISHA WARFORD.

Smith Sutton, being called again, says—That he is acquainted with the handwriting of Jonathan Hunt and Peter Hann, and that the signatures to the receipt marked *Exhibit G.* for complainant, is their handwriting respectively; also that the receipt marked *Exhibit H.* for complainant, signed by William R. Hand, is the true 10 and proper signature of the said William R. Hand.

This witness further says—That he heard the defendant tell complainant that the caveat before mentioned had been carried up to the Supreme Court. This took place at the wagon house of defendant, in the conversation I have before detailed.

WM. S. SUTTON.

Margaret Snooks deposes and says—I knew Elizabeth Arnwine in her lifetime; I was brought up by her; I was with her when she died. I heard a conversation between her and the defendant; I should think this conversation was not more than six months, and 20 may be not more than three or four months before her death. This conversation was between her, defendant, and Cornelius Lake. Mrs. Arnwine, defendant's wife, and I were sitting in the room together, and I saw Cornelius Lake pass the window. I presume Mrs. Arnwine also saw him, and got up and went out into the other room and met him. They were talking together, but I did not just then hear what they said. In a few minutes I saw defendant come from the barn, and he appeared to be in a hurry; he had not been in but a minute or two before I heard a great talking and fuss; it was so loud, (he was swearing) I had a curiosity to hear 30 what was going on. Mrs. Arnwine was crying, defendant was swearing. She was wanting a bond to be given by defendant to show what was to be after her death. I could not hear as well as I might, in consequence of defendant's wife spinning. I asked her to stop her wheel, and come to the door, which she did. There we had both of us a good chance to see and hear. We could see through the cracks of the door; I saw Mrs. Arnwine leaning on her cane and crying. She was determined that the writings should be done, and that Cornelius Lake should do the writing then. Defendant said, what more do you want; have not I told you that I 40 would pay uncle Jacob (complainant) two thousand dollars, (and mentioned others' names) if Elisha Warford did not law me out of the property. She then said to the defendant, John, I believe you to be a rascal, and I never can die satisfied and contented the way it now is. There was such a fuss that Cornelius Lake got up and said, there can be nothing done now. Cornelius Lake went away, promising her that he would come again.

Defendant further said, in this conversation, that if he gave a

bond, it would be placing them on the safe side, and him not. This was in answer to her request for the bond. This, I think, was after his saying, as before stated, "if Elisha Warford did not law him out of the property."

I remember something of a conversation, at the time of her last sickness and death, between Mrs. Arnwine, the defendant, and Mrs. Elizabeth Warford. I remember that in this conversation something was said about complainant. I can't say that I can remember any thing particular at all just at that time; I remember
10 of going into her room and seeing her in the bed, Mrs. Warford and her talking, and defendant being there at the same time. I knew the subject they were talking upon; it was nothing new to me. They had talked of it often; it was on the subject of her property. There were no other persons present. Complainant's name was mentioned in this conversation.

In the afternoon of the funeral of Mrs. Arnwine I heard a conversation between complainant and defendant; this was at the house of the deceased; defendant asked complainant to step aside. Defendant told complainant how the affairs stood otherwise, and
20 then said to complainant, but you are to be taken care of; I am to pay you two thousand dollars. Complainant seemed to be in trouble till after this.

I have heard frequent conversations between Mrs. Arnwine and complainant; have heard her say to him she wished he would stop lawing with George Arnwine and Elijah Wilson; that he was only throwing his money away; but wished him to stop that; that if he would do so, she had property enough to make him whole, and she meant to do it. Have heard her say that the Stout farm was bought for complainant, and that he had made the first payment on it. I
30 have heard her and uncle John both say that (in consequence of complainant's having lost this farm) they would make it up, or make it right. I have heard Elizabeth Arnwine say that she knew that complainant had lost his property wrongfully; that he had been wronged out of it, and that she would make it up, and felt it her duty to do it, as she had promised her husband to do it. Elizabeth Arnwine was my grandmother. Cornelius Lake, after he left, as above stated, to my knowledge never came back again till she was buried.

[The counsel for the defendant excepts to all of the above con-
40 versations where the defendant was not present, and to all the testimony that goes to establish a trust by parol in the defendant.]

And being cross-examined on the part of the defendant, says— That the "*others*" that were named during the conversation of Mrs. Arnwine with Cornelius Lake, as before stated, were defendant's brothers and sisters, and Pegg, by which last name he meant me, as I think, for he always called me by that name. As I understood this conversation between Mrs. Arnwine and defendant, he was to pay complainant two thousand dollars, and was to pay his brothers and sister and me something, but what I can't say. It appeared to
50 me (this is my own idea) that it was her will that defendant was to

have the property, and that after her death he was to pay for the property two thousand dollars to complainant, and something to his brothers, sister, and me; but at that time I did not understand what sum he was to pay to his brothers, sister, and me.

At some times, when Mrs. Arnwine has been stating to me that defendant was to pay complainant two thousand dollars, she has also stated what was to be paid to defendant's brothers, sister, and me; this was at various times. She said, at various times, that the sum that was to be paid to me was five hundred dollars, and some particular things out of the house, her clothes, &c. I don't 10 know that she ever stated the particular sums to be paid by defendant to his brothers and sister. She told me that five hundred dollars was to be paid to me by the defendant. I never asked defendant for this five hundred dollars; I had several reasons for not asking him for the five hundred dollars; I had had trouble enough; I had lost my husband. He was cross to me when I came to his house. I took counsel about it; I was poor, and I thought if he could live with it, I could die without it, and I was loth to go any further with it. I was persuaded to go on, but I did not conclude anything about it. If complainant succeeds in recovering two thousand dol- 20 lars in this cause, I do not know whether I expect or intend to prosecute for my five hundred dollars; I have not thought anything about it.

At the time of the conversation, when Cornelius Lake was there as before stated, I do not think that they knew that we were behind the door listening; we were listening the whole time till Cornelius Lake went out of the house; I think we were there a half an hour, not much more or less. The door did not shut tight, and there was a hole by the latch that I could put my finger in it, so that I could see through. There was nothing said in this conversa- 30 tion about a will or deed; she never in any of these conversations said any thing about a deed or will, to the best of my knowledge. In the conversation in the afternoon of the funeral of Mrs. Arnwine, as before stated, no other persons were present but complainant, defendant, and myself. This conversation was out of doors, near the corner of the house. I was doing nothing in particular; I happened to go out, and they were talking very loud, especially complainant, and I listened. I stopped to listen; I was about five yards from them.

I can't say whether defendant and his mother, Mrs. Warford, are 40 good friends or not. I understood, from Mrs. Arnwine and defendant, that the five hundred dollars was to be paid to me by defendant before the death of Mrs. Arnwine, but that, in consequence of what defendant had lost in a lawsuit, he was unable to do it; and then defendant promised her that he would pay me after her death.

[The counsel for complainant excepts to all the testimony of the payments to other than complainant.]

And being re-examined on the part of the complainant, says—

That defendant promised to pay me the five hundred dollars during the life of Mrs. Arnwine.

