

STATE OF NEW-JERSEY,
COURT OF ERRORS & APPEALS

IN THE LAST RESORT IN ALL CAUSES AS HERETOFORE

PETER G. OBERT, WILLIAM SIMPSON & OTHERS,

APPELLANTS;

—AND—

THROCKMORTON OBERT,

APPELLEE.

ON BILL, &C., APPEAL FROM CHANCERY.

NEW-BRUNSWICK, N. J.:
PRINTED AT THE FREDONIAN OFFICE,
NO. 1 PATERSON BLOCK, COMMERCE SQUARE.

STATE OF NEW JERSEY

STATE OF NEW JERSEY

COURT OF ERRORS & APPEALS

THE COURT OF ERRORS & APPEALS

IN THE MATTER OF THE ESTATE OF

LETTER OF EXECUTION, WILLIAM SIMPSON & OTHERS

vs. THE ESTATE OF WILLIAM SIMPSON & OTHERS

THE ESTATE OF WILLIAM SIMPSON & OTHERS

vs. THE ESTATE OF WILLIAM SIMPSON & OTHERS

ON THE 20th DAY OF APRIL 1884

THE COURT OF ERRORS & APPEALS

has heard the arguments of the parties

and has considered the same

and has rendered its decision

STATE OF NEW-JERSEY,

COURT OF ERRORS & APPEALS,

IN THE LAST RESORT IN ALL CAUSES AS HERETOFORE

Peter G. Obert, William Simpson and others, <i>Appellants</i> , and Throckmorton Obert, <i>Appellee</i> .	} On Bill, &c., Appeal from Chancery.
--------------------------------------------------------------------------------------------------------------------	---------------------------------------------

To HIS EXCELLENCY, &c.,

Humbly complaining, sheweth unto to your Excellency your 10
Orator, Throckmorton Obert, of, &c., that one George Obert,
your Orator's Grandfather, late of the Township aforesaid, died
intestate about the month of March, in the year of our Lord one
thousand eight hundred and twenty, seized amongst other real
estate of a farm, situate in the Township, &c., and described
as follows, viz:—

And your Orator further showeth unto your Excellency
that at the time of the death of the said George Obert, he left
the following children, heirs-at-law, viz: Peter Obert, Paul
Obert, Nancy Obert, and George Obert, his children, also Nan- 20
cy, Jane, Susan, George, your Orator, Throckmorton Obert, the
children and heirs of John Obert, a son of the aforesaid George
Obert, who died intestate in the life-time of the said George,
leaving your Orator, his said brothers and sisters, his only child-
ren and heirs at-law. And your Orator further showeth unto
your Excellency that upon the death of the aforesaid George
Obert, Sr., the said farm, according to the laws of New-Jersey
then in force, descended to the aforesaid heirs at-law of the
said George Obert, deceased, in the following manner, viz:
one-fifth to the said Peter Obert, one-fifth to the said Paul 30
Obert, one-fifth to the said Nancy Obert, one-fifth to the said
George Obert, son of George, and one-fifth to your Orator, his
aforesaid brother and sisters, as the heirs at-law of their father,
John Obert, who was the son of the said George Obert.—
And your Orator further showeth unto your Excellency that after
the death of your Orator's grandfather, and the descent of the
said farm to his said heirs-at-law, your Orator's brother George
Obert died intestate, without leaving lawful issue or other heirs

than your Orator and his sisters, by reason whereof and of the
 40 premises hereinbefore stated, your Orator became entitled to
 the one equal undivided twentieth part of the said farm ; and
 being so entitled, he endeavored to have his share or portion
 set off to him, but on investigating the whole matter, he as-
 certained that Peter Obert, one of the sons of the aforesaid
 George Obert, deceased, had possessed himself of the whole
 of the said farm, and claimed to hold the same, adversely to the
 other heirs of the said George Obert, and finding, after repeat-
 ed efforts, that the said Peter Obert would not award to your
 Orator his portion or share of the said farm, your Orator brought
 50 an action of ejectment in the Supreme Court of this State, to
 recover the possession of his said share or interest in said farm,
 and one Mahlon Hammel, a tenant of said Peter Obert, was
 admitted a defendant in said suit ; and your Orator further
 sheweth unto your Excellency that on the trial of said action
 of ejectment, at a Circuit Court held in the County of Mid-
 dlesex, the said defendant set up by way of defence, a holding
 under the said Peter Obert, and also a deed for the said farm,
 and other premises, to him, the said Peter, from one David
 Smith and wife, purporting to have been made by said Smith
 60 and wife to said Peter, on the fifth day of June, eighteen
 hundred and twenty-two, for the consideration of five hundred
 dollars, and also a deed from the aforesaid Peter Obert, as Ad-
 ministrator, &c., of George Obert, deceased, to the said David
 Smith, for the same premises conveyed by said Smith and wife,
 to said Peter Obert, and purporting to bear date the fourth day
 of June, eighteen hundred and twenty-two, and to be in con-
 sideration of the sum of five hundred dollars, and to have been
 made in pursuance of a sale under an order of the Orphans'
 Court, of the County of Middlesex, to pay debts and expenses
 70 of settling the estate of said George Obert, deceased. And
 your Orator further sheweth unto your Excellency that upon
 the trial aforesaid, your Orator objected to the said deeds as
 illegal, fraudulent and void, and a verdict was ordered by the
 Court for the Plaintiff, subject to the decision of the Supreme
 Court, upon a case stated, which verdict and case was argued
 before the Supreme Court, and in the Term of May, eighteen
 hundred and forty, the said Court, in reference to said deeds
 set up by the Defendant, by way of title, decided that a fraud-
 ulent deed, &c., (*See 3 Harrison li., page 74*)
 80 Yet in consequence of some informality in the proceedings,
 the Court ordered a new trial, which took place at a Circuit
 Court, held in the County of Middlesex, in the Term of De-
 cember, eighteen hundred and forty-two, and after full investi-

gation, a verdict was rendered for the Plaintiff, and which was confirmed and final judgment rendered thereon by the Supreme Court, in the Term of February, eighteen hundred and forty-three, and a writ of possession issued thereon, by means of which your Orator was put into the legal possession of his said one undivided twentieth part of said farm.

And your orator further sheweth unto your Excellency that his sister Nancy intermarried with one Samuel Magie, and his sister Susan intermarried with one Stephen Verity, and his sister Jane intermarried with one Halsey Magie, which said Halsey Magie and wife, pending the said action of ejectment, sold and conveyed by deed to your Orator, for a valuable consideration, their share or interest, being the one-twentieth part of said farm. 90

And your Orator further sheweth unto your Excellency that whilst the said action of ejectment was pending, Nancy Obert, the aunt of your Orator, and daughter of the said George Obert, Senior, sold and conveyed to your Orator, for valuable consideration, her share or interest, being the one-fifth part of the said farm; and the said Paul Obert, as your Orator has been informed, and verily believes, sold and conveyed his share to the said Peter Obert. And your Orator further sheweth unto your Excellency that the said farm is really and truly owned in the following shares and proportions, viz: Peter Obert, eight-twentieths or two-fifth parts; George Obert, son of George, one-fifth, being four-twentieths; your Orator, Throckmorton Obert, one-fifth and two twentieths, being in all six-twentieths; Samuel Magie and Nancy, his wife, one-twentieth; and Stephen Verity and Susan, his wife, one-twentieth. And your Orator further sheweth unto your Excellency that one William Simpson claims, or did claim, as your Orator is informed, some portion of or interest in the said farm, through the said Peter Obert, but what that interest is, your Orator is unable to say, and leaves to the said William Simpson to make out by proof, to the satisfaction of this Honorable Court, in the mode that may be designated therefor, in case the same becomes necessary. 100 110 120

And your Orator further sheweth unto your Excellency that as well the said deed, from the said Peter Obert, Administrator, &c., to the said David Smith, and the deed from the said David Smith and wife, to the said Peter Obert, as the pretended sale of the said Peter Obert, as Administrator, as aforesaid, the order of the Orphans' Court of Middlesex County, for the sale of the real estate of George Obert, deceased, and the pretended amount of debts and credits filed with the Surrogate of

Middlesex County, are all illegal, fraudulent and void ; being,
 130 in fact, an illegal and fraudulent proceeding of the said Peter
 Obert, to transfer to himself the real estate of the said George
 Obert, deceased ; without any consideration therefor, and your
 Orator expressly charges that the said George Obert died pos-
 sessed of a sufficient personal estate to pay all his debts, and
 more too—and that the amount of debts filed by the said Peter
 Obert, was a fraudulent statement, made out by the said Peter
 Obert in order to procure an order for the sale of the said real
 estate—no such debts, in fact, existing against the estate of
 said George Obert ; and the sale was all planned and arranged
 140 by the said Peter Obert, for himself, the said David Smith be-
 ing an irresponsible person, procured and hired by the said Pe-
 ter Obert to bid off the property and convey the same to him.

And your Orator farther sheweth unto your Excellency that
 the Supreme Court having adjudged the said deeds, &c., of
 the said Smith and Obert to be fraudulent and void, and that
 no title passed thereby, and your Orator having been put into
 the legal possession of the one-twentieth part of the said farm,
 and shewn to the said Peter Obert that he had become by pur-
 chase the owner of five other twentieths of the said farm, your
 150 Orator well hoped that the said Peter Obert would have recog-
 nized your Orator's rights and interests, and permitted him
 peaceably to have entered into the full possession and enjoy-
 ment of the whole of his said six-twentieths of the said farm,
 and that he would amicably have agreed to make partition of the
 said farm, and to have permitted your Orator to have had di-
 vided off to him the whole of the said six-twentieths, or at
 least the said one-twentieth, which had been adjudged to your
 Orator. And your Orator further sheweth unto your Excel-
 lency that he has frequently applied to the said Peter Obert,
 160 and requested him to join and concur with your Orator in mak-
 ing a fair and just partition of the said premises between them,
 and the other part owners thereof, in order that their several
 shares might be held and enjoyed by them in severalty, and
 your Orator well hoped that the said Peter Obert would have
 complied with such reasonable request, as in justice and equity
 he ought to have done ; but your Orator further sheweth unto
 your Excellency, and expressly charges that the said Peter
 Obert has utterly refused to make partition of the said farm,
 but instead thereof, has converted the whole premises to his
 170 own use, and taken the rents and proceeds thereof, and has been,
 and is now, either by himself or in connection with the said
 William Simpson, engaged in felling the wood and timber on
 the said farm, and carting the same off and disposing thereof

to his own use, and committing great waste and other irreparable injury and mischief to the said premises, although your Orator has forbidden his so doing, and endeavored to prevent him; and now so it is, may it please your Excellency, that the said Peter Obert, combining and confederating with the said William Simpson, George Obert, Samuel Magie and Nancy, his wife, and Stephen Verity and Susan, his wife, and other 180 persons as yet unknown to your Orator, but whose names when discovered your Orator prays may be made parties, if necessary, to this his bill of complaint, with apt words, how to injure and aggrieve your Orator and the other part owners of said farm, absolutely refuse to make partition or to permit your Orator to share the proceeds of the said farm, or to desist from wasting the same, pretending that your Orator has no title for any portion of said farm, that he, the said Peter Obert, is the owner of the whole farm, by virtue of the aforesaid sale and deeds, the contrary of which your Orator expressly charges, all which 190 actions, pretences and doings of the said Peter Obert, are contrary to equity and good conscience, and tends to the injury of your Orator, and to defeat the enjoyment of his just rights. In tender consideration whereof, and forasmuch as your Orator is without complete and ample remedy in the courts of law, and can only have adequate relief in a court of equity, where matters of this kind are properly cognizable and relievable—to the end, therefore, that the said Peter Obert, William Simpson, George Obert, Samuel Magie and Nancy, his wife, Stephen Verity and Susan his wife, and their confederates, when 200 discovered, may upon their several and respective corporal oaths, to the best and utmost of their several respective knowledge, remembrance, information and belief; full, true, direct and perfect answers make to all and singular, the matters aforesaid, and that as fully and as particularly as if the same were herein repeated, and they and every of them distinctly interrogated thereto, and more especially that the said confederates may, in manner aforesaid, answer whether the said amount of debts, filed with the Orphans' Court of Middlesex County, was not a false and fraudulent exposition, made for the purpose of procuring the 210 sale of the said farm for the benefit of the said Peter Obert, and whether the said David Smith was not procured and hired for the purpose of bidding off said farm and making a deed therefor, and whether any and what consideration was paid for said farm, either by said Smith or said Obert, and also what has been the annual proceeds and value of the said farm since the said Peter Obert has converted the same to his own use, and what quantity of wood and timber has been cut on said

premises, and what has been carted off, and the value thereof,
 220 and that they may set forth a true and specific account of the
 said proceeds, and quantity and value of said wood and tim-
 ber, and that they may be restrained by a writ of injunction,
 issued out of, and under the seal of this Court, from felling
 and carting off the wood and timber from said farm and from
 committing any other waste in the premises. And that a com-
 mission of partition may be issued out of and under the seal
 of this Honorable Court, and directed to certain commissioners
 therein named, to divide and set off the said farm into the sev-
 eral shares and proportions herein before specified, that is to
 230 say, eight-tenths thereof to the said Peter Obert or the said
 William Simpson, if it shall appear by proof, to the satisfac-
 tion of this Court, that he is the owner thereof; four-twentieths
 to the said George Obert; six-twentieths to your Orator; one-
 twentieth to the said Samuel Magie and Nancy, his wife; and
 one-twentieth to the said Stephen Verity and Susan, his wife;
 and that your Orator may hold and enjoy his said share of the
 said premises in severalty, and that the title of your Orator,
 having been settled at law, may be confirmed and quieted by
 order of this Court, and all proper and necessary conveyances
 240 and assurances may be executed for carrying such partition
 into effect, and that in case your Excellency may deem it nec-
 essary to stay the general partition of the said premises until
 the titles thereto may be settled, as between said parties and
 claimants, then that the share and portion of your Orator, or
 at least the one-twentieth part of the premises embraced and
 settled in the before stated action of ejectment, may be parti-
 tioned and divided off to your Orator, as by the nature of the
 premises it may be, without waiting for the settlement of all
 or any of the questions that may arise between the other co-
 250 tenants, and may your Orator have such other and further re-
 lief in the premises as to your Excellency shall seem meet and
 agreeable to equity and good conscience.

*On the 11th of July, 1844, two of the Defendants filed the fol-
 lowing answers, viz :*

The separate answer of Peter G. Obert to the Bill of Com-
 plaint of Throckmorton Obert, the Complainant, against the
 said Peter G. Obert, William Simpson, George Obert, Samuel
 Magie and Nancy, his wife, and Stephen Verity and Susan,
 his wife, Defendants.