I have heard Mrs. Arnwine, Mrs. Warford, and defendant talk together about writings in the hands of Cornelius Lake. About two years before Mrs. Arnwine's death was the first time that defendant promised her, in my presence, to pay me the five hundred dollars. The last time was within six months before her death, when defendant promised her as before, as near as I can recollect. Defendant and Mrs. Arnwine talked before me that defendant had
10 had bad luck in a lawsuit, and was thereby unable to pay me the five hundred dollars at that time.

MARGARETTA A. SNOOKS.

Elizabeth Warford, being again cross-examined on the part of the defendant, and by consent of the counsel for complainant, says—That the reason or consideration why defendant was to pay complainant two thousand dollars, was that complainant had been lawed out of his farm; that defendant had received the benefit of mother's property, and she could not think of defendant's having all her property, and complainant's being a town charge. And the
20 reason why defendant's brothers and sister were to receive three hundred dollars, and Margaret Snooks five hundred dollars, from defendant, was that they had been kind to her, and more so than defendant ever had. These were the reasons stated by my mother. The defendant was to pay these sums of money because he got my mother's property; he was to pay these sums out of this property, and what he had had of the rents and profits, &c.

ELIZABETH WARFORD.

Jacob Buchanan deposes and says—I was acquainted with Elizabeth Arnwine in her lifetime. I knew the farm on which she lived
30 at the time of her death; it was situated near Head-Quarters, in Delaware township. I have known this farm all my lifetime. I am in the forty-eighth year of my age. It is a very good farm, and always was a good grain and grass farm. In 1830, I should judge that this farm was worth six or seven thousand dollars; it is worth more now. The land is worth more now, and the buildings on it new and better than in 1830; I should think it was worth near ten thousand dollars.

In March, 1837, I think, I heard a conversation between complainant and defendant. This took place on the road leading to
40 Flemington, between the copper mines and Flemington. Defendant said to complainant, I don't see why the devil you are troubling yourself so much about the will, for granny has left enough for me to pay you more than you will get if you break the will. I heard nothing more said between them. I rode on.

I knew of complainant's having a farm, which was called his; it lay in Delaware township near Sergeant's mills. It was called the Stout farm. I should suppose it was worth two thousand dollars when complainant owned it.

And being cross-examined on the part of the defendant, says— That there were no other persons present in the above stated conversation than the parties in this cause and myself. I was on horse-back, complainant on foot, and defendant in a wagon. They were talking, and I passed them. I am a grandchild of Elizabeth Arnwine, deceased. Defendant and I have not spoken together for years; we have never had any dispute, and I have no enmity or ill-will towards him, and never had, as I know of. We don't speak together never when we meet.

And being re-examined on the part of the complainant, says— 10
That in the conversation spoken of in my principal examination, defendant said, for granny has left you well enough; I am to pay you more than you will get if you break the will.

JACOB BUCHANAN.

ten
Daniel Larew deposes and saith—That complainant bought a wood lot of my father, and paid him four hundred and twenty-five or four hundred and fifty dollars for it. It lay in Delaware township; it was a two acre lot. It was bought in 1806 or 1807; complainant paid for it. I have often heard Elizabeth Arnwine say that what is called the Stout farm was intended for complainant. 20

I knew complainant long before the Stout farm was bought; he was a very industrious man when he moved on to this farm, and raised a great deal of grain on it. He was a man who at that day could have bought on credit almost any thing that he wanted that another had for sale.

And being cross-examined on the part of the defendant, says— That the wood lot spoken of did not join the Stout farm, and was no part of it.

And being re-examined on the part of the complainant, says— That complainant lived at home with his father till he was four- 30
and-twenty years of age; worked hard for his father, and was as fine and industrious a young man as there was in that settlement.

And being again cross-examined, says—That after this he became a changed man; he became poor, got in difficulty, and broke down in property.

His
DANIEL X LAREW.
mark.

Elisha Warford deposes and says—That I have no interest in, or connection with this suit whatever; I do not furnish the funds 40
for carrying it on. I paid the fees for a few witnesses in the suit at law for the same cause of action as in this suit, brought in the Hunterdon circuit a few years ago. I did it then for pity's sake. I do not expect to pay for any of the expenses of this suit, and am under no obligation to do so. I told complainant, if he would keep sober, may be I could help him, and perhaps I would; but I am under no obligations to do any thing for him. Complainant owes me more than two hundred dollars, and if he recovers in this suit,

I can't say whether I expect he will pay me or not; I should like to get it. I can't say whether he has promised to pay me or not, if he gets it; I have heard him say that he would pay all his honest debts if he got it. If he does not recover in this suit, I should say he has no other means to pay his debts, unless he has other means that I don't know of.


- And being cross-examined on the part of the complainant, says—
That I do not hold any obligation of complainant for the two hundred dollars or more that he owes me. I have no book account
10 against him. He made oath, when he took the benefit, of how much he owed me, and that lays yet. He never paid it; this might have been in 1824; I don't recollect whether it was or not. Complainant has worked for me since I paid his witnesses, as stated, but I have paid him for this work. I have kept no account of his work, nor of what money I have paid him.

ELISHA WARFORD.

- Margaret Buchanan* deposes and says—I was at Elizabeth Arnwine's at the time of her death. I remember a conversation between her and defendant about complainant. This was during her
20 last sickness. She called defendant to her bed-side, and he would not go, and I did not hear her say any thing to him then. After her death, I heard defendant and his mother (Mrs. Warford) talking together. Defendant said to his mother that he would pay to his uncle Jacob the two thousand dollars that he had promised his granny that he would pay him. I heard no more at that time on that subject. This was before my mother was buried; Elizabeth Arnwine was my mother. I know that the Stout farm was bought for complainant. A mare belonging to complainant, worth fifty or
30 sixty pounds, went towards the first payment.

- George Arnwine was the administrator of my father's estate, and he lawed the Stout farm away from complainant, and my mother said she would make it right with him. My mother said this a good spell before her death. This was when they were lawing complainant. I have heard her say this at different times; I think the last time I heard her say this was when she was building the barn on the place where defendant now lives. This was about two years before her death; she said she had given writings to give complainant half the farm.

- And being cross-examined on the part of the defendant, says—
40 That when the will was opened, defendant said that he was to pay uncle Jacob two thousand dollars, and then the property was all his. This he said, in the house where my mother died, to complainant. I was there when part of the first payment was made for the Stout farm. I was not there when the deed was given. I expect I am seventy-nine or eighty years old; I don't know which. I was one of the caveators to the will of my mother.

Her
MARGARET  BUCHANAN.
mark.

[It is agreed by the parties and their solicitors in this cause that the testimony of Elisha Warford, taken *de bene esse* in this cause on the part of the complainant on the 9th day of October, 1850, shall be received as if taken at this time on regular notice, and be considered as part of the testimony in this cause. March 26th, 1851.]

EXHIBITS FOR COMPLAINANT.

1. Receipt of Jonathan H. Townsend, administrator of the late
 _____ Townsend, to complainant, dated September 1st, 1849, and
 marked *Exhibit I.* for complainant. 10
2. Receipt of William Coughlin to complainant, dated September
 1st, 1849, and marked *Exhibit J.* for complainant.
3. Receipt of Thomas Cherry to complainant, dated September
 1st, 1849, and marked *Exhibit K.* for complainant.
4. Receipt from Francis Tomlinson to complainant, dated Sep-
 tember 1st, 1849, and marked *Exhibit L.* for complainant.
5. Receipt from John M. Niece to complainant, dated September
 1st, 1849, and marked *Exhibit M.* for complainant.
6. Receipt from John T. Ridler, one of the executors of John
 Bird, deceased, who was administrator of Jesse Wood, deceased, 20
 dated September 1st, 1849, and marked *Exhibit N.* for complain-
 ant.

[The counsel for the defendant excepts to these and all the other receipts offered as exhibits by complainant, because although he admits that they are signed by the persons whose names are respectively signed thereto, he insists that the persons thus signing said receipts should have been called as witnesses.]

Newton Buchanan deposes and saith—I am in the twentieth year of my age; I am acquainted with the parties in this cause; I once heard a conversation between them relative to two thousand dol- 30
 lars, claimed by complainant of defendant. It took place before the court house in Flemington; I suppose it was six years ago. Complainant asked defendant what was to be done with that thing betwixt him and defendant. Defendant said, I will pay you when the caveat is decided.

And being cross-examined on the part of the defendant, saith—
 I can't tell for certain how long it is since this conversation took place; I suppose it to be about six years ago. I can't say it was not eight years ago; it is so long ago, I have forgotten how long it was. This conversation took place during court. I have no doubt 40
 I heard more in this conversation, but I cannot recollect more than I have detailed. I did not hear either of them at that time name any sum of money, as I recollect. When I say that I heard a conversation between them in relation to two thousand dollars, I mean to say that I did not hear any sum mentioned by either of them. I am the son of Jacob Buchanan.

NEWTON BUCHANAN.

Peter I. Case, being duly affirmed, saith—I once heard a slight conversation between the parties in this cause at Sergeantsville; I think it was in 1846, at town meeting; I was coming from the shed to the house; the parties in this cause were between the house and shed. I heard the complainant talking tolerably loud, and I made a halt. I can't tell the whole conversation that passed, for I did not pay any particular attention. Complainant rather placed himself in front of defendant; defendant seemed as if he did not wish to listen to the conversation, but to pass off. Complainant
 10 says to defendant, damn you, do you mean to pay me that money you owe me? Defendant I don't think made any reply to this. Complainant still kept on with his foolish talk, and said to defendant, it is the last time I will ever ask you for it. Defendant then moved as if he was going into the house, and complainant followed him; and defendant said, I owe you nothing; I have never promised you any thing; and crack your whip as soon as you please. Up to this time I had not heard the complainant threaten the defendant with a prosecution. After defendant said crack your whip,
 20 complainant said I will prosecute you for the two thousand dollars you promised me. Defendant made no reply to this.

After they got on the porch, or the steps of the porch, complainant still beset defendant with his discourse, and defendant said to him, I want no further discourse with you.

PETER I. CASE.

Peter I. Case, being the same witness now produced on the part of the defendant, says—That complainant and Smith Sutton were together on a wagon loaded with grain, I think wheat and corn. I said you have had pretty good luck in getting grain; where did you get it. He said he got it of defendant.
 30

PETER I. CASE.

James Carrell deposes and saith—I had a conversation with defendant in 1837, on the road, just before the lawsuit about the will. Defendant told me that old Warford, the Buchanans, and Arnwine's boys, and among them, were going to law with him about grandmother's will. He said he did not care a damn for any of them; said he would law them to hell and back again.

He asked me if I had heard any of them say any thing about it. I told him I had not. I said to him, there's uncle Jake; I think you ought to do something for him. He said, as for uncle Jake, he
 40 was never to see him want for any thing, and he was willing that he might come and live with him. This is pretty much all that passed. I am half-brother of the defendant.

JAMES CARRELL.

Elias H. Conover deposes and says—I have been acquainted with the parties in this suit for some years. I once heard a conversation between the parties, at Sergeantsville, about a demand which complainant had against defendant; this was four or five years ago

this spring; complainant said to defendant, you owe me two thousand dollars, and that it was money which he (defendant) had agreed with complainant's mother to give complainant. He said further to him, you justly owe it to me, and if you don't pay it to me I will arrest you. Complainant said this over to defendant several times.

After a length of time, when complainant said I will arrest you, defendant said, crack your whip, and go ahead. I did not hear defendant say any thing but this. I remember that, in this conversation, complainant said to defendant, I have been to see you, and 10 you have let me have some money, or produce, (I forget which) and now you turn your back to me. I did not hear defendant make any reply to this; I don't know that he made any. I reside near the farm where defendant lives; I have resided there twenty-two years, and was born within one mile of it. I am now nearly fifty-two years of age. Defendant's farm is the same he got of Elizabeth Arnwine. I should think that this farm, in 1837, was worth six thousand dollars; it is one of the best farms in Hunterdon county. I consider that it was worth \$6000 at any time; I should think it now worth ten or twelve thousand dollars, the way land 20 sells.

And being cross-examined on the part of the defendant, says— That this conversation at Sergeantsville took place outside of the public house, between it and the shed. I do not remember of any one being present; it happened at town meeting there; I was there by accident at the time. I think complainant had had a drink, but I can't say as to that; he was pretty well excited.

Elizabeth Arnwine brought up defendant from his infancy, I believe. I suppose he carried on the farm for her after he grew up. He bought goods at our store in his own name. I don't know of 30 any one beside him carrying on the farm; I suppose he improved the farm in her lifetime; he has improved it more since her death. The barn on the place was burnt during her lifetime; it was rebuilt some two or four years before her death. He improved the farm some before her death, but not so much as since her death. I suppose that defendant was rising twenty years of age when Elizabeth Arnwine died. I knew Mrs. Arnwine well; she was frequently at our store. Her intellect was good; she was smart, and understood business. My intimate acquaintance with her commenced when we moved to Head-Quarters, which was about 40 twenty-two years ago. In the last two or three years of her life her mind failed a little; I did not consider her a childish woman; twenty-two years ago she was the smartest and keenest woman I ever knew; I thought I never knew her equal. She continued the same for two or three years after. Before she began to fail she understood business well, and was capable of transacting it. From what little conversation I had with her before she began to fail, I never knew her equal. I thought she understood legal matters better than women in general.

One instance I remember well, of her showing how a certain 50

due-bill should be written. I once went to her to borrow some money for my brother-in-law, with his due-bill for it. She objected to the note, but said she would take mine, and I could fix it with my brother-in-law, to which I agreed, and she was very particular as to the form in which the note or due-bill should be drawn for the money. She seemed to understand it perfectly.

When I speak of her failing, I mean that she failed in body, and I think that her mind became weaker, though I think she was capable of understanding business; and I don't know as her faculties were weaker. The last conversation I had with her I thought she was capable of transacting any business for herself. This was eighteen months or two years before her death.

And being re-examined on the part of the complainant, says—I heard her talk of her own right in the property where she lived, and heard her talk a good deal of law, and I thought she knew a good deal more about it than common women.

Quest. [By complainant.] Would she understand enough to create a trust estate?