This Defendant now, and at all times hereafter, saving and reserving to himself all and all manner of benefit of exception to the manifold and manifest uncertainties, errors and imperfections in the Complainant's said Bill of Complaint contained, for answer thereunto, or to so much and such parts thereof, as he is advised by his counsel, it is in any way material for him to make answer unto, answers and says, that George Obert, the father of this Defendant, lived for many years in the Township of North-Brunswick, in the County of Middlesex, in this State, upon a farm there situate, and that he died there in the month of March, in the year of our Lord, eighteen hundred and twenty-one, and not in the year eighteen hundred and twenty, as in the Bill of Complaint is falsely and untruly stated. The said George Obert at the time of his death had attained to the very advanced age of about ninety-three years, as this Defendant has been informed, understood, and as he verily believes. 260

And this Defendant, in further answering, says, that the said George Obert in the former part of his life, that is to say when he was a little past forty years of age, as this Defendant has been informed and believes, intermarried with one Deborah Stillwell, and that she, the said Deborah, bore to him, during their cohabitation, the following children, that is to say, 1st, this Defendant, the said Peter G. Obert, who is now past seventy-three years of age; 2d, Mary Obert, who intermarried with one Joseph Marsh; she and her said husband died in the life-time of the said George, and there is no issue of the said marriage surviving; 3d, John Obert, the father of the Complainant; 4th, Nancy Obert, who is now about the age of sixty-five years; 5th, and Paul Obert, who survived his father, but is now dead. He died about thirteen years ago, aged fifty years or thereabouts. 280

And this Defendant further says that his aforesaid mother, the said Deborah, departed this life in the year of our Lord, eighteen hundred and seventeen or eighteen, leaving the said George Obert a widower, very old and infirm. He was then about ninety years of age. He soon after received into his house, as a housekeeper, the wife of one Tom Brewer, and the whole of her family very soon accompanied her, a family of the meanest and most infamous character. And this Defendant further says that he has great reason to believe, and does verily believe, and hopes and expects to be able to prove to the satisfaction of this Honorable Court, that a wicked combination and conspiracy was very soon formed between the said wife of the said Tom Brewer and one Samnel Whitehead, to induce and seduce his said old, infirm and feeble father to marry Char- 290

lotte, the infant daughter of the wife of the said Tom Brewer, then under the age of fifteen years. The iniquitous and selfish conspiracy prevailed, and on the evening of the twenty-fourth day of December, in the year of our Lord eighteen hundred and nineteen, old George Obert, the father of this Defendant, was
 310 married to Charlotte Brewer, a girl of very little more than fourteen years of age.

The absurd and cruel ceremony was passed through, and old George Obert, an old man in his dotage, feeble, infirm, and almost childish, having been made intoxicated for the occasion, was held up by the assistance of the conspirators, who were present to witness the shameful transaction.

This Defendant has heard, and believes it to be true, that one Samuel Willet, who then most unworthily held the commission of a Justice of the Peace, performed the ceremony ;
 320 others who were applied to, indignantly refused, and reproached the messengers for the iniquitous attempt.

This Defendant has heard, and believes it to be true, that some short time thereafter the said Charlotte was delivered of a son, who in the Bill of Complaint is called George Obert, and is one of the persons named as defendants therein. But he by no means admits that old George Obert was the father of that son ; on the contrary, he has many and powerful reasons to believe, and he does verily believe that the said Samuel Whitehead was and is the father of that child. This defend-
 330 ant is persuaded from a variety of circumstances, that the said Samuel Whitehead had illicit and criminal carnal connection with the said Charlotte, in the life-time of the said George Obert, and that he got her with child, either before the afore-said ceremony of marriage or shortly after it.

This defendant had a conversation with the said Samuel Whitehead, a short time after the death of his said father, and fully and entirely believing, as he then did believe, and as he now believes, that the said child, called George Obert, was and is the child of him, the said Samuel Whitehead, and that he
 340 was not and is not the child and son of the said George Obert, deceased, he, this defendant, in plain terms taxed the said Whitehead with the paternity of the said child, and the said Samuel Whitehead replied, " It is no matter, he was caught in your father's net, and he shall have a share of the estate, I am determined he shall." He afterward added, " What if I did get her with child ? the old man could do nothing, and I took pity on the woman. I will make a man of the boy, I will make a lawyer of him." This Defendant reproached the said Samuel with such flagrantly immoral and fraudulent conduct,
 350 but he, the said Samuel, scoffed at all such remarks.

Some short time after the death of the said George Obert, the said Samuel Whitehead came with a wagon and horses to the house where the said George Obert had lived and died, and took off the said Charlotte and her said child to the City of New-Brunswick, and boarded her, as this defendant has heard and believes, at the house of one widow Machet. She resided there some months, and he then removed her to his own residence and farm in the County of Middlesex, and into the house inhabited by his own wife, and she has continued to live there with the said Samuel ever since, and she has since borne in his house, seven other bastard children; of these, universal fame ascribes the paternity to the said Samuel Whitehead. The said Samuel Whitehead told this defendant he was not afraid to own these children. "They are mine," he said, and this defendant has heard, understood, and believes that the said Samuel supports them all in his own house. This defendant believes that the said Samuel Whitehead has sent the oldest one, the said George, out to boarding, to the intent that he may be educated as a lawyer. This defendant has recently heard, but knows nothing of the truth of the matter, that the said Charlotte has lately been delivered of another child.

This defendant could add many other reasons for his belief that the said child, called George Obert, is not the son and child of the said George Obert, deceased, but he forbears. It is with extreme reluctance and pain that he brings this subject forward for the consideration of this Honorable Court.

And this defendant in further answering, says, that true it is, and therefore he admits it, that he took out letters of Administration of the goods and chattels, rights and credits of the said George Obert, his aforesaid father, from John Heard, Esq., then being Surrogate of the County of Middlesex, and that the said letters bear date on the twenty-third day of March, in the year of our Lord one thousand eight hundred and twenty-one, and the said letters he brings here into Court for inspection and examination.

This defendant had in early life removed from the neighborhood of his said father to Flemington, in the County of Hunterdon, and resided there some years. From thence he removed to the City of New-York, where he was engaged in an extensive and profitable business, for a considerable time. But during the war he encountered many and severe losses; nevertheless he continued to reside in the City of New-York till about the time of his said father's death, so that he was at that time in a great measure a stranger in the neighborhood of his birth, and where his said father lived and died.

Hearing of the death of his father, he felt it incumbent upon him to return to New-Jersey and look into and give some attention to the affairs of the estate. He did, therefore, return, and learning that his said father had died intestate, he took out letters of Administration as above in this answer is set forth.

400 And this defendant, in further answering, says that he very soon found that the personal estate of his deceased father was very small and inconsiderable, and that it had been levied upon and was liable and subject to sundry executions in the hands of various constables, to its entire value and amount, or very nearly so. It had, indeed, been wasted and destroyed to almost nothing.

410 This defendant, as Administrator aforesaid, made a just and true inventory thereof, in the manner prescribed by law, and it was justly and fairly appraised, so far as he knows and as he verily believes, and the inventory and appraisement were duly filed in the office of the Surrogate of the County of Middlesex immediately thereafter.

And this defendant in further answering, says, that he found on examination that his said father was largely indebted unto divers and various persons in various and large sums of money, and that in order to pay off and satisfy the said debts it would be necessary to make sale of the whole of his real estate, or at all events, of much the greater part of it, and for this purpose
420 this defendant caused to be made out a true and perfect list of the said debts due from the said George Obert at the time of his death, so far as he could then discover the same, together, also, with a true and faithful account of the personal assets of the said estate, so far as they had come to his hands or to the hands of any other person, to his use or to his knowledge, to be presented to the Judges of the Orphans' Court at New-Brunswick, in and for the County of Middlesex, in the Term of June, in the year of our Lord, one thousand eight hundred and twenty-one, by which it did manifestly appear, and so the truth
430 is, that the personal estate of the said George Obert was insufficient to pay his debts, and this defendant did, then and there, pray the aid, counsel and advice of the said Court in the premises, according to the directions of the statute in such case made and provided, and such proceedings were therein had, that at an Orphans' Court held at New-Brunswick, in and for the County of Middlesex, in the term of March, in the year of our Lord, eighteen hundred and twenty-two, it was ordered, adjudged and decreed by the said Court, that the said Peter G. Obert, Administrator as aforesaid, should make sale of so much

of the real estate of the said George Obert, deceased, as might 440
be necessary for the payment of the debts and expenses of the
said decedent.

And this defendant doth further answer and say that he did
make sale of all the real estate of the said George Obert, in the
County of Middlesex, it being necessary to sell the whole there-
of for the payment of the debts of the said decedent ; and that
he did sell the same after having advertised, agreeably to the
statute, *bona fide*, and for the best and most price that he
could obtain for the same, and that the said sales were without
any fraud, covin or concealment, and that in the term of June, 450
in the year of our Lord, eighteen hundred and twenty-two, he
made full and true report of the said sales, to the Judges of
the Orphans' Court at New-Brunswick, in and for the County
of Middlesex, for their approbation.

And this defendant further, on his oath, answers and says
that on the third day of June, in the year of our Lord, eight-
teen hundred and twenty-two, he did sell the said farm of his said
father, being part of the premises mentioned and set forth in the
complainant's Bill of Complaint, at public vendue and out-cry,
to one David Smith, for the sum and price of five hundred 460
dollars, having first publicly advertised the same according to
the directions of the statute ; that the same premises were sold
to the said David, he being the highest bidder therefor, on the
alone and sole account of him, the said David, and not upon
any secret, or other contract or agreement, that the said David
should buy in the same on the account of or for this defend-
ant. This defendant took great and unusual pains to induce
persons to attend and bid, but bidders were very reluctant. It
was plain that they anticipated that the purchaser would have
much trouble, and probably be put to much expense and an-470
noyance from the low and greedy family with which this defend-
ant's father had unhappily become connected, as above men-
tioned. And they had reason to suspect and believe the vicious
connexion of the said Samuel Whitehead with the said Char-
lotte—and they seemed to take it for granted, from his flagi-
tious character and conduct, and from his criminal and adulte-
rous connexion with her, that the possessor of the said farm
would have a most undesirable situation.

The said farm, at the vendue aforesaid, stood for a long time
at the bid of James Dunham, Esq., for the sum of three hun-480
dred dollars, and but for the unusual exertions of this defend-
ant, it would have been sold at that price. He took very ex-
traordinary pains to induce those who attended to bid. He
urged David Smith among others to buy, representing to him

and to them, that the property was worth more than that sum of money.

This defendant urgently pressed the said David Smith and others who were there present, to buy the said farm, and finally, when all other inducements seemed to fail, this defendant told
 490 the said David Smith that he need not run any risk, and that if he, the said David Smith, should purchase the farm at any price short of eight hundred dollars, and after the purchase should be tired of his bargain, and should desire to get clear of it, he, this defendant, would take it off his hands.— And this defendant further sayeth that the said farm at the said public vendue and out-cry, after all others had ceased to bid, was struck off to him, the said David Smith, for the aforesaid sum of five hundred dollars; no person being willing to bid more, notwithstanding the earnest solicitations and repeated
 500 endeavors of this defendant to induce them to bid more. And this defendant further sayeth that on the fourth day of the same month of June, he did, by deed, convey the said farm, in fee simple, to the said David Smith, and to his, the said David Smith's use, and not upon any secret, or other trust or confidence, that he, the said David Smith, should hold it for this defendant, but that the said David Smith bought it *bona fide*, and with just and honest lawful authority, power and right to retain, keep and hold it for his own use.

It is true that this defendant held himself bound, as a man
 510 of honor and integrity, and as one who was scrupulous of his word, to take it off the hands of the said David, if he, the said David should desire it so to be done:

And this defendant further answers and says that the said David Smith did repent of his bargain, and did apprehend great trouble, vexation and annoyance from the expected interference and claims of the said Charlotte, and the very low and mean family from which she had sprung, and from the vicious and flagitious character and conduct of the said Samuel Whitehead, connected with her as above mentioned, and he, the said
 520 David Smith, did propose to this defendant to convey the same premises to him, this defendant, for the same price and consideration. But this defendant, on his oath, absolutely and most peremptorily denies that the said David Smith was under any obligation, moral, fiduciary, legal or secret, or otherwise, to convey the said premises to him. And this defendant further sayeth, that the said David Smith on the fifth day of June aforesaid, by deed bearing date on that day, did convey the same premises to this defendant in fee. And this defendant submits it to this Honorable Court, that in this there is nothing repugnant

to law or equity, and that it is an abuse of all language, and a 530 gross perversion of all the principles and rules of law and truth, and right and justice to stigmatize such conduct with the epithets, fraudulent or deceitful.

And this defendant in further answering, says that it is not true, as charged in the Bill of Complaint, that the list of debts against the said George Obert, filed in the Orphans' Court aforesaid, by this defendant, was or is a fraudulent statement. On the contrary, many of them were debts due from the said George Obert within the personal knowledge of this defendant, and were justly and truly due from the said George at the time 540 of his death. And this defendant is able even now, at this late day, and after the expiration of more than twenty years, to prove, incontestibly, much the greater part of them. The vouchers for many of them have been lost or destroyed by time and accident. The whole account of the debts was audited and adjusted, and final decree made and passed thereon by the Orphans' Court aforesaid, in the term of June, in the year of our Lord one thousand eight hundred and twenty-five.

This defendant has fortunately, or rather providentially, preserved from the ravages of time and accident, the most im- 550 portant of these vouchers, which shew the indebtedness of his said father, that is to say

1. A Bond and Mortgage from the said George Obert, to John Burrows, of New-York, to secure the payment of one thousand dollars, with interest, from the sixth day of April, eighteen hundred and fifteen.

2. Also a note of hand, from the said George, to this defendant, dated New-York, December the tenth, eighteen hundred and ten, for the payment, six months after date, of the sum of two hundred and ten dollars, with interest; on which 560 said note there is endorsed a credit on the tenth of December, eighteen hundred and eleven, for sundry articles of merchandise returned, amounting to the sum of one hundred and eighty-seven dollars and fifty cents.

3. Also, a note of hand from the same George Obert to this defendant, for the payment of the sum of five hundred dollars to this defendant, ninety days after the date of said note, and bearing date May the twenty-fifth, eighteen hundred and twelve.

4. Also, one other note of hand from the said George Obert to this defendant, bearing date the twenty-third day of Sep- 570 tember, eighteen hundred and nineteen, for the payment, twelve months after date, of the sum of two hundred and twenty-three dollars, it being the balance of interest then due and in arrear upon the note of hand just above mentioned.

And this defendant further on his oath, sayeth, that the several amounts, respectively on the three notes of hand above mentioned, together with the interest as above said, were actually and *bona fide* due and owing from the said George Obert at the time of his death, to him, this defendant, and that no
 580 part of the same had been paid, and that the said George Obert was entitled to no other credit thereon than as is above in this answer set forth. And he now offers the notes and evidences to the inspection of this Honorable Court, or to such of the officers thereof as the Court shall for that purpose appoint.

And this defendant further sayeth, that he was well aware and knew of the existence of the said Bond and Mortgage from the said George Obert to the said John Burrows, for the sum of one thousand dollars above mentioned, and that the said sum of one thousand dollars mentioned in the said Bond, was, to
 590 the knowledge of this defendant, actually and truly borrowed from the wife of the said John Burrows, and that the money was taken, as this defendant then understood and as he now believes, to pay for a tavern house and lot at Cheesequakes, which his said father had recently purchased, or was about to purchase. And this defendant knowing that the said debt so as aforesaid mentioned and set forth in the said Bond and Mortgage, was really and truly due, did on the tenth day of October, in the year of our Lord eighteen hundred and twenty-one, as Administrator of the said George Obert, pay off and
 600 satisfy the said Bond, out of his own proper funds; and this defendant now tenders the said Bond and Mortgage, together with the receipt of the said John Burrows endorsed thereon, to the inspection of this Honorable Court, or such of the officers thereof as the Court shall for that purpose appoint.

This defendant is not able now to produce the residue of the receipts and vouchers for the residue of the credits claimed by him. They were all delivered to John Heard, Esq., the Surrogate, for the purpose of auditing and stating, before the Orphans' Court aforesaid, the account of this defendant as Ad-
 610 ministrator, as aforesaid; and they were all exhibited to the Judges of the said Court, and the account sanctioned and approved by the said Court. Very few, if any other than those in this answer above set forth, were ever returned to this defendant, and he knows not what has become of them. This defendant esteems it a merciful interposition of Divine Providence in his protection, that so many have been preserved.