Ans. I think she would. I never thought about that; but I think she had skill and knowledge enough so to shape and manage business that it would come within the bounds of law.

I can't say whether she placed confidence in defendant or not; but from the way of his transacting business for her, I should judge that she placed full confidence in him. I remember of subscriptions being started among her neighbors to help her rebuild her barn that was burnt; subscription was generally circulated, and there were a good many signers on it when I saw it. I remember of William Dils, William Rockafellow, Job Wolverton, and John Lake being on the farm, and working it. I suppose they rented it. I recollect of complainant working the farm for one or two years, I forget which. I am not positive, but I think that complainant's brother George worked it one year.

And being again cross-examined, says—I think she understood the law enough to make any disposition of her property by will, or in any other way, to take effect after her death, according to law. I can't say whether the subscription spoken of was in her name or in the name of defendant; it was always understood that the subscription was for Mrs. Arnwine.

ELIAS H. CONOVER.

Richard S. Godown deposes and says—I am acquainted with the parties in this cause; have known complainant from his boyhood. I have had no particular acquaintance with defendant, but have known him from his youth. I remember a conversation between the parties in relation to a demand which complainant made of defendant. This was in about 1842, I think, on the road between the Quaker church and Sergeantsville. On returning from my business, I met complainant going to defendant's. Complainant requested me to go with him to defendant's, but I did not go. While conversing with complainant, defendant came out, and a conversation took

place between them respecting the will of the mother and money due from defendant to complainant, or due from the estate of the mother to him. Complainant made a demand of defendant of two thousand dollars and interest. Defendant said he could not agree to pay that, unless the will stood good; there was a caveat entered; if the will stood good, he was willing to pay it. This is what he said. If the will stood good defendant promised to pay the \$2000 and interest. This is the words that took place between them. It come from the estate of Elizabeth Arnwine.

Complainant said to defendant he wished this settled; he wanted 10 to be made safe. Complainant said to defendant that \$2000 would be a cheap payment to get a property worth \$6000. Defendant said he could not agree to pay any thing till such times as the caveat was settled, for it would ruin him if the will did not stand good. Complainant replied that he did not want it of him, if the will did not stand good. Defendant said if the will stood good, he was willing to pay him the \$2000. I don't recollect of any thing being said about defendant's having promised his grandmother to pay complainant the \$2000.

And being cross-examined on the part of the defendant, says— 20 I was asked at the time of this conversation, by complainant, to remember it, and I generally recollect things that I charge my memory with. Complainant had been talking to me about this \$2000 before defendant came out, and that he was going to demand it of defendant. I had heard of it before he told me. When I say that defendant came out, I mean that he came from home, and met us on the road. I cannot say how long he talked with us; we were not long about it. I should not suppose that the conversation lasted over half an hour; it might not have been half that time.

When complainant made demand of defendant, he said, I want 30 \$2000 you owe me on my mother's estate; that he had obligated himself, or was bound to pay, and the interest. Defendant said, I am willing to pay it to you, if the will stands. Complainant then said it was a cheap price for a property worth \$6000. I don't recollect of any thing else between them. Complainant and I have not talked of this lately.

And being re-examined on the part of the complainant, says—I had heard Elizabeth Arnwine say that complainant had been cheated out of his property, and that she meant to make him amends for what he had lost; and that she meant to make him sa- 40 tisfied out of the place she lived on. This I have heard her say repeatedly; defendant was not present when she said this. I was well acquainted with the family, and lived a neighbor to them.

[This last answer excepted to by defendant.]

RICHARD S. GODOWN.

TESTIMONY FOR DEFENDANT.

James Snyder, esquire, sheriff of the county of Hunterdon, deposeseth and saith—That the signature of the name Cornelius Lake, as a witness to a paper writing, and marked *Exhibit D.* on the part of defendant, as also the body of said writing, is the true and proper handwriting of Cornelius Lake; and that the said Cornelius Lake died as much as ten years ago.

JAMES SNYDER.

EXHIBITS FOR DEFENDANT.

1. Deed from George Arnwine, administrator of John Arnwine,
10 deceased, to Elijah Wilson, and marked *Exhibit A.* for defendant.

2. Deed from Edward Welsted, sheriff, to Elijah Wilson and George Arnwine, and marked *Exhibit B.* for defendant.

3. Deed from Elizabeth Arnwine to John Carrell, and marked *Exhibit C.* for defendant.

4. Lease from John Carrell to Elizabeth Arnwine, and marked *Exhibit D.* for defendant.

5. Certified copy of the proceedings of the Court of Common Pleas of the county of Hunterdon on the application of Jacob Arnwine, as an insolvent debtor, and the discharge of said Arnwine,
20 and marked *Exhibit E.* for defendant.

6. Probate of the last will and testament of Elizabeth Arnwine, deceased, and marked *Exhibit F.* for defendant.

7. Certified copy of the testimony of Cornelius Lake, taken before the Orphans' Court of the county of Hunterdon, and marked *Exhibit G.* for defendant.

[*Exhibit G.* excepted to on the part of complainant.]

8. Caveat to the proving of the will of Elizabeth Arnwine, under the certificate of the surrogate of the county of Hunterdon, and marked *Exhibit H.* for defendant.

30 *William Morris* deposes and says—That I was at defendant's house in the beginning of March, 1844. Complainant came there while I was there; he was alone when he came there; he said he came to get some flour or grain of defendant. He said it had been a hard winter, and provision had been pretty scarce. He wanted some flour or some wheat of defendant, and defendant was not willing he should have it. Complainant told defendant that if he would let him have some flour or wheat he would come and labor for him. I did not hear complainant say any thing about defendant's owing him any thing; he did not ask for the grain or flour on
40 account of any former debt or transaction; he said he wanted grain, and wanted to labor for it. Defendant told him that if he would come and help him make some post fence, that he would

help him to some wheat. Complainant then promised defendant that he would come in a few days, and help him make the fence.

Quest. by defendant's solicitor. Was any thing said in this conversation about Elizabeth Arnwine or her property, or any claim of complainant upon her property, or upon defendant on account of her property, or any claim or debt which he had against defendant?

Ans. There was nothing said like it or about it.

Complainant went away while I was there. I believe I was present at their whole conversation at that time. Complainant did not take any grain away that day.

In a few days after this I saw complainant here at this place, say four or five days. At this last time, a man by the name of Smith Sutton was with him. I did not know Smith Sutton at that time; I knew they called him Smith Sutton. I saw them when they came from defendant's here. Smith Sutton came with him; they had bags in the wagon, with grain in; there was two or three bags that had grain in; I expect there was a couple of bushels in each bag.

Complainant and I got a talking together about making defendant's fence. I was going there to work also. We agreed to go there such a day to make the fence. We did not go; he said he had got the grain of defendant, and he and I were to go such a day, and make this post fence. I asked him if he got the grain of defendant; if he had been down and got the grain of defendant; he said, yes.