And this defendant, in further answering, says that at the time when he took out the letters of Administration upon the estate of his said father, and for some considerable time there-

after, he did really and truly suppose and believe that his said 620 father died seized and possessed of all the real estate mentioned and set forth in the complainant's Bill of Complaint.

Nearly fifty years ago, this defendant removed to Flemington, and from thence, after some years residence, to the city of New-York, as above set forth, and when after the death of the said George, he examined the title deeds of the real estate, to which, with the lines and boundaries he was much a stranger, he found the old deeds and titles in great disorder. The real estate of the said George Obert, was held under divers and various East-Jersey surveys, and in some instances, by divers and 630 various purchases from sundry and divers persons, having title, or claiming title, through certain proprietors of the eastern division of New-Jersey. None of these titles had been recorded in the Clerk's office of the County of Middlesex, so far as this defendant has ever discovered; and several of them had been partially destroyed by accident, carelessness, or lapse of time. They were a confused mass. As this defendant found them, so he has carefully preserved them, and now tenders them to the inspection of this Honorable Court, or to such of the officers thereof as the Court shall appoint for that purpose. 640

A very small portion of the lands were enclosed by fence of any kind or sort, and the whole premises were in detached pieces, some of them very poor and scarcely worth enclosing; the wood having been cut off and wasted, and the land in general not being arable, and very little remaining but the barren, scrubby pine and running oaks.

Some considerable time after this defendant had made sale of the real estate of his father, as aforesaid, and had afterwards purchased the same premises from the said David Smith, as has been set forth above in this answer, he had occasion to borrow 650 money, and for that purpose applied to Ann Van Beuren, and did actually borrow of the said Ann a sum of money to meet his then present wants; and for the purpose of securing to the said Ann the repayment of the said borrowed money, with interest, this defendant executed to the said Ann a bond for the payment of the same on a day now past, with lawful interest; and also further to secure the payment aforesaid, he did make, execute and deliver, to the said Ann Van Beuren, a mortgage on the same premises, describing them as in the aforesaid deed of conveyance, to the said David Smith. 660 most immediately thereafter, David Freeman, of the city of New-Brunswick, complained to this defendant, that he, this defendant, had included in the same mortgage to Ann Van Beuren, as aforesaid, eight acres and four-tenths of an acre,

belonging to him, the said David Freeman, and to which land he, the said David Freeman, had the good right and lawful title, and which said eight acres and four-tenths of an acre were not of the real estate of the said George Obert, deceased.—

And this defendant further sayeth, that the said eight acres
670 and four-tenths of an acre, so claimed by the said David Freeman, were, and constituted part of the premises contained in the said conveyance from this defendant to the said David Smith, and that they are part of the premises mentioned and set forth in the complainant's Bill of Complaint, and therein represented as part and parcel of the real estate of the said George Obert, deceased.

And in like manner, Ferdinand S. Van Arsdalen complained that this defendant had included in the said mortgage, to the said Ann Van Beuren aforesaid, seventeen acres and a half of
680 land, belonging to him, the said Ferdinand S. Van Arsdalen, and to which he, the said Ferdinand S. Van Arsdalen, then had good right and lawful title, and which said seventeen acres and one-half of an acre, were not of the real estate of the said George Obert, deceased. And this defendant further sayeth, upon his oath, that the said seventeen acres and one-half of an acre, so claimed as aforesaid, by the said Ferdinand S. Van Arsdalen, were, and constituted part of the premises contained in the said conveyance from this defendant to the said David Smith, and that they are part of the premises mentioned and set forth in
690 the complainant's Bill of Complaint, and therein represented and charged as part and parcel of the real estate of the said George Obert, deceased.

And in like manner, Henry Obert, the brother of the said George and the uncle of this defendant, complained that he, this defendant, had included in the said mortgage to the said Ann Van Beuren, thirty-five acres and twenty six-hundredths of an acre of land belonging to him, the said Henry Obert, and to which
700 land he, the said Henry Obert, then had good right and lawful title, and which said thirty-five acres and twenty six-hundredths of an acre, were not of the real estate of the said George Obert, deceased.

And this defendant further, on his oath, sayeth, that the said thirty-five acres of land and twenty six-hundredths of an acre, so claimed as aforesaid, by the said Henry Obert, were, and constituted a part of the premises contained in the said conveyance from this defendant to the said David Smith, and that they are part of the premises mentioned and set forth in the complainant's Bill of Complaint, and therein represented
710 and charged as being part and parcel of the real estate of the said George Obert, deceased.

And in like manner, the agent and representative of the heirs or devisees of Robinson Thomas, late of the County of Essex, deceased, complained that this defendant had included in the said mortgage, fourteen acres of land, belonging to the estate of the said Robinson Thomas, deceased, and to which fourteen acres of land the heirs or devisees of the said Robinson Thomas, then had good right and lawful title, and which said fourteen acres of land were not of the real estate of the said George Obert, deceased.

And this defendant, further on his oath sayeth, that the said fourteen acres of land so claimed as aforesaid, on the part and behalf of the heirs or devisees of the said Robinson Thomas, deceased, were, and did constitute a part of the premises contained in the said conveyance from this defendant to the said David Smith, and that they are part of the premises mentioned and set forth in the complainant's Bill of Complaint, and therein represented and charged as being part and parcel of the real estate of the said George Obert, deceased. And thereupon a very careful examination and survey was made, from which it did manifestly appear, and so the truth is, that the aforesaid eight acres and four-tenths of an acre, so claimed as aforesaid, by the said David Freeman, did really and truly belong to the said David Freeman ; and that the said George Obert, the father of this defendant, had, in his life-time, by deed, and for a valuable consideration, conveyed to the said David Freeman, in fee, the aforesaid eight acres of land and four-tenths of an acre. And that the aforesaid seventeen acres and one-half of an acre, so claimed as aforesaid, by the said Ferdinand S. Van Arsdalen, did really and truly belong to the said Ferdinand S. Van Arsdalen, in fee, and that they had never belonged to the said George Obert, and that they never were, or did constitute any part of his real estate. And that the said thirty-five acres and twenty six-hundredths of an acre, so as aforesaid claimed by the said Henry Obert, did really and truly belong to the said Henry Obert, in fee, and that they never had belonged to the said George Obert, and that they never were, or in truth and in fact, did constitute any part of his real estate ; and that the said fourteen acres of land, so claimed as aforesaid, on the part and behalf of the estate of the said Robinson Thomas, did really and truly belong to the estate of the said Robinson Thomas, in fee, and that they never had belonged to the said George Obert, and that they never were nor in truth and in fact did at any time constitute a part of his real estate.

This defendant was greatly embarrassed to find that he had

innocently and ignorantly mortgaged the lands of other persons, and it caused him great and serious distress ; he therefore commenced a negotiation with each of the parties aforesaid, that is to say, the said David Freeman, the said Ferdinand S. 760 Van Arsdalen, the said Henry Obert, and the heirs, devisees or other representatives of the said Robinson Thomas, for the purpose of purchasing from them respectively, the said tracts of land, so as aforesaid shewn to belong to them respectively.

And this defendant further sayeth, that the said negotiation, so far forth as respects the said David Freeman, the said Ferdinand S. Van Arsdalen, and the said Henry Obert, terminated successfully, so that the said David Freeman and Letty, his wife, by deed bearing date the tenth day of May, in the year of our Lord eighteen hundred and twenty-five, in consideration of the sum of forty-five dollars, in hand paid to them by 770 this defendant, did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto this defendant, in fee simple, all that certain lot of land, situate, lying and being in the Township of North Brunswick, County of Middlesex and State of New-Jersey, at the upper end of a certain bog meadow formerly belonging to George Van Arsdalen and Cornelius Dehart, and begins at a pine tree marked and blazed, thence running south fifty-two degrees and twenty-seven minutes, west twelve chains to another pine, blazed, thence south forty degrees, east seven 780 chains to a stake, thence north fifty-two degrees and twenty-seven minutes, east twelve chains to a stake, thence north forty degrees, west seven chains to the beginning ; containing eight acres and four-tenths of an acre ; which said lot was conveyed to said Freeman, by George Obert, by deed recorded in D. 3, of Middlesex deeds, fol 493, and being a part and parcel of the premises mentioned and set forth in the complainant's Bill of Complaint, together with the hereditaments and appurtenances to the same belonging or in any wise appertaining.

And also that the said Ferdinand S. Van Arsdalen, by deed of indenture made on the fifth day of December in the year of our Lord one thousand eight hundred and twenty-nine, between the said Ferdinand S. Van Arsdalen, of the County of Middlesex and State of New-Jersey of the first part, and this defendant, by the name of Peter G. Obert, of the second part, for and in consideration of the sum of fifty dollars to him, the said party of the first part, well and truly paid, the receipt whereof was thereby acknowledged, did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto him the said Peter G. 800 Obert, in fee simple, all that certain tract or lot of land situate

in the Township of North Brunswick in the County of Middlesex and State of New-Jersey, beginning at a crotched pine marked on four sides, and being a corner of land that George Van Arsdalen sold to George Obert ; thence running south sixty-four degrees and thirty minutes ; east, nineteen chains and eighty links along said George Obert's line to his corner, thence north, four degrees ; west, twenty chains and twenty links to a corner of a lot of land said George Van Arsdalen sold to Aaron Hassert and David Freeman ; thence along their line, south fifty-two degrees and fifty-one minutes ; west, 810 twenty chains and twenty links, to the place of beginning ; containing seventeen acres and a half, more or less, which said lot was conveyed to the said Ferdinand S. Van Arsdalen by Cornelius Bordine, by deed dated October the fifth, eighteen hundred and twenty-nine, and also is part and parcel of the premises mentioned and set forth in the complainant's Bill of Complaint, together with the hereditaments and appurtenances to the same belonging, or in anywise appertaining.

And also that the said Henry Obert, by Andrew Snowhill, his attorney, thereto lawfully appointed and authorized, by deed 820 bearing date on the twenty-sixth day of April, in the year of our Lord eighteen hundred and thirty, did sell and convey, in fee simple, unto him, this defendant, for and in consideration of the sum of one hundred and sixteen dollars, in hand well and truly paid, the receipt whereof was thereby acknowledged, all that certain tract of land containing thirty-five acres and twenty six-hundredths of an acre, and is recorded in the Proprietor's office, at Perth Amboy, in book S. 9, page 136, and which said tract of land is situate in the Township of North Brunswick, in the County of Middlesex, and State of New-Jersey 830 aforesaid, and is also a part of the premises mentioned and set forth in the complainant's Bill of Complaint. Beginning at two pepperidge trees, marked on four sides with a blaze and notches above and below, being the beginning of a tract of land containing one hundred and five acres returned to the heirs or assigns of Hugh Hartshorne, at the request of Obadiah Higby, on the sixth day of August, seventeen hundred and sixty, and recorded in book S. 4, page 288 ; thence north, eighty-five degrees and twelve minutes ; east, five chains and forty-eight links ; thence south, five degrees and twelve min- 840 utes ; west, thirty chains along Dockara ; thence south, sixty-four degrees and fifteen minutes ; west, twenty-eight chains and seventy links ; thence north, sixty-eight degrees and thirty minutes ; east, twenty-four chains and eighty links ; thence north, one degree and thirty minutes ; west, eight chains to

the beginning ; containing thirty-five acres and twenty-six hundredths of an acre, as is above set forth.

And this defendant, in further answering, says that he has not as yet been able to obtain a deed of conveyance from the 850 heirs or devisees, or other representatives of Robinson Thomas, but that he did hold the lands so claimed on the part of the estate of the said Robinson Thomas, by a verbal contract with George C. Thomas, the brother of the said Robinson, and that the said lands are also a part of the premises set forth and mentioned in the complainant's Bill of Complaint, as being part of the real estate whereof the said George Obert died seized, but which in truth and in fact never did belong to the said George Obert, and never did constitute any part of his estate, and which said lands are described as follows, that is to 860 say, situate, lying and being in the Township of North-Brunswick, in the County of Middlesex, and State of New-Jersey aforesaid, beginning at a stone for a corner, which stone has a hole in the top of it, and is the south-west corner of John D. Van Liew's land, thence running north along his land and others, twenty-one chains to a stone, for a corner ; thence westwardly along the land of Freeman and Bordine, six chains to the corner of a lot conveyed by Ferdinand S. Van Arsdalen to this defendant, by deed dated the fifth of December, eighteen hundred and twenty-nine ; thence on a due south course, twenty- 870 one chains ; thence easterly six chains, on a direct course to the beginning ; containing fourteen acres of land more or less.— And this defendant further sayeth, that the said fourteen acres of land, so as aforesaid contained within the above abutments and boundaries, never did belong to the said George Obert, deceased, nor did the same ever constitute a part of his real estate, nor was the same ever enclosed by him or in his possession, so far as this defendant knows, and as he verily believes.

This defendant acknowledges that he is exceedingly mortified and much ashamed of the foregoing mistakes, but he hopes 880 that he has satisfactorily accounted for them ; and that his long absence, his ignorance of the lines, distances and boundaries, together with the almost entirely unenclosed state of the premises described, and of others contiguous and adjacent to them, will plead a full apology for these mistakes ; already has he suffered for them very severely.

This defendant therefore denies, and he denies it because it is not true, that the said George Obert died seized of the lands and premises in the Bill of Complaint mentioned, described and set forth, but he avers, and so the truth is, that from the 890 said description, in the said Bill of Complaint, there ought to

be, and must be, deducted the several lots, pieces and parcels of land in this answer, before set forth and shewn therein to have been the property of other persons, and not to have been of the real estate of the said George Obert, deceased. That is to say, eight acres and four-tenths of an acre, comprehended within the said description, did belong to the said David Freeman, as aforesaid, and not to the said George Obert ; seventeen acres and one-half of land, comprehended within the said description, did belong to the said Ferdinand S. Van Arsdalen, as aforesaid, and not to the said George Obert ; thirty-five 900 acres of land and twenty six-hundredths of an acre, comprehended within the said description, did belong to the said Henry Obert, as aforesaid, and not to the said George Obert ; and fourteen acres of land, comprehended within the said description, did belong to the estate of the said Robinson Thomas, and not to the said George Obert. And this defendant further sayeth, that the said several lots, pieces and parcels of land, so of right to be deducted and excepted out of the aforesaid description of the farm of the said George Obert, deceased, amount in the whole to seventy-five acres and sixteen-hun-910 dredths of an acre, and that the true and just description, so far as this defendant has ever been able to ascertain the same, of the farm of which the said George Obert died seized, in the Township of North-Brunswick, in the County of Middlesex, is, and ought to be as follows, that is to say—

Beginning at a white-oak and bunch of running-oaks, in the north-west corner of a lot of land formerly owned by John Rickman, about twenty chains distant from a place whereon formerly stood two dead pepperidge trees, now marked with a stone and a stake, thence running (1,) south, eighty-seven de-920 grees ; west, thirty-one chains and ninety five links along lands of Richard Service ; thence (2,) north, sixty-three degrees ; west, twenty-one chains along land formerly owned by Ferdinand S. Van Arsdalen ; thence (3,) south, fifty-eight degrees and thirty minutes ; west, eight chains and twenty links along land of E. N. Blew ; thence (4,) south, twenty-nine degrees ; east, eight chains and eighty-eight links along land formerly owned by David Freeman ; thence (5,) south, fifty-eight degrees and thirty minutes ; west, nine chains along the same lot ; thence (6,) north, twenty-nine degrees ; west, eight chains 930 and eighty-eight links ; thence, (7,) south, fifty-eight degrees and thirty minutes ; west, ten chains and twenty links along land of E. N. Blew ; thence (8,) south, twenty-three degrees and thirty minutes ; east, twenty-eight chains and twenty-five links, along the road leading from New-Brunswick to S₁ ots-

wood ; thence (9,) north, seventy degrees ; east, fourteen chains, along land of Benjamin Service ; thence (10,) north, forty-nine degrees and forty-five minutes ; east, ten chains and sixty links along lands of Benjamin Service ; thence (11,) south, thirty-
 940 three degrees and forty-five minutes ; east, nine chains and seventy-three links, along lands of Benjamin Service, as aforesaid ; thence (12,) south, thirty-nine degrees and thirty minutes ; west, one chain and eighty links ; thence (13,) south, ten degrees and thirty minutes ; east, twelve chains to the Washington Road ; thence (14,) north, eighty-seven degrees ;
 east, eleven chains along aforesaid road ; thence (15,) north, fifty-six degrees ; east, four chains along said road ; thence (16,) north, thirty-seven degrees ; east, four chains along said road ; thence (17,) north, six chains to a scrub black-oak on the corner
 950 of land belonging to the estate of Paul Obert, deceased ; thence (18,) north, eighty-seven degrees ; east, thirty eight chains and fifty links along land belonging to the said estate of Paul Obert, deceased, and William Dunham ; thence (19,) north, sixty-two degrees and thirty minutes ; west, thirty-eight
 chains along land sold by Henry Obert to this defendant, as is above mentioned by this defendant in a former part of this his answer to the Bill of Complaint ; thence (20,) north, sixty-nine degrees and thirty minutes ; east, ten chains along said lot of land ; thence (21,) north, eleven chains to the place of be-
 960 ginning ; together with a lot of land containing twenty-six and a quarter acres, conveyed by John Rickman to this defendant, and by him, this defendant, to his said father, in which deed of conveyance the said lot is thus described : Beginning at a pepperidge sapling, marked on four sides, which is said to be a corner of Dougherty tract of land, on the west side of South River ; thence running west twenty-one chains and seventy links to a stake ; thence south, fifteen chains and a half to a stake ; thence north sixty-nine degrees ; east to said Dougherty line, to a stake for a corner ; thence north, eight chains to the place of
 970 beginning ; containing twenty-six acres and one quarter of an acre, which last two mentioned and described pieces of property contain in the whole about one hundred and twenty acres of land.

And this defendant further in answering, upon his oath sayeth, that the aforesaid descriptions of lands, just above given, comprehend all the real estate whereof the said George Obert died seized, in the County of Middlesex, so far as he, this defendant knows and as he verily believes, save and except
 980 County, which said lots are not brought in question by the Bill

of Complaint ; and save also and except the tavern house and lot of land at Cheesequakes, before mentioned, which said last mentioned lot is not brought in question by the Bill of Complaint ; and save also and except an out lot of about thirty-three acres, situate in North Brunswick aforesaid, a little more than a mile distant from the said farm, and which said lot is in no way brought in question by the Bill of Complaint ; and save also and except two salt meadow lots, containing about nine acres, and which last two mentioned lots are in no way brought in question by the Bill of Complaint ; and save also and except 990 one other out lot of about twenty-three acres, now belonging to the estate of Paul Obert, deceased, and which said last mentioned lot is in no way brought in question by the Bill of Complaint. And this defendant further admits that his brother, the said John Obert, departed this life in the life-time of the said George Obert, deceased, and that he left him surviving his children, Nancy, Jane, Susan, George, and the Complainant, and that they also survived the said George Obert, the father of this defendant ; and he has heard that the said George Obert, his aforesaid nephew, is also dead intestate and without 1000 issue. This defendant has heard that the said Nancy, Susan and Jane, did intermarry respectively, with the said Samuel Magie, Stephen Verity and Halsey Magie, as in the Bill is set forth, but he knows nothing of the matter, and neither confessing nor denying it, he leaves it to be proved in such manner and way as the complainant shall be able to prove the same.

And this defendant further answering, says that on the fifteenth day of February, in the year of our Lord eighteen hundred and thirty-four, he, for a valuable consideration, did, by deed, convey unto one Lewis Selover, in fee, a part of the premises in the Bill of Complaint mentioned, abutting and bounding the said premises so conveyed and intended to be conveyed in manner following, that is to say—Beginning at a bunch of large running oaks and two small maples, and a small white-oak standing in north-west corner of the field, called the Stillwell place, and being about five chains on a north-west course from the old spring, east of where the old house formerly stood ; thence beginning at said running oaks, maples and white oak, a south course about twenty-five chains, more or less, to Elisha N. Blew's land ; but if the south course should strike the field 1020 along the South River road, then in that case an offset is to be made to the east, so as to clear the field wide enough for a road between the said field and south line, to the said Blew's land, and thence east along said Blew's line about fifteen chains to a stake standing on the west side of the road that leads from the

brook to Richard Service's barn ; thence along land of mine, or the first party, to land belonging to Richard Service, and thence westwardly along said Service's line to the place of beginning ; containing about seventy acres, be the same more or less. And that the said Lewis Selover thereupon entered into
 1030 actual possession of the same, and was thereof seized and possessed, and made sundry and divers improvements thereon, planted an orchard, and built thereon a dwelling-house, and lived and resided there. And this defendant has heard and believes that the said Lewis Selover afterwards to wit, sometime in the month of February, in the year of our Lord eighteen hundred and thirty five, did, by deed, and for a valuable consideration, convey the same premises, in fee, to one Peter Obert, a cousin of this defendant, and that the said Peter Obert after-
 1040 wards, to wit, sometime in the month of February, in the year of Lord eighteen hundred and thirty-nine, did, by deed, and for a valuable consideration, convey the same premises to the said William Simpson, one of the defendants to the Bill of Complaint, and that the said William Simpson has continued ever since and is now the owner of the same premises, in fee.

And this defendant denies all knowledge of any ejectment against the said Mahlon Hammel, and of the proceedings therein as set forth in the Bill of Complaint. And if such proceedings at law have taken place between the Complainant and the
 1050 said Mahlon Hammel, as in the bill are charged, this defendant knows nothing about them. The first information he ever received of them was from the Bill of Complaint.

And this defendant in further answering, says that in the month of March, in the year of our Lord eighteen hundred and thirty-seven, he did demise, and to farm, let unto one George Hammel, a part also of the said premises contained and described in the Bill of Complaint, for a certain term of time, and that the said George Hammel, by virtue of said demise, entered into the said demised premises, and was possessed
 1060 thereof as of an estate for years, and to render rent ; and that the said George Hammel occupied the same premises for the space of two years, that is to say, till the first day of April, in the year of our Lord eighteen hundred and thirty-nine.

And this defendant further sayeth, that the part and portion of the said lands and tenements so demised to the said George Hammel, and so occupied by him, is as follows, that is to say : Beginning at a scrub black-oak, said to be a corner of a lot of land formerly belonging to Stephen Dunham, now of the estate of Paul Obert, deceased, and which said black oak stands
 1070 at the intersection of two private roads, one leading from the

dwelling-house of the late George Obert, to Washington, and the other leading southwardly to the road from Washington to Spotswood and Rhode Hall ; thence running north ten degrees, west twelve chains ; thence westwardly about one chain, thence north seven degrees, west twenty-one chains, fifty-seven links ; thence south eighty-seven degrees, west twenty-seven chains ; thence about south fourteen degrees, east near about twenty-four chains ; thence south thirty-three degrees, forty-five minutes, east nine chains, seventy-three links ; thence south thirty-nine degrees, thirty minutes, west, one chain, eighty links ; thence south ten degrees, thirty minutes, east one chain ; thence north eighty-seven degrees, east twenty chains and fifteen links to place of beginning ; containing about sixty acres. And this defendant further sayeth, that the said George Hammel never was in the possession of any other of the real estate of the said George Obert, since the death of the said George.

This defendant admits, because it is true, that the Complainant brought an action of ejectment in the Supreme Court of this State, against the said George Hammel, for the recovery of a certain portion of the lands and premises, so in the possession of the said George Hammel, to which action there was an appearance by the said George Hammel ; and the consent rules were exchanged in the Term of September, in the year of our Lord eighteen hundred and thirty seven.

And this defendant further admits, that on the trial of the cause before the Circuit Court, held at New-Brunswick, in the County of Middlesex, in the month of December, in the year of our Lord eighteen hundred and forty two, the complainant obtained against the said George Hammel, a verdict for one equal twentieth part of the said lands and tenements whereof he was, so as aforesaid, in possession under the demise aforesaid, and on which verdict judgment has been entered.

But this defendant denies that such verdict was obtained on full and fair investigation ; on the contrary, he insists, and so the truth is, that the said investigation was neither full nor fair, but the same was partial, unjust and untrue, and founded in a great measure, on false and garbled testimony, and on the suppression of the truth and justice ; and this defendant respectfully insists, before this Honorable Court, that such verdict and judgment is not, and cannot, be conclusive upon him, or upon any other person claiming through, by or under him, in a court of equity. The complainant has thought fit to give to a court of equity cognizance of the whole matter, by his Bill of Complaint, and he cannot recover in this Court contrary to equity.

- And this defendant in further answering, says that he does not know whether the said Halsey Magie and Jane, his wife, conveyed any right or share of and in the said premises, to the
- 1120 complainant during the pendency of the said action of ejectment, or not. Nor does he know whether the said Nancy Obert conveyed or sold to the complainant her share or interest, or any share or interest, in the said lands and premises, or whether she did not convey or sell the same. But this defendant most urgently insists that such sale and conveyances, from the said Halsey Magie and Jane, his wife, and the said Nancy Obert, if any such there be, so far forth as they relate to this defendant and all persons claiming from, by, or under him, are absolutely void, illegal, and of none effect.
- 1130 And this defendant, in further answering, says, that he being indebted unto the said Ann Van Beuren on the bond and mortgage, above in this answer set forth; the said Ann departed this life about the month of September, in the year of Lord eighteen hundred and thirty-nine, and that Henry Van Beuren became the Administrator of the goods and chattels, rights and credits, of the said Ann, and as such Administrator demanded payment from this defendant of the moneys due from this defendant, on the bond and mortgage aforesaid. That this defendant, in consequence of his losses, misfortunes,
- 1140 and embarrassed circumstances, was unable to pay the same as soon as the said Henry required the said payment; whereupon the said Henry filed his bill in this Honorable Court, to compel a sale of the said mortgaged premises; and such proceedings were therein had, that by the final decree of this Honorable Court, made on the nineteenth day of October, in the year of our Lord eighteen hundred and forty-two, it was ordered, adjudged and decreed that the said mortgaged premises, or so much thereof as should be necessary, should be sold for the purpose of paying and satisfying unto the said Henry Van Beuren, administrator as aforesaid, the aforesaid debt, and the interest thereof, together with the costs of prosecution; and to that end a certain writ of sale was awarded and issued from the said Court, directed to the Sheriff of the County of Middlesex, commanding him to make sale of the said mortgaged premises, or so much thereof as should be necessary to pay and satisfy the said debt, interest, and costs aforesaid; and the same writ was delivered to and placed in the hands of Asher Bisset, Esq., then being Sheriff of the said County of Middlesex, to be executed according to law. And thereupon, the
- 1160 said Asher Bisset, Esq., Sheriff, as aforesaid, according to the command in the said writ, and according to the directions of

the statute in that case made and provided, having first advertised the same according to law, did sell to the said William Simpson, at public vendue and out-cry, the aforesaid mortgaged premises, lands and tenements, and by deed bearing date the nineteenth day of May, in the year of our Lord eighteen hundred and forty-three, he, the said Sheriff, for and in consideration of the sum of four hundred and ninety-five dollars, did grant, bargain, sell and convey the said mortgaged premises, with the appurtenances, being the whole of the premises 1170 in the Bill of Complaint mentioned, to the said William Simpson, in fee.

And this defendant further says that the said William Simpson resides in the city of New-York, and that he is universally received and believed to be a man of large estate, real and personal. This defendant has understood, and believes, that he annually receives rents upon his estates, in fee simple, in the city of New-York, to the amount of fifteen hundred dollars and upwards : at no time has he been suspected or believed to be a bankrupt or insolvent, as is invidiously and falsely 1180 stated by the complainant in his Bill of Complaint.

And this defendant further says that he is in the possession of the same premises by the permission of the said William Simpson, and at his will, and that the said William Simpson is his son-in-law, and that he, this defendant, has the charge of the same premises for the said William Simpson.

And this defendant further says that when he purchased the premises from David Smith, and entered into possession as above set forth, the buildings were in a ruinous condition ; the house was absolutely untenantable, and ready to fall down ; it 1190 was propped up with poles and stakes ; the barn and out-houses reduced to decay, and even dangerous in the use ; the fences had been burned or destroyed, and everything about the premises appeared to have gone to waste and wreck. This defendant built a new house, barn and out-houses ; he erected fences, and purchased lime for the land. His actual expenses in building, fencing, ditching and liming, exclusive of his own severe and hard labor, exceeded the sum of two thousand dollars ; and this defendant claims the protection of this Honorable Court in the premises ; and he denies that either he or 1200 the said William Simpson, or any other person, by their order or permission, have at any time committed any waste, destruction or spoil of the said premises, or of the wood or timber growing, standing or being thereon, nor to the knowledge of this defendant, have they ever threatened to do so. There was a tax of about eight dollars and some cents due on the said

land sometime last autumn, and this defendant had not money to pay the same ; and lime or other manure was required for the purpose of improving the arable land and making it fit and
 1210 able to produce any crop, or even the seed ; rails, also, were required for the purpose of fencing several of the fields. For the purpose, therefore, of obtaining funds for these beneficial and necessary objects, this defendant concluded to clear a small piece of about two acres. The wood from this piece ought to be cut off, good husbandry and convenience alike require it to be done. This defendant, therefore, in the early part of last winter, he thinks in January, engaged three men to cut wood on the two-acre strip aforementioned, near to the barn. There were cut and carted away, not exceeding eight or ten cords of
 1220 wood, and there are now remaining on the ground, of the cut wood, about three-quarters of a cord. This defendant intended to clear the entire two-acre strip, as most certainly ought to be done, when he was restrained by the Writ of Injunction of this Honorable Court, which Writ, he prays, may be forthwith dissolved.

And this defendant, on his oath, denies that he ever, as the Administrator of his said father, exhibited any false or fraudulent statement, account or claim, against the estate of his said father, but on the contrary, he insists that the account and
 1230 claim by him exhibited, as aforesaid, were, and are just, honest and true. And he in like manner denies that the aforesaid order of sale, so made by the Orphans' Court aforesaid, was obtained by any fraud, artifice or deception ; on the contrary, he insists, and so the truth is, that a sale of the whole of the real estate of the said George was necessary to pay his debts ; and that even after the appropriation of all the proceeds of the sales to the payment of his debts, there is still due to this defendant a large balance, that is to say, the sum of one thousand, one hundred and thirty-one dollars and ninety-five cents,
 1240 with lawful interest, from the month of July, in the year of our Lord eighteen hundred and twenty-two, still remains due to this defendant for his advances in the payment of the debts of the said George, as Administrator as aforesaid. And this defendant claims the protection of this Honorable Court in the premises ; and this defendant has annexed to this, his answer, in schedule, a true copy of his final account as Administrator of the said George Obert, deceased, together with the decree thereon of the Orphans' Court of the County of Middlesex, by which it does manifestly appear that the said sum of one thousand
 1250 one hundred and thirty-one dollars and ninety-five cents, with interest, as aforesaid, is still justly and honestly due to

this defendant for his advances as Administrator as aforesaid ; and this defendant prays that the said schedule account and decree may be taken as a part of this his answer.