And being cross-examined on the part of the complainant, says— I expect the bags spoken of were made of tow cloth; I did not take hold of them. The wagon in which the bags were was a little one horse wagon; it was a common one horse wagon; I can't say whether it had springs under it or not, or whether it had a top on it; I can't say whether it was a straight or crooked body. There was a tavern kept here at that time. It was kept by a Mr. Waggoner, Henry Waggoner. A man by the name of Voorhees kept the store. I lived here at the time. I was out by the tavern shed when they drove up. I don't recollect what color the wagon was. Smith Sutton had a horse or a mare he had been getting of sheriff Runk; this beast was to the wagon. I don't remember the color of the beast. There were several people around there; I recollect Henry H. Fisher, esquire, was there; I guess old Mr. Waggoner and his son were there. They had one horse or mare to the wagon. I believe the color of the bags was white, or light color; I don't remember of seeing that they had stripes in them. I did not open these bags. I did not see what was in them.

Defendant and I never had any conversation about these matters till he served a subpoena on me. He served the subpoena on me a day or two before the twenty-third day of June last; I can't say whether it was one or two days. He said nothing to me about this business. He fetched the subpoena to me, and paid me my fees. He did not ask me what I knew about it, or tell me what he wanted to prove by me. In 1844, I worked part of the time for defendant and part of the time with William Clark, the mason, at Fleming-

ton. I worked the same year at Rosemont for Isaiah Moore and James Wolverton; also at Joseph Reading's and Gilbert Barton's. I don't recollect of ever telling any one about this matter till after the subpoena was served upon me. I know this conversation took place at defendant's, in 1844, for I have him charged with the work that I did for him. I expect defendant paid me for the work I did right away. I examined my book to-day, for the purpose of seeing the time of this conversation at defendant's. I have told all the particulars that passed between these parties, as near as I can recollect them. I can't say what I was doing at defendant's at this time; I was a great deal there, and did a great deal of work for him. I don't think I could state within ten days the time complainant came to defendant's, as I have detailed.

And being re-examined on the part of the defendant, says—That I think the time complainant was at defendant's was somewhere between the first and the tenth of March, 1844. I mean, by my last answer in my cross-examination, that I could not state the day within ten days when complainant came to defendant's, and had the conversation which I have detailed.

20

WILLIAM MORRIS.

Christopher Dils deposes and says—I knew Elizabeth Arnwine fifty years before her death. I lived near her, and worked for her and her husband; I worked for her when I was twenty-four years old; was right well acquainted with her; I always was on intimate friendship with her. She used to tell me a good deal about her affairs, how she was getting along. She has told me, at different times, about her children and her affairs; heard her say that she has often helped her children to money when they stood in need of it. She told me that her children had used her very bad sometimes; she said that complainant had used her sometimes very bad; she said he would come there sometimes groggy, and want a little money of her, and abuse her.

She got talking at one time that complainant had been there, and abused her; she said he wanted some money. She told him she had none, and then he ripped out and swore very hard at her, and she would not let him have any. She said she had helped complainant to a great deal of money, at one time and another, and she would not help him to any more; at present she could not. She said she had helped him to a great deal, and if she should help him to all she was worth it would appear it would do him no good. She said it went hard enough when complainant lived with his wife, but since he had got living with another woman, it was much worse yet. She said she had done a great deal more for complainant than she had done for any child she had. She said she had settled her business as she thought right. She said she was satisfied, and never wanted it altered from the way it was done; I never asked her whether it was by will or any other way. This must have been from two to three years before her death; I mean that the conversation about the settling of her business was about two or three

years before her death. She said she was determined Jemima Hull should never live upon any of her earnings. This was at the time she told me of complainant's having been there and abused her. She never said any thing to me, one way or the other, about complainant's having anything out of her estate.

I was at Elizabeth Arnwine's a good deal during her last sickness and at the time of her death. She died on Sunday morning; can't tell what year; she died about seventeen years ago. I was there from the previous Saturday morning till she died, pretty much all the time. If I recollect right, Elizabeth Warford came there on the Friday previous to her death; I think she staid there till her death. I went there on the Thursday previous to her death; she was taken very low then, she was not expected to live. They sent for me and my wife to come there; I was there, off and on, till Saturday morning, and then I remained there steadily. I went home once in the time. 10

From Thursday till her death she seemed to have her senses pretty well. She began to fail on Saturday morning very fast. On Friday, some time in the afternoon, defendant came up to her bed; I told him his grandmother wanted him. Defendant came to the bed, and had his handkerchief before his eyes like, and she told him not to be scared, for his title was good, and they could not get his property from him. I don't know who she meant by they, otherwise than as I suppose she meant some of the family; no name was mentioned. 20

Quest. Who did you understand her to mean by they?

Ans. I should judge it was some of the family she meant, and that they would try to get the property from him.

On Friday I heard her ask defendant (as I understood her) if his chest was locked; and right after this she asked him if he had got the key. He said yes. Well take care of that, she said. Elizabeth Warford was somewhere about the house; I can't say whether she was in the room or not. I should not say that after Thursday she had her senses at all times to do business. I should not think that at any time after Thursday she was capable of making a deal or to do business of any amount, any further than when she spoke she spoke sensibly, that is for a drink of water and the like. 30

I was there at the time of the funeral. When they read the will, there was a good deal of laughing and talking about it. They read the will after they returned from the burial, and after dinner. I mean that the children and heirs laughed a good deal about what was left them by the will. Cornelius Lake read the will, and complainant said he could not understand it, and asked Mr. Lake to read it a second time. Lake read it a second time, and complainant said, very much beloved son, five dollars is his portion. 40

Quest. Did complainant use any profane language? [Excepted to.]

Ans. He said, damned much beloved son; he talked and laughed; it seemed to be more like a frolic to him than a burial. He swore a little along occasionally. 50

Quest. Did they abuse defendant? [Excepted to.]

Ans. I thought they did in the way of language. They called him the Blue General, referring to the mark on his face, as I suppose. Complainant was the main hand in this abuse; he called defendant the Blue General; they had called him in this way for years. His tongue was the most limber of the family. Elisha Warford and his wife, and complainant's sister Margaret Buchanan, also, joined in the abuse of defendant. Defendant did not say anything in reply; he sat peaceable. I could not understand any particular abuse, any further than they had been ill friends with him
10 for several years.

When complainant was about to go away, he went and got his wagon. He backed it up to the door, and said he wanted to take with him the provision his mother left him, and wanted the Blue General to put it in the wagon. After this he drove off.

At the funeral, complainant said nothing about the two thousand dollars, or any other sum except the five dollars, as before stated. Defendant said nothing at that time about having a deed for the property. Elizabeth Arnwine always spoke in defendant's favor
20 very much. She said that he had always been a good boy to her; had used her better than any child she had; had done more for her. She has told me this a half a dozen times, at different times.

Just before complainant commenced this suit, he said he was going round to hunt up witnesses. This must have been five or six years after his mother's death. He said he come to see me about it; he said he knew I had worked there a great deal, and been there a great deal; he said to me that I had been there so much, I must have heard about defendant's paying him a thousand dollars after his mother's death; he said that his mother had told defend-
30 ant to pay him a thousand dollars after her death, and he thought I must know something about it, for I had been there a great deal. I am sure he said one thousand dollars. He mentioned the same sum two or three different times to me. Complainant wanted to know if I had heard Elizabeth Arnwine say any thing about this; I told him I never had heard her say such a word. Elizabeth Arnwine never intimated to me that she meant to give complainant any thing at all.