And this defendant denies, upon his oath, and he denies it because it is not true, that he hired or procured the said David Smith to bid off or purchase the said premises or any part of them, for him ; and he denies that the said David Smith was an agent for him in the purchase of the said farm, or other real estate, in any shape, manner or way, or that he, the said David 1260 Smith, purchased the same, or any part of it, for this defendant, under any device, arrangement or understanding.

And this defendant doth further deny that the Supreme Court ever did adjudge the said deed of conveyance from him, as Administrator, as aforesaid, or the said deed of conveyance from the said David Smith, to him, to be fraudulent, illegal or void. Nor did the Supreme Court ever adjudge that no title passed thereby. If the Supreme Court had so decided, they would have decided contrary to all truth, justice and law.

And this defendant further, on his oath, denies that he ever, 1270 to his knowledge, or by his direction, was made a defendant in any action of ejectment brought by this complainant for the recovery of the aforesaid premises, or any part thereof.

And this defendant denies all unlawful combination and confederacy in the Bill of Complaint charged ; without that, that any other matter or thing, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to 1280 aver, maintain and prove, as this Honorable Court shall direct.

And he humbly prays to be hence dismissed, with his reasonable costs and charges, in that behalf most wrongfully sustained.

CHARLES S. SCOTT, Solicitor
for the Defendant, PETER G. OBERT.
J. W. SCOTT, of Counsel.

NEW-JERSEY, ss. Be it remembered, that on this sixth day of July in the year of our Lord one thousand eight hundred and forty-four, at the city of New-Brunswick, in the County 1290 of Middlesex, before me, John Van Dyke, one of the Masters of the High Court of Chancery of the State of New-Jersey, personally appeared, Peter G. Obert, the defendant named and mentioned in the foregoing answer, and the said Peter G. Obert, defendant as aforesaid, maketh oath, and upon his oath sayeth, that the matters and things in the foregoing answer

set forth in manner and form as they are therein set forth, are true, of his own knowledge, so far as they respect the actings and doings of this defendant, and so far as they respect the 1300 actings and doings of others, he believes them to be true.

PETER G. OBERT.

Subscribed and sworn this 6th day of July, A. D. 1844, before me,
JOHN VAN DYKE, M. C.

The separate answer of William Simpson to the Bill of Complaint of Throckmorton Obert, the complainant against the said William Simpson, together with Peter G. Obert, George Obert, Samuel Magie and Nancy, his wife, and Stephen Verity and Susan, his wife, defendants.

1310 This defendant, the said William Simpson, now and at all times hereafter, saving and reserving to himself all and all manner of benefit of exception to the manifold and manifest uncertainties, errors and imperfections in the complainant's said Bill of Complaint, contained for answer thereunto, or to so much and such parts thereof as he is advised by his counsel it is in any way material for him to make answer unto, answers and says that he knows nothing about the residence of the said George Obert, deceased, that he was not acquainted with the said George, and never, to his knowledge, saw him. He has 1320 understood in general, that the said George Obert died seized and possessed of a farm in the Township of North-Brunswick, in the County of Middlesex, containing about one hundred and twenty acres; but this defendant did not know the lines and boundaries of the said farm, and is therefore unable to give any description of the same. As for the personal estate of the said George this defendant has understood and believes, that at the time of his death it had been wasted by extreme improvidence and carelessness, so that nothing, or next to nothing, remained.

This defendant knows very little of the history of the family of the said George Obert, deceased, and is entirely unable 1330 to answer whether he left him, surviving, the children and grand-children mentioned in the Bill of Complaint, or not.— This defendant knows not what children and grand-children he left him surviving, and he leaves the same to be proved by the complainant as he shall think it necessary, and as he may be enabled to do; nor does this defendant at all know the law of descents, in the State of New-Jersey, and he cannot, therefore, state the proportions in which the children and grand-children, or other issue of George Obert, deceased, would have inherited, 1340 or how they would have succeeded, in case he had left estate more than sufficient to pay his debts.

This defendant had no connexion with the said George Obert, or any of his descendants, till long after the death of the said George.

And this defendant in further answering, says that on the twenty-eighth day of April, in the year of our Lord eighteen hundred and twenty-seven, he intermarried with Nancy, the daughter of the said Peter G. Obert, one of the defendants in the Bill of Complaint, that she bore to him six children, all of whom are still surviving, that she departed this life on the 1350 twenty-first day of August, in the year of our Lord eighteen hundred and thirty-nine, that this defendant resides with his aforesaid family of children, in the city of New-York, and that he has resided there more than thirty years.

And this defendant further answers and says, that he is utterly ignorant of any action of ejectment, brought by the complainant against the said Mahlon Hammel, nor does he know anything of the proceedings in the said action of ejectment, as stated by the complainant, and he therefore leaves the same to be proved by the complainant, as he may be enabled and as he 1360 may deem it expedient and beneficial.

And this defendant, in further answering, sayeth, that one Peter Obert, son of Peter Obert, deceased, sometime in the month of February, in the year of our Lord eighteen hundred and thirty-nine, representing himself to be seized in his demesne, as of fee, of and in all that tract or parcel of land and premises situate, lying and being in the Township of North-Brunswick, County of Middlesex, and State of New-Jersey—beginning at a bunch of large running oaks and two small maples and a small white-oak, standing in the north-west corner 1370 of the field called the Stillwell Place, and being about five chains on a north-west course from the old spring, east of where the old house formerly stood, thence beginning at said running oaks, maples and white-oak, a south course about twenty-five chains, more or less, to Elisha N. Blew's land ; but if the south course should strike the field along the South River road, then in that case an offset is to be made to the east so as to clear the field wide enough for a road between said field and south line to the said Blew's land ; and thence east along said Blew's line about fifteen chains, to a stake standing on the west side of 1380 the road that leads from the brook to Richard Service's barn ; thence north along land of Peter G. Obert, to land of Richard Service, and thence westwardly along said Service's line to the place of beginning ; containing about seventy acres, be the same more or less, and representing that he had therein a sure, certain and indefeasible estate of inheritance, and being then in

the actual possession of the same premises, did propose to sell them to this defendant.

1390 And this defendant listened to the overture of the said Peter Obert, and discovered on examination, that the said Peter Obert had purchased the same premises, in fee, from one Lewis Selover, and that the said Lewis Selover had occupied the said premises, had lived for a long time in the uninterrupted possession and enjoyment of the same, as tenant, in fee; had built a house thereon, had planted an orchard, erected fences, and made thereon many other and valuable improvements; and this defendant further sayeth, that the treaty between the said Peter Obert and himself, was soon brought to a conclusion, so that the said Peter Obert, for a valuable consideration, 1400 actually and *bona fide*, paid by this defendant to the said Peter Obert, did, by deed bearing date on the twenty-sixth day of February, in the year of our Lord eighteen hundred and thirty-nine, grant, bargain, sell, alien, release, enfeof, convey and confirm unto this defendant, the same premises, in fee, abutting, bounding and describing them as hereinbefore is set forth.

And this defendant further sayeth, that the said land and premises, so as aforesaid butted, bounded and described, are part of the lands mentioned and set forth in the Bill of Com- 1410 plaint.

And this defendant further sayeth, that at the time when he so as aforesaid, purchased the said lands and premises from the said Peter Obert, he had no notice or knowledge of the claim of Throckmorton Obert, the complainant, to the said premises, or to any part of them; nor had he any belief, or even suspicion, of the same; but perceiving and understanding, as the truth most certainly is, that the same premises were sold under the authority and by the order of the Orphans' Court of the County of Middlesex, this defendant had every 1420 reason to believe, and did believe, that all the right, title and interest of the said George Obert, deceased, at the time of his death, passed to and vested in the purchaser, and from him by sundry mesne conveyances, was transmitted to and vested in the said Peter Obert, and from him, in like manner, to this defendant. This defendant surely relied upon the public and judicial acts and proceedings of a court of competent jurisdiction, and he trusts that his reliance was not and will not be in vain.

And this defendant, on his oath, denies all knowledge of 1430 any fraud, covin, falsehood or concealment, either in the accounts of the said Peter G. Obert, the Administrator of the

said George Obert, deceased, or in the order of the Orphans' Court of the County of Middlesex aforesaid, for the sale of the real estate of the said George Obert; and he has never had reason to suspect or believe, nor does he know, suspect or believe, that there was any fraud, covin, falsehood or concealment, either in the said accounts of the said Administrator, or in the said order of the Orphans' Court aforesaid; nor does he know, suspect or believe that any fraud was committed, perpetrated or attempted in the sale of the real estate aforesaid, by 1440 the said Administrator, or by any others.

And this defendant further sayeth, that Asher Bisset, Esq., Sheriff of the County of Middlesex, on the sixth day of May, in the year of our Lord eighteen hundred and forty-three, at the village of Washington, in the County of Middlesex, did expose to sale, by way of public vendue and out-cry, all that certain tract or parcel of land situate, lying and being in the Township of North-Brunswick, County of Middlesex, and state of New-Jersey—Beginning at two dead pepperidge's and a stone heap, which was said to be the north-west corner of Dougher- 1450 ty's tract of land, but now the corner of a lot taken up by Henry Obert; thence running north one chain to a stake for a corner; thence south eighty-seven degrees, west forty-six chains and thirty-eight links along John D. Van Liew's land; thence north along the west end of said Van Liew's land, ten chains, more or less, to land belonging to David Freeman, Aaron Hassard and others; thence westerly along said land, fifteen chains more or less, to a crotched pine-tree marked on four sides, being the beginning corner of a tract of two hundred and thirty-seven acres, returned to the Executors of Aza- 1460 riah Dunham on the second day of December, seventeen hundred and ninety-nine, and recorded in Book S. 11, page 398; thence south four degrees, east eighty-three links; thence south eighty-seven degrees and forty-eight minutes, west along lands belonging to David Freeman and Hassard and the widow Blew, forty chains more or less, to the road leading from New-Brunswick to Spotswood; thence southwardly, as the road runs, twenty-five chains, more or less, to a stake in Phillip Hooper's field; thence north-easterly along the said Hooper's land to the north-east corner thereof, to a stake standing by the field of the said 1470 George Obert, deceased; thence southwardly along said Hooper's land to a stake standing in the road leading to South River; thence eastwardly, as the road runs, to Standley's land, now belonging to Paul Obert; thence northwardly along said Paul Obert's line, to the north-east corner thereof; thence eastwardly along the said Obert's and Stephen Dnnham's land

to a stake for a corner on the east side of Standley's brook ; thence north one chain and ninety-seven links, to Henry Obert's north corner ; thence along said Obert's line, the several courses
 1480 to the place of beginning ; containing about two-hundred acres, be the same more or less ; under and by virtue of a decree of the High Court of Chancery, founded upon a certain mortgage executed and given by Peter G. Obert, one of the defendants in this cause, to Ann Van Beuren. This defendant was informed, and so the truth was, that the said mortgage from the said Peter G. Obert, and the aforesaid decree of the High Court of Chancery of the State of New-Jersey, comprehended and included the whole of the lands and premises purchased by this defendant from the said Peter Obert, son of Peter, so as aforesaid
 1490 said in this answer above set forth.

This defendant therefore attended the said sale and did bid for the same mortgaged premises, as he was necessarily compelled to do in protection and defence of his title to the lands and premises conveyed to him by the said Peter Obert, son of Peter, as is above in this answer set forth. And this defendant bidding for the same premises at the vendue aforesaid, the price and sum of four hundred and ninety-five dollars, and no person bidding more, the said lands and premises so as aforesaid described in the aforesaid mortgage to the said Ann Van
 1500 Beuren, were knocked off and sold by the said sheriff, to this defendant, for the said sum and price of four hundred and ninety-five dollars. And this defendant further sayeth, that he did actually and truly pay to the said Asher Bisset, Sheriff, as aforesaid, the said sum of four hundred and ninety-five dollars, so bid by him for the said mortgaged premises, lands and tenements ; and thereupon the said Asher Bisset, Esq., Sheriff, as aforesaid, by deed bearing date the nineteenth day of May, in the year of our Lord eighteen hundred and forty-three, in consideration of the said sum of four hundred and ninety-five dol-
 1510 lars, paid by this defendant to him, the said Asher Bisset, Esq., Sheriff as aforesaid, and in execution of the power and authority vested in him by virtue of a certain writ of sale to him directed and delivered, founded on the said decree of the High Court of Chancery of the State of New-Jersey, and in compliance with the provisions and directions of the statute in such case made and provided, did grant, bargain, sell and convey to this defendant, in fee simple, the said mortgaged premises, with their appurtenances and every part and parcel thereof.

And this defendant, in further answering, says that the
 1520 lands, premises and tenements so sold and conveyed by the said Asher Bisset, Esq., Sheriff as aforesaid, to this defendant, in-

clude all the premises set forth and mentioned in the complainant's Bill of Complaint. And this defendant claims the same as his own property and estate, and justly and honestly purchased and paid for as is above set forth.

And this defendant further sayeth, that he does not know whether the said Nancy Obert conveyed or sold to the complainant her share or interest, or any share or interest, in the said lands and premises, or whether she did not convey or sell the same ; nor does he know whether the said Halsey Magie 1530 and Jane his wife, conveyed or sold to the complainant their share or interest, or the share or interest of either of them, or any share or interest in the said lands and premises, or whether they did not convey the same. But this defendant strongly insists that such sale and conveyance from the said Nancy Obert, and from the said Halsey Magie and Jane his wife, if any such there be, are, so far forth as they relate to this defendant, absolutely void, illegal, and of none effect. Neither the said Nancy Obert, nor the said Halsey Magie and Jane his wife, have been in possession of the said premises, either con- 1540 structively or actually, since the fourth day of June, which was in the year of our Lord eighteen hundred and twenty-two ; but the same premises have been possessed ever since that time by divers and various persons, adversely to the said Nancy Obert, and adversely to the said Halsey Magie and Jane his wife, and claiming title adversely to the said Nancy Obert and to the said Halsey Magie and Jane his wife, as this defendant has been informed, and as he verily believes.

And this defendant further sayeth that the said Peter G. Obert, one of the defendants in this cause, is now in the actual 1550 possession of the said premises, by the permission, and at the will of him, this defendant. And this defendant denies altogether the right and authority of the complainant to enquire or interrogate him or his tenant, or any person, by his command or permission, cutting down or carting away any wood, timber, or underwood from off the said premises ; nevertheless, this defendant, from high respect to this Honorable Court, is willing to answer any of its interrogations, and does answer and say, that neither he nor any other person, by his direction or permission, have committed any waste, destruction or spoil, of 1560 any of the said premises, nor of the wood, timber, underwood or trees standing, being or growing thereon. He has put the same premises in the care, custody and possession of the said Peter G. Obert, with instructions and directions to use the same in a prudent and provident style of good husbandry, 0181 and for their improvement and cultivation ; and he is decided-

ly of opinion that a small piece of the wood-land, containing about two acres, near the barn, on which alone some wood has been cut, ought to be cleared. He thinks that safety from
 1570 fire requires it to be done, and he is persuaded that good husbandry for cultivation, requires the same thing. A very small portion of the wood standing on the said two acres has been, as this defendant has been informed, cut down before the coming of the Writ of Injunction, which Writ this defendant prays may be forthwith dissolved. This defendant ought to have the sole right of judging how and in what manner he will use his own property.

And this defendant further sayeth that it appears plainly from the Bill of Complaint, that the complainant has not ex-
 1580 hibited his Bill of Complaint, or claim of or for the said lands and tenements within twenty years next after his title thereto accrued, if he ever had any title, or within twenty years next after cause of action accrued to him, if he hath or ever had cause of action. This defendant then being an innocent purchaser, for valuable consideration, and having no notice of such dormant and concealed claim and demand, if such claim or demand ever had real existence, has, beyond all controversy, a just and equitable right to plead thereto the statute of limitations in bar, and he does therefore plead the same statute in
 1590 bar, of the same claim and demand.

And this defendant denies that he is, or that he has ever to his knowledge, been esteemed bankrupt or insolvent. He has a clear income from unincumbered real estate, of more than is required or sufficient for his family expenses and support, and he is at a loss to understand how the complainant can justify to his own conscience his swearing to an allegation so false, so wanton, or so malignant.

And this defendant denies all unlawful combination and confederacy wherewith in the Bill he stands charged; without
 1600 that, that there is any other matter or thing material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver and maintain, and prove, as this Honorable Court shall direct.

And this defendant humbly prays to be hence dismissed, with his reasonable costs and charges in that behalf most wrongfully sustained.

1610

CHARLES S. SCOTT, Solicitor
 for the Defendant, WILLIAM SIMPSON.
 J. W. SCOTT, of Counsel.

NEW-JERSEY, SS. Be it remembered, that on this sixth day of July in the year of our Lord one thousand eight hundred and forty-four, at the city of New-Brunswick, in the County of Middlesex, before me, John Van Dyke, Esq., one of the Masters of the High Court of Chancery of the State of New-Jersey, personally appeared, William Simpson, the defendant named and mentioned in the foregoing answer, and the said William Simpson, defendant as aforesaid, maketh oath, and upon his 1620 oath sayeth, that the matters and things in the foregoing answer set forth in manner and form as they are therein set forth, are true, of his own knowledge, so far as they respect the actings and doings of him, this defendant, and so far as they respect the actings and doings of others, he believes them to be true.

WILLIAM SIMPSON.

Subscribed and sworn this 6th day of July, A. D. 1844, before me,
JOHN VAN DYKE, M. C.

1630

(Schedule A, Referred to in the Answer of Peter G. Obert.)

The account of Peter Obert, Administrator of George Obert, late of the County of Middlesex, deceased, as well of and for such and so much of the goods and chattels of said deceased, as have come to his hands to be administered, as for and concerning his payments and disbursements out of the same :—

THIS ACCOUNTANT CHARGETH HIMSELF		
1821.	DR.	1640
March 24.	To amount of Inventory exhibited,	\$194 99
	To cash received from sales of real estate at Washington,	980 00
	To cash received of Samuel Willet, note	39 00
	To " " on sundry small notes,	15 00
	To " " " lot of land, 33 acres, sold to Paul Obert,	73 00
1822.		
July 22.	To cash received, Mrs. White's note,	369 84
		<u>1650</u>
		\$1,671 83
	Balance due this accountant,	1,131 95
		<u>\$2,803 78</u>

PER CONTRA, HE PRAYS ALLOWANCE
CR.

	No.		By c'h p'd	Jeremiah Rappleyea, appraiser,	\$1 50
	2.	1820.	" "	Jonathan Booream, coffin, &c.,	18 00
	3.	March.	" "	Thos. Walker, digging grave,	1 00
1660	4.	1821.	" "	Wm. Myer, advertising,	1 25
	5.	March.	" "	Surrogate proving inventory,	75
	6.	"	" "	letters of Adm'n,	3 00
	7.	"	" "	Robt. Watt, crying vendue,	2 00
	8.	April 27.	" "	Elisha N. Blew, appraiser, &c.	2 00
	9.	"	" "	John Griffith, tax,	1 61
	10.	May.	" "	Wm. Hyer, Esq., costs,	1 60
	11.	"	" "	Wm. P. Deare, searcher, &c.	75
	12.	"	" "	Sam'l L. Southard, Esq., services,	2 00
	13.	"	" "	Wm. Hyer, costs in Chancery,	
1670				Obert vs. Obert, and others,	7 60
	14.	June.	" "	Surrogate, rule, &c.	9 70
	15.	"	" "	Henry Hoagland, constable,	14 16
	16.	"	" "	John Heard, ackg't,	50
	17.	July.	" "	Robt. Watt, account,	75
	18.	"	" "	Stephen Dunham, account,	50
	19.	August.	" "	F. P. Obert, do.	1 87
	20.	September.	" "	Jonas Hagar,	5 00
	21.	October.	" "	Wm. P. Deare, fee,	5 00
	22.	"	" "	John Burrows, b'd & m'tg'e,	1000 00
1680	23.	December.	" "	Commissioners set-off dower,	24 00
		1822.			
	25.	January.	" "	Sam'l Combs,	13 25
	26.	"	" "	John Griffiths, costs, &c.,	1 25
	27.	"	" "	Wm. P. Deare, t'k'gdep. in chan.	1 50
	28.	"	" "	witness fees, &c.	1 50
	29.	"	" "	Andrew Accor, do.	4 50
	30.	February.	" "	John Griffith, execution,	5 00
	31.	March.	" "	Josiah Davis, Esq., affidavit, &c.	36
	32.	"	" "	Surrogate, order for sale, &c.	2 25
1690	33.	"	" "	D. C. Thompson,	50
	34.	May.	" "	P. P. Messeroll, on execution,	9 20
	35.	"	" "	J. Connet, witness fees,	50
	36.	July.	" "	W. P. Deare, n'te to L. Dunh'm,	21 49
	37.	"	" "	Josiah Davis, witness,	50
	38.	"	" "	note,	1 08
	39.	"	" "	Henry Hoagland, execution,	5 44
	40.	"	" "	David Smith, account,	20 00
					\$1,192 86

No.	1822.	By c'h p'd amount brought forward,	\$1,192 86
41.	July.	" " N. Booream, Esq., depositions,	2 00
42.	"	" " Josiah Davis, Esq., costs,	5 22 1700
43.	"	" " John Griffith, execut'n & costs,	16 24
44.	August.	" " Jer. Rappleyea, witness fees,	2 00
45.	"	" " John Griffith, serving subpoenas,	3 50
46.	"	" " Henry Hoagland, costs,	2 37
47.	September.	" " Peter Brewer, witness fees,	6 50
48.	"	" " Abm. Accor & wife, do.	7 00
49.	"	" " N. Furman, do.	2 00
50.	October.	" " Henry Obert, do.	2 00
51.	"	" " Andrew Accor, do.	1 50
52.	"	" " Surrogate, division of dower,	6 60 1710
53.	"	" " Peter Brewer, witness fees,	1 48
54.	November.	" " Ralph Van Arsdalen, account,	4 75
55.	December.	" " Elisha N. Blew, witness,	6 50
55	1-2	" " Abm. Accor, do.	2 00
56.	"	" " Jonathan Booream, coffin, &c.	10 25
57.	"	" " Daniel C. Sparling, witness,	3 00
	1824.		
58.	January.	" " Robt. Boggs, Esq., fee,	5 00
59.	June.	" " Vincent Barkeley, due-bill,	16 31
60.	September.	" " Mary Obert, witness,	50 1720
61.	October.	" " John Clayton, do.	2 00
62.	"	" " John D. Service, due-bill,	3 06
	1825.		
63.	January.	" " do. do. services, &c.	1 25
64.	March.	" " Richard Service, do.	6 00
65.	"	" " John Clayton, witness,	2 00
66.	"	" " Alex'r Laird, do.	2 00
67.	"	" " Samuel Willet, judgm't & costs,	4 48
68.	"	" " N. Booream, Esq., costs,	5 64
69.	"	" " J. W. Scott, Esq., note,	10 00 1730
70.	"	" " Robt. Down's note,	7 31
	1823.		
71.	January.	" " John Griffith, witness,	1 00
72.	"	" " Henry Perrine, expenses,	1 37
73.	September.	" " Jacob J. Bergen, account,	50
74.	"	" " Wm. P. Deare, services,	6 00
75.	December.	" " Thos. F. Sergeant, Judgm't, &c.	19 00
76.	"	" " James Connet, account,	43
	1825.		
77.	April 16.	" " Wm. Herbert,	25 1740
			<hr/>
			\$1,371 87

No.	1825.	By c'h p'd amount brought forward,	\$1,371 87
78.	April 16.	" " Elisha N. Blew,	75
79.	" "	" " C. L. Hardenbergh, costs, &c.	131 00
		By three certain notes payable to this ac- countant, principal and interest, viz :	
		No. 1,	\$230 80
		No. 2,	49 42
1750		No. 3,	555 00
			<hr/> 835 22
80.		By sundry sums paid witnesses, &c.	70 50
81.		By do. do. do.	21 50
		By goods levied on and sold by Henry Hoagland, constable, on several ex- ecutions,	169 99
82.	June.	By c'h p'd Alletta Blew's account,	2 00
83.	" "	" " Nicholas Booream, Sr.,	13 93
	" "	" " Abm. Van Arsdalen, tax.	
1760	" "	" " at the office for auditing and stating account and Court fees,	10 00
		By commissions on \$1,671 83, at 7 per cent.,	117 02
		By 1000 rails, sold to Whitehead and lost, he being insolvent,	60 00
			<hr/> \$2,803 78

Peter Obert, Administrator, &c., of George Obert, de-
ceased, being duly sworn according to law, did depose and say
1770 that the within account is in all things just and true, both as
to the charge and discharge thereof, to the best of this de-
ponent's memory and belief. PETER OBERT.

Sworn at New-Brunswick, June 17, 1825, before me,
JOHN HEARD, Surrogate.

I have audited and stated the within account, and do report
it for allowance. JOHN HEARD, Surrogate.

Peter Obert, Administ'r,
&c., of } On settlement of Account.
George Obert, deceased. }

1780 The Surrogate having reported the account of said Admin-
istrator for settlement and allowance, and due proof having
been made of advertising according to law, and no exceptions
made thereto, and there appearing a balance due said Admin-
istrator of one thousand one hundred and thirty-one dollars
and ninety-five cents—

The Court do order and decree that the same be allowed and confirmed in all things as reported.

Confirmed by the Court, June Term, 1825.

R. M'CHESNEY,	} Judges.	1790
THOS. HANCE,		
NICH. BOOREAM, Sr.		

List of creditors, with the sums due them respectively :

F. R. Smith,	\$4 25
James Morgan, on note,	95 25
do. do. interest on note,	
Estate of Alche Van Arsdalen,	

The common and usual replication was filed on the 29th of January, 1846.

1800

The following depositions were taken on the part of the Complainant :

Between Throckmorton Obert, Complainant, and Peter G. Obert, William Simpson and others, Defendants.	} In Chancery of New-Jersey.

Examinations and depositions in the above stated cause, taken before me, John S. Blauvelt, one of the Masters and Examiners of the High Court of Chancery of the State of New-Jersey, at my office in the city of New-Brunswick, in the County of Middlesex, this twenty-ninth day of February, in the year of our Lord one thousand eight hundred and forty-eight, in the presence of Henry V. Speer, Esq., Solicitor of the complainant, and Joseph W. Scott, Esq., of Counsel with the defendants, and Charles S. Scott, Solicitor of the defendants, upon due notice admitted by the parties. 1810

J. S. BLAUVELT, Ex.

NEW-JERSEY, ss. Alexander H. Obert, a witness produced and examined on the part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth in the above stated cause, on his oath says : I reside in the city of New-York, I am acquainted with complainant, Peter G. Obert and William Simpson, I am a son of Peter G. Obert and a brother-in-law of William Simpson. I am thirty-seven years of age ; I know the farm in 1820

the Township of North-Brunswick, on which Peter G. Obert now resides ; I understood that this farm was once owned by George Obert, my grandfather. * This farm was conveyed to me by Peter G. Obert.* This between * * objected to by defendant's counsel.

The property described in paper marked Exhibit A, on the part of the complainant, is the property conveyed to me by Peter G. Obert. The conveyance was made about the date of the deed, the twenty-seventh day of November eighteen hundred and thirty-eight. I was present at the acknowledgement of the deed. That was not the time of the delivery. It had not been recorded yet. It was delivered to me sometime after the acknowledgement ; I do not recollect the time, but think it was not under two months after the acknowledgement. Peter

1840 G. Obert took the deed to the Clerk's office to be recorded ; at the time I resided in the city of New-York. To the question, did your father send for you to come from New-York upon the occasion when the deed was executed ? the witness says :—He called on me himself, and asked me to come up to New-Brunswick and have the deed acknowledged. I did not know the deed had then been executed ; I believe that, when my father called upon me in New-York, was not the first time that he conversed with me about the deed, but I do not recollect ; in consequence of my father calling upon me I came to New-

1850 Brunswick. William Simpson, my brother-in-law, came with me. When we came to New-Brunswick the deeds were acknowledged. I understood that my father had called upon Simpson and requested him to come with me ; I understood so from Simpson and my father, I believe. There was one deed to Mr. Simpson, as I understood ; I think I saw it, and both of the deeds were acknowledged at the same time. The deed to Simpson was for a house and lot in New-Brunswick ; I don't recollect that the deed to me was ever delivered to me, that is, that I had it in my own possession ; I presume that Simpson knew

1860 that this deed had been made to me—I can't be certain. Mr. Simpson and I were present at the same time before the judge who took the acknowledgement of the deeds. I came to live in the same house on the farm with Peter G. Obert ; he kept his things in a place where I kept some of mine. This deed was in the same place, and it was in no other way delivered to me than this. It was in a bureau ; I don't recollect that I had any papers of any consequence in the same draw where the deed was ; it is so long ago that I can't recollect. I think it was nearly a year after the acknowledgment of the deed that

1870 I went to live on the farm. There was some little money due

me that my father had collected, and that was the consideration money of the deed ; I was to let him have the property back after he had paid me this money ; that is, if he wished it. I staid on the farm, at this time, one winter season ; I left then, and came back some time after—a year or a little over, and remained on the farm a little over two years. I claimed the property as mine when I was on it. I was not married when I was on the farm the first time, but was married when I went there the second time. The amount that my father owed me was four or five hundred dollars, that he had collected for me, 1880 as I understood from him, but I do not know the exact amount. To the question, what did Simpson pay for the house and lot in New-Brunswick, which was conveyed to him ? the witness says : I do not know (to this last question and answer the defendants object) ; I saw no monies paid or any securities given by Simpson to Peter G. Obert, nor did I hear of any, either at the execution or acknowledgement of the deeds. I don't know when Simpson's deed was delivered to him. The deeds were both left in the office to be recorded. I don't know what became of Simpson's deed afterwards ; the deeds were acknowledged either before Ford or Booream, I think, but I don't remember which ; they were acknowledged at the office near the old Court House. When the deeds were left in the office to be recorded, my father, Simpson and myself were present ; we went there for the purpose of leaving the deeds to be recorded. I don't recollect that the deed to me, after it was acknowledged, was put into my hands. At the time the conveyance was made to me I knew that the title to the farm was in dispute ; Throckmorton Obert, the complainant, claimed title in the farm, as against my father. He claimed a certain share ; I 1900 did know at the time of the deed that complainant had brought a suit to recover his share. I don't know that I can explain exactly how complainant claimed. He had brought an ejectment suit against the place ; it seems that he wanted to recover a share as one of the heirs of his father. At the time of making the deeds to Simpson and me, I believe that Simpson knew that complainant claimed a title in this farm ; I think that Simpson also knew then that complainant had brought a suit to recover a share of the farm. I heard of this claim of complainant first when I returned from sea, in 1910 the year eighteen hundred and thirty-eight. I learned it from my father first, at New-Bedford, where I arrived. I have heard William Simpson speak of complainant's claiming a share in this farm, and that he had brought a suit to recover it. After I had landed at New-Bedford, I went to New-York city, and I

saw William Simpson there. He at that time spoke of this suit and claim of the complainant. This was previous to the execution of the deeds of which I have been speaking ; I heard him speak of this suit and claim to my sister ; I have heard
 1920 him speak of it at other times. I lived one season with Simpson, and heard him speak of complainant's claim several times. This was the season after I returned from sea ; I returned the last of August or the first of September, and I heard him speak of complainant's claim the following summer. I went to Simpson's in February or March following my return ; and I think I also heard Simpson speak of complainant's claim in February or March following my return from sea, during my second residence with him ; when I went to reside with Simpson I went from the foot of Fulton-street, where I board-
 1930 ed ; I had lived with him before ; in the same Fall I returned from sea I stopped with Simpson until I got a situation down town. At the times I have been speaking of, Simpson lived in the upper part of the city of New-York ; during the Fall that I lived with Simpson, I heard him speak of complainant's claim and suit aforesaid. In the years 1838 and 1839, while I resided with Simpson, my father was in the habit of visiting there ; sometimes my father and Simpson conversed about my father's affairs ; I think this claim and suit of complainant was mentioned in their conversations, but I am not certain ; I don't
 1940 recollect that I have heard Simpson speak of this claim and suit to any other person than my sister ; he has talked with me about them ; at the time of the making of the deeds to Simpson and myself my father spoke of his having trouble ; I don't remember what it was, whether it concerned complainant's said suit or what it was, I don't remember ; I don't know that he did, at that time, say anything in reference to a suit or claim of Henry Richmond ; I have heard him speak of Henry Richmond's claim at other times. To the question, how soon after these deeds were made did you hear your father speak of Henry Richmond's
 1950 claim ? witness says : I don't know, I don't recollect what he said about Richmond's claim, it was something about some lots, I believe.