I never heard that complainant demanded of defendant two thousand dollars till some time after this, not till he was about com-
40 mencing his suit and getting his witnesses. This was about five or six years ago, may be longer. The interval between complainant's claim of one thousand dollars and two thousand dollars was about two years, as near as I can recollect. When I heard of his claim of two thousand dollars, it seemed to me that he had claimed before this one thousand dollars, and I made mention of it at the time. After the probate of the will of Elizabeth Arnwine, complainant said that there was one thousand dollars coming to him from the Blue General; that his mother said he was to pay him, and, by God, he meant to have it yet. He told me that the will

was decided, and it stood good. This was about a year or eighteen months after the trial of the caveat.

Elizabeth Arnwine was counted a very smart active woman for business. She understood the law as well as any man in this part of the country or one half the lawyers. I think she understood herself well enough, and as well as any person to fix the disposition of her property according to law. If she had designed to fix any money in defendant's hands for the benefit of complainant, I should think she would know how to do it, and that well too. I think she would know how to fix money in trust for the benefit of 10 complainant according to law.

Complainant has no brother living at this time; Elizabeth Warford and Margaret Buchanan are his sisters. Complainant and his sisters have been hostile to defendant for many years before their mother's death. Complainant was pretty much of a loose character from the time of his living on the Stout farm till his mother's death. By loose character, I mean frolicking around and spending his money. I think in this time he spent full as much as he earned; he took a good many pretty high scales, I believe. When defendant first came into possession of the farm where he now lives, it was very thin and poor; I should not have thought it would have fetched 20 four thousand dollars when it came into his hands. At the death of Elizabeth Arnwine, I do not think it would have fetched more than four thousand dollars, if sold at vendue. From the improvements defendant has put on it, I should think it was worth eight thousand dollars.

And being cross-examined on the part of the complainant, says—I have no learning to keep a book account, or any thing of the kind; I can read print pretty well. The will trial was somewhere in the year 1837 or 8. I was a witness on the trial.

His
CHRISTOPHER DILS. 30
mark.

[The complainant excepts to all that part of this witness' examination in chief touching his conversation with Elizabeth Arnwine and others in the absence of the complainant.]

Richard Horne deposes and says—I was at Elizabeth Arnwine's two days before her death, Friday and Saturday. She was quite low during these two days; we were looking for her death all the time. On Friday she revived up at one time, and looked up and said to defendant, who was by her bed, John, don't be frightened, they can't get the property from you, your title is good.

Quest. What did you understand her to mean by saying this to 40 defendant? [Excepted to.]

Ans. I can't say that I know what she meant; but I took it that she meant that they would try and get the property from him in a course of law, or try and scare him into a compromise.

Quest. Who did you understand her to mean by *they*? [Excepted to.]

Ans. I took it she meant her children. She said nothing about a sum of money being left for complainant; I never heard a word like it.

Quest. Do you think she meant to give him any thing else than what was in the will? [Excepted to.]

Ans. I don't think she did, for my part. I was there at the funeral. Complainant seemed to make some little fun of his portion; he made some laugh at his five dollars; he did not talk. I did not hear of any other sum from him on that day.

RICHARD HORNE.

William McMannes deposes and says—I recollect of being at Elizabeth Arnwine's house at one time when one John Lake was about to move there, as a tenant. I saw complainant there at that time; this was, as I think, about twenty-three or twenty-four years ago. Complainant talked very unbecoming to his mother at that time, as I think; he appeared to be in liquor. He called his mother Mary Magdalen; he went on some length of time. I told him
20 to stop that; he had talked enough to his mother. He then gave me a wink, and put his hand on my shoulder, and said, come here. I went with him to one corner of the room; and when there he said, you be still; hold on; I want to get some money of my mother. He said this was the way he had to take to get it of her. His mother talked back to him a little. I don't recollect that she said any thing particular to him at that time. He continued on with his fun till one or two o'clock, and they went into the room together. After they came out, she said, complainant is everlastingly teasing me for money. She said, complainant has spent more money for
30 me and my old man than one of the shares of the children would amount to. She said, if I were to give him all I had, it would do him no good, he would spend it. The character of complainant has always been called very rough ever since I have known him. By rough, I mean drinking, profane, carousing man.

Complainant came to me, and inquired of me if I was acquainted with his mother's business, and whether I knew that she was to give him so much; I told him I knew nothing about it. I was pretty well acquainted with Mrs. Arnwine; I have dealt a little with her, and have worked a little for her. She was considered a very smart
40 woman for business, for talents, and for managing a farm, and pretty well experienced in law too.

Quest. Do you think she would know how to place money in the hands of defendant in trust for the benefit of complainant according to law?

Ans. I think she would.

WILLIAM McMANNES.

[The complainant excepts to all the conversations of this witness with Elizabeth Arnwine and others in the absence of complainant.]

Margaret Dalrymple deposes and says—I knew Elizabeth Arnwine, and I know Margaret Snooks. Complainant was the father of Margaret Snooks. Margaret Snooks told me that she was to have five hundred dollars, and her father five hundred dollars. Margaret Snooks was expecting to get five hundred dollars of her grandmother's estate. I afterwards told Mrs. Arnwine what Margaret Snooks had told me, and she said she was a dirty lying trollop, she had never told her so. This was a spell before her death, a year or more.

And being cross-examined on the part of the complainant, says— That I told defendant of these conversations, but I can't say when I told him.

Quest. Was it two weeks ago that you told defendant about this?

Ans. It is a good deal longer than that, but how much longer I can't tell.

Quest. Do you think it as much as a month since?

Ans. I don't think any thing about it; I don't know how I come to tell him; it come in the way of talk. Defendant is the first person I mentioned it to since the death of Mrs. Arnwine. I don't know but I have mentioned it to others beside defendant. I can't recollect all I have told it to. I think I have told it to James Carrell's wife. I have told Margaret Snooks' words as near as I can. She told me what she was to have. She said she was to have five hundred dollars, and her father was to have five hundred dollars; I don't know that she made use of any other words. She told it before my husband and children, that were in the house. I told Mrs. Arnwine that I had heard Peggy Snooks say that she was to have five hundred dollars and her father five hundred dollars. This is all I remember of saying to her; I cannot tell how long ago this was. I have no means of telling that this took place a year before Mrs. Arnwine's death, but I think so. I don't think it was two years; I can't tell any exact time about it.

And being re-examined on the part of the defendant, says— When I told Mrs. Arnwine what Peggy Snooks had told me, she said she was a dirty lying trollop, for she had never told her so; she had never said so.

Her

MARGARET X DALRYMPLE.

mark.

Philip Rake deposeth and saith—I knew the Gordon farm on which complainant used to live. I remember of the administrator of John Arnwine selling this farm after the death of John Arnwine. I had a conversation with Elizabeth Arnwine, the mother of complainant, in 1836, in the summer previous to her death, after harvest, as she died in the winter succeeding. She said her children had used her so bad. She had raised John, and she had fixed her property, and John was to have it; I mean by John, the defendant. She said she had raised John, and he had always used her better

than her own children. She said John had used her so well, and she had helped Jacob so much, and there was no use in giving him any thing; that he would only spend it if he got it; she said she had fixed it that John was to have it. She said she would not give Jacob any more of her property. (By Jacob, I mean complainant.)