My father said that he believed that they were going to put him in jail ; this was after the conveyances, I think ; I understood that William Simpson knew and understood all about complainant's claim and suit about the farm ; I understood so from hearing the conversations several times ; I mean Simpson's conversations with my sister and myself ; these are the conversations to which I have alluded in the previous part of my testi-
 1960 mony. I have heard my father speak of a lot which he had

sold to Lewis Selover ; he said he had sold it and was obliged to take it back, or something of that kind ; I can't say when this was, but I think it was soon after I returned from sea.

The witness being cross-examined on the part of the defendants says :—My grandfather died when I was very young, I think ten or eleven years old ; I don't remember of seeing him ; I don't know that I was ever on the farm in his life-time ; I don't know that the property conveyed to William Simpson by my father, ever belonged to my grandfather, nor do I know that it was claimed by any person, as having belonged to my grandfather. The house and lot conveyed to Simpson, is situated in the city of New-Brunswick ; the deed made by my father to me for the farm, was left in the Clerk's office ; I did not get it out of the office ; I paid some person in the office for recording said deed ; I have never held the deed in my possession since, entirely ; I may have had it in my hands since ; I don't recollect when I have seen it since ; when I lived on the farm I saw it ; I do not know where it is ; I don't remember that I saw it open, I don't recollect of reading it after it was recorded ; I may have read it, but I don't remember that I did read it after it was recorded ; I heard it read before it was recorded ; don't know that I read it. My sister is dead ; died a number of years since, I can't recollect how many ; she has not been dead ten years ; she died some time in the Fall of the last season that I resided with Simpson, neither very early or very late ; it was after the conveyance was made to me ; Simpson and his wife, my sister, had various conversations about the law-suit, who would lose and who would gain it, but I don't recollect particularly, what they said ; Simpson and I have spoken together about the complainant's suit for the land, distinct from his wife. To the question, can you remember any one of the remarks Simpson made ? witness says : I don't know that I can ; my conversations with Simpson were had on his premises in New-York, they were had when I resided there—it was both before and after the conveyances were made ; I can't remember any one single remark he made ; I am not positive that Simpson spoke to me of complainant's said claim and suit before said conveyances were made, but think it was before. I am positive that I heard him speak to my sister about said complainant's claim and suit, before the said conveyances were made. I have no interest in this controversy. I am to receive no recompense from complainant to my knowledge ; there is no agreement between us to that effect. I live in Thirty-Seventh-street, New-York, near the Eleventh-avenue—no number on the house. I think I

have not seen my father, before to-day, for more than two years ; I don't think it is over five years.

Being again examined in chief, says, my father first proposed the conveyance of the farm to me ; I had asked him to
2010 pay my claim previous to this ; my father told me he had collected four or five hundred dollars for me.

Being again cross-examined, says, the claims that my father had collected for me were some little notes I had standing out when I went to sea, and which I had authorized him to collect for me.

ALEX'R H. OBERT.

Sworn and subscribed before me, this 29th day of February, 1848.

J. S. BLAUVELT, Ex.

2020 The foregoing testimony of Alexander H. Obert excepted by the defendants, for that the witness is incompetent and the testimony unlawful.

J. S. BLAUVELT, Ex. &c.

NEW-JERSEY, ss. Asher Bisset, a witness produced and examined on the part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth, in the above stated cause, on his oath, says : I was Sheriff of the county of Middlesex, in the year
1807 eighteen hundred and forty-three ; I received a writ of *Habere*
2030 *Facias Possessionem*, in March of that year, in the suit of John Doe upon the demise of Throckmorton Obert against George Hammel. Upon that writ I gave Throckmorton Obert possession of a certain proportion of the farm, according to the
5001 command of the writ. Peter G. Obert was not present at the time.

Being cross-examined on the part of the defendants, says : he did not measure off the proportion or ascertain any one field. We went in the lane leading up to the house, and through a part of the woods, but did not go up to the house. We went
2040 on the premises, through the woods first, and then through the lane and then on the cleared premises, but did not go to the house. I gave complainant possession of an undivided part of the premises, but no particular part.

ASHER BISSET.

Sworn and subscribed this 29th day of February, A. D. 1848, before me.

J. S. BLAUVELT, Ex. &c.

NEW-JERSEY ss. Peter Obert, a witness produced and examined on the part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth, and 2050 nothing but the truth in the above named cause, on his oath, says: I am acquainted with Peter G. Obert, one of the defendants in this suit, and have known him ever since I can remember; I am in my seventieth year; I live now about one mile from him; I was the owner of a lot of land that Lewis Selover had purchased of Peter G. Obert; I was security for Lewis Selover, and he assigned over to me said lot. I was security to Peter G. Obert for some two hundred dollars of the purchase money. The lot of which I speak, is a lot of land mentioned in the answer of Peter G. Obert, as the lot sold to 2060 Lewis Selover. I never saw the land run, but as near as I know, this is the land; I let Lewis do just as he had a mind to with the land. Peter G. Obert wanted his money; I had had some bad luck, and could not pay, and I then deeded it to Peter G. Obert or William Simpson, I think to Peter G. Obert. Nothing was paid to me for the lot, either by Peter G. Obert or William Simpson; I think I conveyed the lot four years ago, a little more or a little less; it may be longer, five or six years, may be; I only made one conveyance of the lot; I don't recollect how much Lewis Selover paid on the lot when he 2070 bought it, but I was security for two hundred dollars; it was mortgaged, when the property came into my hands, for four hundred dollars; the mortgage was given by Lewis Selover either to Peter G. Obert or William Simpson, I don't know which; I proposed conveying the land back, and talked to Peter G. Obert about it. He agreed to take the conveyance of the lot in payment of what I was security for; he wanted the money and I could not pay it. Mr. Ford wrote the deed and took the acknowledgment; several were present at the time; Peter G. Obert was there, Richard Service was there, 2080 and several others; the deed was either left in Mr. Ford's hands or given to Mr. Peter G. Obert, I don't recollect which; William Simpson was not there, I don't recollect seeing him. The deed was acknowledged in the office near the old Court House; I paid nothing; Peter G. Obert, I think, paid for recording the deed. The agreement between Peter G. Obert and myself was, that I was to be at no expense in deeding the property back. I expect Peter G. Obert paid for writing the deed and for the acknowledgment; I paid nothing; I never saw the mortgage.

2090

Being cross-examined on the part of the defendants, says: Part of the lands Lewis Selover had, was called the Stillwell

Place ; it may be that the Stillwell Place took in all and more ; I don't think the Stillwell Place was as large as the lands Selover had ; I can't tell rightly at what time these lands were conveyed by Peter G. Obert to Lewis Selover ; it may be six, seven or eight years ago—it may be a little more or a little less. I was bound with Lewis Selover to Peter G. Obert, for a part of the purchase money, I think by bond ; when I conveyed the land
 2100 I received back the bond. What I meant by receiving nothing is that I received no money. Upon looking at the deed now shown me, marked Exhibit No. 1, on the part of the defendants, it appears that I conveyed the said lands to William Simpson about nine years ago. I did not convey said lands to Peter G. Obert.

Before this conveyance was made I had no treaty or conversation with William Simpson, in any way, about conveying the lands to him ; there was not, as I remember, a young man or young woman who came to me from Mr. Simpson with
 2110 a message from him in relation to the conveyance of this land to him ; I can't remember that Peter G. Obert paid for recording, writing and acknowledgment of the deed ; I don't know who paid for it, I did not. Lewis Selover occupied these lands ; I can't say how long—perhaps as much as four or five years, more or less. He put up a little house on the lands ; it was an old school-house, which he bought and moved upon the lands ; it may have been twenty feet square ; he put no orchard on the lands, as I know of.

Lewis Selover failed, and was sold part out by the constables ; he has been gone away six or seven years ago ; the last
 2120 I heard of him he lived in Monmouth County ; it is better than a year since I heard of him.

Being again examined in chief, the witness says : When I deeded the lot back I got my bond ; it was given to me by Peter G. Obert ; I never had any acquaintance with Mr. Simpson, I don't recollect of seeing him but once, twenty or thirty years ago, at Peter G. Obert's ; I never had any dealing or communication with him, except when I saw him as above
 2130 stated, when we talked a little. The whole of the business about conveying the land back, was transacted between me and Peter G. Obert.

PETER OBERT.

Sworn and subscribed before me, this 29th day of February, 1848.

J. S. BLAUVELT, Ex.

NEW-JERSEY, ss. Ursula Obert, a witness produced and examined on the part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth, in the above named cause, on her oath says: I am the wife of Peter Obert, the last witness; I 2140 heard my husband ask Peter G. Obert to take the land that Peter G. Obert had conveyed to Selover back; my husband at the time held it; this was before we conveyed it. My husband asked Peter G. Obert to take the land back, I expect because he did not feel able to pay for it, that is, that he was not able to pay the money he was security for, to Peter G. Obert, for Lewis Selover; Peter G. Obert agreed to take the land back. Nothing was paid to my husband that I know of.— When we executed the deed, Judge Ford, my husband, Richard Service and I were present; I recollect of no one else; don't 2150 know who paid for the drawing and acknowledgment of the deed; William Simpson was not there; I never saw him.— Peter G. Obert had talked to my husband of wanting money; my husband told him he could not pay it and he had better take the land back. I never heard Peter G. Obert propose to my husband to take the property back, but my husband asked Peter G. Obert to take it back.

URSULA OBERT.

Sworn and subscribed this 29th day of February, A. D. 1848, before me. 2160

J. S. BLAUVELT, Ex.

The further examination of witnesses is adjourned till tomorrow morning at ten o'clock, at the same place.

J. S. BLAUVELT, Ex.

March 1st, A. D. 1848. Parties met pursuant to adjournment, at my office, present, H. V. Speer, Solicitor of Complainant; Charles S. Scott, Solicitor, and Joseph W. Scott, of Counsel, with the Defendants.

J. S. BLAUVELT, Ex.

The defendants except to the several Exhibits offered by 2170 the complainant, marked C, D and E, and say that the matters and things in said Exhibits contained, are not lawfully in evidence. This exception is not to the manner or form of the certificates or exemplifications, but to the matters and things contained in said Exhibits.

J. S. BLAUVELT, Ex.

NEW-JERSEY, ss. Jane H. Magie, a witness produced and examined on the part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth, 2180 and nothing but the truth, in the above named cause, on her oath says: I reside at Jersey City, and am a sister of the complainant in this suit; I have no other brother living; I have two sisters—Ann, sometimes called Nancy, and Susan; my father was John Obert; I married Daniel Halsey Magie; sister Ann married Samuel Magie, and Susan married Stephen Verity; I had a brother George who has been dead nine or ten years; he left no children. My husband and I conveyed my right and interest in the farm, that came from my grandfather, George Obert, to my brother, the complainant, by deed, now produced and marked Exhibit F, on the part of the complainant; my husband and I executed this deed; the signatures 2190 to it are in our proper hand-writing.

Jesse Conklin married my aunt, Nancy Obert, a sister of Peter G. Obert, and resides in the city of New-York; I was present when this deed, Exhibit F, was witnessed by Jesse Conklin, and his name subscribed thereto as a witness is in his proper hand-writing.

I was present when the deed marked Exhibit G, on the part of the complainant, was executed by Jesse Conklin and Nancy Conklin his wife; the signature of the name of Daniel Halsey Magie, subscribed thereto as a witness, is in the proper 2200 hand-writing of said Daniel Halsey Magie; I saw him subscribe it as a witness to said deed.

Ann, or Nancy and her husband, Samuel Magie, and Susan and her husband, Stephen Verity, are all living.

The witness being cross-examined on the part of the defendants, says: The children of my father, John Obert, in their order of age, were George, Throckmorton, Nancy, Susan and myself; I will be thirty-five years of age on the third day of this present month, March; at the time my husband and I executed the deed, Exhibit F, we lived in Spring-street, 2210 New-York; I know the lands and premises we conveyed by the deed, Exhibit F; I saw them before I conveyed them; it may be four or five years before we conveyed them; I never lived on the premises, and do not remember living in the neighborhood; at the first of my remembrance, I lived at Shrewsbury; I was then about eight years old; I lived there until I was in my nineteenth year; from there I moved to New-York. When I married I think I was in my twenty-fifth year; I was married in Spring-street, New-York; I was not married in my father's life-time; I was an infant when my father died, and

I was then, as I have understood, a year or two old. My mother is not living, and was not living at the time of my marriage. At the time of the execution of the deed, Exhibit F, my brother lived where he does now, about two miles from Spotswood, in the County of Middlesex, in this State ; Jesse Conklin lives in Hudson-street, New-York ; he was formerly in the grocery business, but has retired from business. My husband follows the business of book-keeping, and is in the employ of Perse & Brooks, New-York.

The last time that I was on the farm, I went there with my cousin Mary Obert, who had an errand there ; my uncle, Peter G. Obert, lived there then ; this was four or five years ago now, I should think ; the only times when I have seen the farm has been upon occasional visits I have made to my aunt Huldah, who lives in the neighborhood ; upon these visits I have gone to the farm ; these occasional visits were after I moved to New-York ; the first of these visits I can't say how long ago it was. I never made any examination of the farm to know in what situation and condition it was in ; my aunt Huldah is the widow of Paul Obert. We received for the consideration of our deed fifty dollars, and I think Jesse Conklin received four hundred dollars, although I saw no money paid to him.

JANE H. MAGIE.

Sworn and subscribed this 1st day of March, A. D. 1848, before me.

J. S. BLAUVELT, Ex.

The defendants except to the whole of the testimony of Jane H. Magie, both as to the competency of the witness and the legality of her testimony.

J. S. BLAUVELT, Ex.

The defendants also except to the two deeds, marked Exhibit F and G, on the part of the complainant, as being incompetent and unlawful evidence.

J. S. BLAUVELT, Ex.

NEW-JERSEY, ss. Richard Service, a witness produced and examined on the part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth, in the above named cause, on his oath says : I am in my sixty-fourth year ; I reside in North-Brunswick ; I knew old George Obert fifty years ; he died upwards of twenty years

- 2260 ago ; previous to his death I had known him ever since I can remember ; I lived close by him, about a mile and a quarter off. I was intimately acquainted with him ; he used to come to my house almost every day. He left six children, Peter, Paul, John and George, Nancy and Polly ; George Obert married more than once ; his first wife was a Stillwell, his second wife was Charlotte Brewer ; he had one child by his second wife, George ; at the death of old George Obert, his son George could not have been more than one or two years of age. The old man married Charlotte Brewer, I think, about two years
- 2270 before his death, I am not certain about the time ; Paul, John and Polly Obert are dead ; John and Polly died in the old man's life-time ; Polly left no children, I don't know that she was ever married. John left five children ; George, Throckmorton, the complainant, Nancy, Susan and Jane ; George is dead, died good many years since—fourteen or fifteen years ; he was never married. Susan married Stephen Verity ; don't know who the other girls married. Throckmorton Obert, I should think, is over forty years of age, not much over ; I was not present at any time when it was proposed between Peter
- 2280 Obert and Peter G. Obert, to convey the Selover lot back ; I was once in the Clerk's office of Middlesex, when Peter Obert and Peter G. Obert were there but did not know what their business was when I saw them there ; Judge Ford, I think was there. The two Obert's were talking together ; I paid no attention to what they were talking of ; I did my errand and walked out ; this must be eight or ten years ago ; it was in the old clerk's office. * Afterwards Peter Obert told me that he had been transferring the Selover lot back to Peter G. Obert ; this was on the same day that I saw the Obert's in the Clerk's office.*
- 2290 This last between * * excepted to by defendants.
- Old George Obert owned a farm in his life-time ; he was the grandfather of complainant ; this farm lays on the Spotswood road, joins my land on two sides and the Washington road. The paper now shown me and marked Exhibit H, on the part of the complainant, is a description of the lands of which old George Obert died seized, and some other lots belonging to Peter G. Obert, one of the defendants ; this description includes a thirty-five-acre lot which Peter G. Obert bought of Henry Obert. Upon a re-examination of the description, the thirty-five-acre lot is not included in the description ; the thirty-five-acre lot lays to the east ; there is a lot of eighteen or twenty acres included in the description, which Peter G. Obert bought of Sheriff Van Arsdalen ; this lays on the north-west corner of the farm ; I am not certain whether

Peter G. Obert bought this lot from Sheriff Van Arsdalen or his son, Schureman Van Arsdalen ; I am not much acquainted with this part of the woods. There is also a lot within the description, of fourteen or fifteen acres, called the Thomas lot ; of which George Obert, the elder, did not die seized ; this lays on the north. There is another lot included in the description, 2310 called the Freeman lot, of which George Obert, the elder, did not die seized ; of all the residue of the property, included in this description, old George Obert died seized.

Henry Obert owned a thirty-five-acre lot adjoining old George Obert's farm, and he owned no other land adjoining said farm. Peter G. Obert sold this thirty-five-acre lot, and also a part of the farm ; in all, about seventy acres, to Lewis Selover. I am pretty well acquainted with all the lands adjoining old George Obert's farm ; I have worked all over the farm, and best acquainted on the east side and on the west 2320 side ; on the north side I do not know so much about the lines. I should say that the farm of which George Obert died seized, contained about two hundred acres ; I have been over it frequently ; cut a great deal of wood on it. At the time of old George Obert's death it was pretty well wooded ; there was white-oak, black-oak, red-oak and pine wood on the farm then ; at his death it was worth three thousand dollars ; it would now bring four thousand dollars ; the land has risen in price and value.— There is a better house and barn on the farm now than at George Obert's death ; since old George Obert's death there 2330 has been considerable wood and timber cut off ; if the farm were in the same condition now that it was in at old George Obert's death, it would be worth as much now as then ; I think the improvements that have been put upon the land have made it a little more valuable than it was at old George Obert's death—say two or three hundred dollars. The quantity of wood that has been cut off since George Obert's death is equal in value to all the improvements that have since been put on the farm ; I don't know that it is more ; I do not know how much wood has been cut, but there has been a large quantity cut ; I 2340 bought the wood on two lots of Peter G. Obert, and paid forty dollars for one lot, and seventy-five for the other. Peter G. Obert has had possession of this property since old George Obert's death, and he is in possession of it now ; he acts as owner ; I believe Peter G. Obert sells no wood now ; about a year ago he sold wood off to Elisha Blew ; he sold the wood on four or five acres to Elisha Blew, which he cut off ; I don't know of his selling to any else at that time ; the wood sold to Elisha Blew, was cut on the south side of the place ; it was not on the lots that

- 2350 did not belong to old George Obert ; I don't know that Alexander Obert was ever in possession of the farm ; old George Obert had been in possession to the time of his death ; Alexander Obert lived there with his father. The farm is worth forty or fifty dollars per year ; it would rent for no more I think. I have seen William Simpson ; don't know what his circumstances are ; I have no intimate acquaintance with him. He owed my sister some money, I believe ; she said so ; I only know as she said so. I believe she got it, or the most of it, with a good deal of difficulty. * I believe it was generally
 2360 known in the neighborhood that Throckmorton Obert was put in possession of the farm by the Sheriff.* This part between * * objected to by the defendants.

I do not know that the Sheriff put Throckmorton Obert in possession ; I saw them go up there.

- I thought old George Obert, at the time of his death was pretty well off. To the question, had the property of old George Obert, at the time of his death, been levied on by executions by constables ? witness says : not to my knowledge ; I was not in the habit of visiting him ; sometimes when I went
 2370 by, I would stop ; the old man was frequently at my house, but did not come so often after his second marriage ; he talked sometimes about his affairs.

- I knew George Hammel and Mahlon Hammel ; they both were in possession of this farm ; Mahlon first, and then George ; Mahlon went on the farm thirteen or fourteen years ago, in the spring of the year, April, I think ; it runs in my head he was on two years, but am not certain. George was there one year after Mahlon went off ; he came on when Mahlon left ; they had all the land to work that there was on the farm, and the privi-
 2380 lege of getting their fire-wood, I expect ; I expect the Hammels had possession of the whole farm, but I don't know ; I know that they had the whole of the cleared land ; I believe that Hammel's cattle did run in the woods, but not much ; he had to keep them in the fields or they would run away.

- The witness being cross-examined on the part of the defendants, says : I never saw old George Obert's farm run out and described according to a survey ; I never calculated or computed in figures, the number of acres belonging to the farm ; I only went over it with my eye. The description set
 2390 forth in the answer of Peter G. Obert, as the description of the lands whereof George Obert died seized, having been read to me, is, I think the true description thereof ; this comprehends the whole of George Obert's farm. The lot called the Rickman lot, is not a part of the original farm of old George Obert,

I think, but I do not know anything about it. Since my examination in chief, I have reflected up how long since Mahlon Hammel went on this farm, and I think Mahlon Hammel went on the farm about ten or eleven years ago, and he was there two years. I remember when the ejectment was brought against Hammel ; 2400 it was brought, I think, about one year after Mahlon went off. Both the Hammels moved to near Trenton, but at different times ; the last I heard of them they lived near Trenton.

Of the farm there is sixty or seventy acres cleared ; I can't say how much lime Peter G. Obert has put on the farm ; he has put a great deal. Peter G. Obert built a house on the farm, which I suppose cost three or four hundred dollars—and a barn, not very large, about twenty by thirty feet, or something like that ; I suppose it might be built for two hundred dollars. He also set out some apple trees—thrifty—they look 2410 good ; I guess there are fifty trees. At the time of the death of old George Obert, the farm was in possession of his widow Charlotte, and a part of the Brewer family ; she was old Tom Brewer's daughter, and was eighteen or twenty years of age. Old George Obert at the time of his second marriage, was about eighty-four years of age ; he told me his age often ; the members of the Brewer family who were on the farm at old George Obert's death, were Mrs. Brewer and two boys, who were, I think, pretty nearly of age, and both older than Charlotte. The old house was poor, but it answered the old 2420 man as long as he lived. I guess that the widow did not stay there more than a year ; the old man died in the spring of the year ; I know the widow went away shortly ; she did not stay more than a year ; the Brewers went away when the widow did ; Charlotte now lives with Samuel Whitehead, and I believe has lived with Whitehead ever since she left the farm. She and Whitehead have raised a fine parcel of boys—don't know how many—there are five or six, there may be more. I don't know of his going in debt for a property in Cheesequakes ; I thought he had paid for it ; Henry Obert's property was sold 2430 to pay his debts, but I don't know that any of George Obert's property was sold to pay Henry Obert's debt ; the property sold was the thirty-five-acre lot. Peter G. Obert put a cowshed on the farm ; there was some new fencing put upon the farm ; at the time of old George Obert's death the fencing was poor and it is poor yet ; Peter G. Obert repaired the fences.—There was a drain, or narrow ditch, all filled up now, cut from the barn to Elisha Blew's line ; this was done since the old man's death, I expect. The cow-house was a small one, and worth ten or fifteen dollars ; it was on the back side enclosed 2440

with boards ; there ain't much timber in it ; I don't know whether there are shingles or boards on it.

I can't write and I can't read writing, but I can read print. I don't remember when the widow's dower was assigned to her ; I understood it was assigned and that she got the Cheesquake property for her dower.

- The witness being again examined in chief, says : The frame of the barn that Peter G. Obert put up on the farm, came off the place, and I expect that the frame for the house did to ; I
 2450 don't know whether the costs of the house and barn was paid for by wood cut off the place ; about the time they were built Mr. Obert sold wood off of the place, in lots ; he sold some to me about that time. I don't know that the lime was paid for by wood cut off the place. The farm of which old George Obert died seized, contained, I have no doubt, more than one hundred and twenty-six acres ; I can't say, but I calculated it contained about two hundred acres, more or less ; I can come pretty near the quantity of a piece of land by looking at it ; I never heard old George Obert say how much his farm contained ; I
 2460 don't know where the beginning point, as described in the said answer, is ; but I know where the two pepperidge's, in said description, are, or the place where they were, and that is the beginning point of the farm ; the second and third lines in the said description, I don't know—nor the fourth, nor the fifth, nor the sixth. Old George Obert's farm crossed the Washington road, but it does not cross said road according to said description ; in order to get to the scrub black oak, mentioned in said description, the line must cross the road ; this scrub black-oak is on the south east side of the road ; the nineteenth
 2470 course is not right ; I don't understand the twentieth course ; I think it not right.

his
 RICHARD ✕ SERVICE.
 mark.

Sworn and subscribed this 1st day of March, A. D. 1848, before me.

J. S. BLAUVELT, Ex.

The foregoing are all the depositions taken March 1st, 1848.

J. S. BLAUVELT, Ex.

- A paper, writing, purporting to be a certified copy, under
 2480 the hand and official seal of W. Booram, Clerk of the County of Middlesex, of a deed, made by Peter G. Obert to Alexander H. Obert, dated November 27, 1838, produced and marked Exhibit A, on the part of the complainant, February 29th, 1848.

J. S. BLAUVELT, Ex.

A paper, writing, purporting to be a certified copy, under the hand and official seal of N. Booream, Clerk of the County of Middlesex, of a deed made by Peter G. Obert to William Simpson, dated the 28th December, 1838, produced and marked Exhibit B, on the part of the complainant, February 29th, 2490 1848.

J. S. BLAUVELT, Ex.

A paper, writing, purporting to be an exemplification of a Judgment in the Supreme Court of the State of New-Jersey, recovered by John Den, upon the demise of Throckmorton Obert, plaintiff against George Hammel, defendant, produced and marked Exhibit C, on the part of the complainant, February 29th, 1848.

J. S. BLAUVELT, Ex.

A paper, writing, purporting to be a certified copy, under the hand and official seal of James Wilson, Clerk of the Supreme Court of New-Jersey, of the consent, rule in Ejectment, in the suit wherein John Den, upon the demise of Throckmorton Obert, is plaintiff, and George Hammel defendant, produced and marked Exhibit D, on the part of the complainant, February 29th, 1848. 2500

J. S. BLAUVELT, Ex.

A paper, writing, purporting to be a certified copy, under the hand and official seal of James Wilson, Clerk of the Supreme Court of New-Jersey, of a writ of *Habere Facias Possessionem*, in a suit of John Den, upon the demise of Throckmorton Obert, against George Hammel, produced and marked Exhibit E, on the part of the complainant, February 29th, 1848. 2510

J. S. BLAUVELT, Ex.

A paper purporting to be a deed made and executed by Daniel Halsey Magie and Jane his wife, of the city of New-York, to Throckmorton Obert, dated the 11th day of January, A. D. 1839, produced and marked Exhibit F, on the part of the complainant, March 1st, 1848.

J. S. BLAUVELT, Ex.

2520

A paper purporting to be a deed made and executed by Jesse Conklin, of the city of New-York, and Nancy his wife, to Throckmorton Obert, dated the 11th day of January, A. D. 1839, produced and marked Exhibit G, on the part of the complainant, March 1st, 1848.

J. S. BLAUVELT, Ex.

A paper, writing, purporting to be a description of lands,

produced and marked Exhibit H, on the part of the complainant, March 1st, 1848.

J. S. BLAUVELT, Ex.

A paper purporting to be a deed made and executed by Peter Obert and Ursula his wife, to William Simpson, and dated the 26th day of February, A. D. 1839, produced and marked Exhibit No. I, on the part of the defendants, February 29th, 1848.

J. S. BLAUVELT, Ex.

The foregoing are all the Exhibits.
March 1, 1848.

J. S. BLAUVELT, Ex.

2540

Between Throckmorton Obert, }
Complainant, and }
Peter G. Obert, William Simpson } In Chancery of New-Jersey.
and others, Defendants. }

Examinations and depositions of witnesses in the above stated cause, taken before me, John S. Blauvelt, one of the Masters and Examiners of the High Court of Chancery of the State of New-Jersey, at my office in the city of New-Brunswick, in the County of Middlesex, in the State of New-Jersey, on this fifth day of December, in the year of our Lord one thousand eight hundred and forty-eight, in the presence of Henry V. Speer, Esq., the Solicitor of the complainant, and Charles S. Scott, Solicitor, and Joseph W. Scott, of Counsel, with the defendants, Peter G. Obert and William Simpson, upon due notice, admitted before me by the parties attending.

J. S. BLAUVELT.

2560 Vincent Barkelew, a witness produced and examined on the part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth and nothing but the truth, in the above stated cause, on his oath says: I was acquainted with David Smith in his life-time; I frequently saw him, and was acquainted with him when he resided in New-Brunswick; I understood that he was not in much circumstances; I am unable to say what his circumstances were; what I know was from hearsay; I understood he was not worth much property; he had got poor; I heard that he failed while he lived in New-Brunswick; this was the talk in the neighborhood. I recollect of hearing of the sale of the farm, made by

2570

Peter G. Obert, as Administrator of George Obert, deceased ; I heard of this sale about the time it was made. This farm was the farm of said George Obert ; I heard a talk around our neighborhood that they were a little afraid of buying the farm because they thought said Peter G. Obert had not a good title for it ; I can't say that the people in the neighborhood questioned Peter G. Obert's right to sell or the validity of the sale ; I never heard any persons assign as a reason for not bidding at the sale of the farm, that they were afraid of the Brewer 2580 family. Old George Obert was not in good friendship with Peter G. Obert ; I have heard the old man talk very hard against him ; I can't remember particularly on what grounds he talked hard against Peter ; I can't say for what purpose he talked hard against Peter ; nor can I remember what the old man said, it is so long ago ; in his talk to me he appeared to distrust Peter's honesty. Peter G. Obert offered to sell me the property which had belonged to his father, in Washington, a short time after he got possession of it. This property the old man owned at the time of his death, and Peter offered to sell it to 2590 me for five hundred dollars ; I did not buy it because there was some talk in the neighborhood that he could not give a lawful title for it. I reside in the village of