I had a conversation with complainant a year or two before her death; it was before this conversation with Elizabeth, his mother. He said he had understood his mother had given defendant the farm where she lived; he said it would do Blue John (defendant) no good if he got it; he said he did not care a great deal about it, for it would do him no good if he got it. He said nothing at that time about any claim he had against Elizabeth or defendant for \$2000, or that he was to have it in any way; he mentioned no other sum that he was to have; he said that whenever he wanted money his mother would help him to money.

In my conversation with Elizabeth, she said her children grudged defendant the farm and every thing he raised on it.

PHILIP RAKE,

James N. Reading, esquire, deposes and says—The witness being shown *Exhibit E.* for defendant, says, he is one of the creditors in the schedule annexed to said exhibit, individually and as the administrator of Samuel Reading, deceased. At the time of the application of complainant for the benefit of the insolvent laws, as set forth in said exhibit, he owed me, and he said he owed the estate of Samuel Reading, deceased. He has never paid either demand to me, nor to any one else, as I know. He requested me to give him a receipt for my debt, and also for the debt due to the estate of Samuel Reading, deceased. I gave him a receipt for the former, but refused to do so for the latter. He said that others had given him similar receipts without his paying any money, and he wanted me to do the same. He did not offer to pay me any money. Thinking that he had owed me a good while, and I could not collect it, I consented to give him a receipt. This was after the suit he brought against defendant in the Circuit Court, for the same matter now in controversy had been determined against him, and, as I think, before the commencement of this suit. I think it was a short time before this suit was brought. I think he said he was getting ready for defendant again. I was the attorney for the defendant in the suit, in the Circuit Court, spoken of. The costs were never paid to me by complainant, and I never issued execution for them; I asked him for them several times. I never received them from any one on account of the complainant.

Being shown *Exhibit H.* for defendant, (being caveat against the will of Elizabeth Arnwine) says—I was counsel in this cause for the executors (the defendant). I knew the executors named in said exhibit, viz: Samuel Buchanan, son-in-law of the testatrix, the husband of Margaret Buchanan, who is sister of complainant, Elisha Warford, a son-in-law of testatrix and brother-in-law of complainant, and Jacob Arnwine, the complainant.

There seemed at the time of the caveat to be a hostility between the caveators and defendant, such as is common with people who are at law. I thought the hostility against defendant seemed to extend to others of the connection of the caveators, to wit, Elizabeth Warford, Margaret Buchanan, and Margaret Snooks. I think Jacob Buchanan and some of John's (the defendant's) brothers seemed to take part against him. They seemed also all combined, with the caveators, together against defendant. This was at the time of the contest about the will. I have heard Mrs. Warford, Mrs. Buchanan, Elisha Warford, and Jacob Buchanan express 10 themselves adverse to defendant since this time.

My impression is that these persons entertain these feelings towards the defendant up to this time; I have this impression from conversations with them since the caveat. The last conversation I think I had with Elisha Warford and wife after the suit was commenced in the Circuit Court, as stated. I have no knowledge of there ever having been a reconciliation between them. At the time of the caveat, I have no recollection of ever having heard of complainant's claim of \$2000. He seemed very desirous to set aside the will. 20

I can't speak from any positive knowledge, but my impression is that the complainant knew that the caveat was decided against the caveators. I have no positive recollection of giving complainant information myself of the way in which the case had been decided, or hearing any one do it. My recollection is, that complainant and the other caveators were present in court when the case was argued and decided. I think there was no appeal of the case. I have no recollection of ever hearing of any appeal, or of a threat to appeal. I infer that complainant must have known all about the matter, from my belief that he was present at the trial, my know- 30 ledge of the man, knowing that he is an astute man, and would be likely to know all about it. As far as I know, complainant has lived in the neighborhood of the defendant since the death of his mother. I think Cornelius Lake died seven or eight years ago.

And being cross-examined on the part of the complainant, says— I considered that I should never make any further claim upon complainant for the debt he owed me, but leave him to do as he pleased, and gave him a receipt in full. I never issued an execution against complainant for the costs in the suit spoken of, because I considered him insolvent. I do not know that the costs could have been 40 collected of him at any time since. I can't remember the date of the trial of the will spoken of. Upon looking at the caveat, I find it was in the spring of 1837.

I don't recollect of hearing of the claim of complainant for the \$2000 till a short time before the suit brought by him in the Circuit Court. I heard of it some time in 1847.

After the will trial, I had a conversation with Margaret Buchanan on the subject of the will trial some years after. I think I talked with her once about it at her own house, and I talked with her at Flemington about it. I have no recollection who were present at 50

those conversations; very likely her son Jacob or some of the family, but I can't state that it was so. I can't state any language, but only the purport of the conversations. I may have had more conversations with her than these in reference to it, as the will trial was rather a notorious affair, and I may often have introduced it to her in a jesting way. It is perhaps about three or four years since my last conversation with her on this subject.

I don't know that I ever conversed with Mrs. Warford more than once since the will trial, and I don't know that we conversed
10 about the will trial. We talked about John, the defendant; it was some three or four years ago, in Flemington. We were alone, as I think. I cannot repeat the conversation, only its purport. It was unfriendly towards defendant. I can't remember of whom I first heard that complainant had this claim. What I heard was, that complainant pretended to claim two thousand dollars of defendant.

Defendant always denied that he owed complainant any thing, and that there was any foundation whatever for the claim. I was present when all the witnesses were examined on the will trial.

JAMES N. READING.

20 *Peter I. Case* deposes and says—I was present at a conversation at Sergeantsville, in which complainant, Smith Sutton, William Morris, and myself were present; this was in 1844, in March, between the first and the middle of the month. Complainant had wheat and corn in a wagon, four or five bags; part of the bags had corn and part wheat; three bushels of wheat, I should think, and five or six bushels of corn. It was Smith Sutton's team; Smith Sutton was with him. Complainant said he had got the wheat and corn of defendant. He was directing his discourse to William Morris, and he told Morris he was to do work for defendant; and Morris
30 asked him what kind of work, and the complainant replied, post and rail fence was one thing he was to do; and there was a young orchard defendant wanted to set out, and he had rather promised to help do that work.

There was something said about some trees that defendant was to give complainant to set out on his lot; that there would be an overplus of ten or a dozen trees more than he had room for, that he would make him a present of, if he would come and help with the fence and help set out the trees.

Quest. by defendant's counsel. Which was to pay for the work
40 of complainant for the defendant, the grain or the ten or twelve trees?

Ans. I expected, by the run of the discourse, the work was to pay for the grain. Grafted apple trees are worth about fifteen cents a tree, ungrafted apple trees, eight or nine cents a tree.

Morris asked complainant what he was to pay for the grain, and complainant said he was to do some work for defendant for the grain. This was pretty much all that passed respecting the grain.

Being shown *Exhibits A.* and *B.* for defendant, says that the pro-

perty described therein is the farm of 112 acres, known by the name of the Zebulon Stout or Gordon farm.

I have heard complainant speak about his not being left anything by his mother's will. I don't think I ever heard him complain about his not being left anything by her will. At this time he said nothing about the \$2000; he never mentioned the matter of the \$2000 to me at any time. I think I have heard him say frequently he was left nothing; his mother had willed him nothing. He said nothing about the \$2000 at the time of the conversation about the grain in Smith Sutton's wagon, as before stated. 10

I should rather think that Jacob Buchanan was not on friendly terms with defendant, by the language I have heard him use against him. I think him very unfriendly to defendant.

I know Margaret Snooks; she is said to be complainant's daughter.

And being cross-examined on the part of the complainant, says— I won't be positive what time in the day this conversation about the grain took place, but it strikes me it was in the afternoon. The grain was in an oldish light two horse wagon; I think it had no top on; it had two horses to it; one horse was a brown, the other I think was a sorrel. The brown I recollect distinctly; it was the horse Sutton told me he got of John Runk. I was here when complainant and Smith Sutton drove up; I was on the porch of the tavern here. They drove up to the door in the first place, or near the door; it began to rain or mist a little, and then they drove under the shed. Smith Sutton came into the house, and invited me to look at the horse he had got of Runk; I went out for this purpose, and then I heard the conversation, as stated. Smith Sutton and I went out together; complainant and Morris came on behind us, or went before us, I don't know which. After we got to the shed, then the conversation took place. Nothing more occurred, except that Smith Sutton asked my opinion of the brown horse he had got. The first thing I heard was Morris asking complainant where he got the grain; complainant said he got it of defendant. Morris then asked him what kind of grain he had; complainant said wheat and corn. Morris asked him what he paid for the wheat and corn. I don't recollect whether any particulars were stated. Complainant said, I am to do some work for defendant. Morris asked him what kind of work; complainant said he was to set some post and rail fence, and was to help him set out a young apple orchard. 40

Complainant then said, defendant is going to make me a present of a few trees, an overplus he would not have room for, ten or a dozen. This was pretty much all I can recollect.

I had a conversation with Jacob Buchanan about defendant this summer, in the road in front of where I live. He asked me my opinion about his trial, how it would go, &c. I told him I did not know what the result would be. He said that defendant was a mean kind of a man; said he did not think him an honest man. It is from this conversation that I infer that he is unfriendly to defendant. 50

Richard Bennet deposes and says—That I had a claim against complainant when he took the benefit of the insolvent laws; I think it was upon my execution that he made application for the benefit of the insolvent laws.

And being shown *Exhibit E.* for defendant (being insolvent papers)—I suppose my claim was in the neighborhood of three dollars; my judgment, debt, and costs was about this sum, as stated in the schedule. This debt has never been paid; I have never given him any receipt for it. Complainant came to me last fall, and
 10 wished me to give him a receipt. He said he had a suit in Chancery against defendant, and it was necessary to have these debts paid; he said that his lawyer had told him that these debts must be paid or settled, or it would have an effect upon his suit in court against defendant. He then pulled out a number of receipts that he said his creditors had given him, and said I was pretty much the last he had come to. He said when he got his money of defendant he would pay all these debts; said that he had not paid any of his creditors, but they had given their receipts, and he had promised to pay them when he got the money of defendant. He wished to
 20 do the same with me, but I refused.

And being cross-examined on the part of the complainant, says—He offered to pay me a part of the debt. I think he offered me one-third or half of the debt, I think one dollar and a half, and said if I did not take this, I could do without any thing. This was about a year after he took the benefit. My bill against him was a tavern bill. I have no recollection of his offering me any money at any other time.

RICHARD BENNET.

[It is admitted that Smith Sutton, before named, and William S.
 30 Sutton are the same person.]

William Sergeant deposes and says—Being shown *Exhibit D.* for defendant, says, he knows the handwriting of Cornelius Lake and John Lake, deceased; says that the body of this exhibit is in the handwriting of Cornelius Lake, deceased, and that Cornelius Lake and John Lake, whose names are subscribed thereto as witnesses, is their handwriting respectively.

I know the property where defendant lives, and have always known it; where Elizabeth Arnwine used to live. This property is worth near as much again now as it was at the time of
 40 her death. At her death it was worth four thousand or four thousand five hundred dollars. It has always been a good farm. In 1830, I should think it was worth from thirty-five to thirty-seven hundred dollars.

And being cross-examined on the part of the complainant, says—I think it is worth now eight thousand three hundred dollars. I should think this last price pretty well up for it.

WILLIAM SERGEANT.

EXHIBITS FOR DEFENDANT.

Deed from Samuel Tucker, sheriff of the county of Hunterdon, to John Opdyke, dated June 1st, 1767, and also a deed from John Opdyke to John Arnwine and Elizabeth Arnwine, dated 24th July, 1775, and marked *Exhibit I.* for defendant.

[It is admitted that John Opdyke, named in *Exhibit I.*, was the father of Elizabeth Arnwine.]

William Morris being again called on the part of the defendant, deposes and says—That in his former examination he had stated, on his cross-examination, that there was one horse to the wagon of 10 Smith Sutton at Sergeantsville at the time of the conversation in that cross-examination, alluded to by me, between complainant and myself. I can't recollect distinctly about it, whether there was one or two horses to the wagon.

WILLIAM MORRIS.

 DECREE.

This cause coming on to be heard at the regular term of the Court of Chancery, held at the State-house in the city of Trenton before the Chancellor, in the presence of George A. Allen, of counsel with complainant, and John H. Wakefield, of counsel with the 20 defendant, and the pleadings, depositions, exhibits, and proofs being read, and the arguments of the respective counsel being heard and considered, and the Chancellor having taken time to advise thereon—And now, on this third day of February, in the year of our Lord one thousand eight hundred and fifty-two, it appearing to the Chancellor that the complainant is not entitled to the relief sought and prayed for by him in his said bill of complaint,—It is ordered, adjudged, and decreed, that the complainant's said bill be, and the same is hereby dismissed, with costs.

O. S. HALSTED, C. 30

DATED February 3, 1852.

COURT OF ERRORS AND APPEALS.

JACOB ARNWINE, appellant,

and

JOHN A. CARRELL, appellee,

} On appeal.

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

The humble petition of Jacob Arnwine, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a final decree in the Court of Chancery, made by his Honor Oliver S. Halsted, lately Chancellor of this state, bearing date the third day of February, in the year of our Lord one thousand eight hundred and and fifty-two, wherein this petitioner was complainant, and the said John A. Carrell was defendant, in this, that the said final decree declares that the complainant, your petitioner, was not entitled to the relief sought and prayed for by his bill, and orders and decrees that the bill in said cause should be dismissed, with costs; whereas, upon the pleadings and evidence in said cause, the said decree ought to have been for your petitioner and for the relief prayed for by said bill.

And your petitioner appeals from said decree, upon the ground that the same is erroneous and contrary to law and equity. Your petitioner therefore prays that the said decree may be reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

20 DATED February, 1853.

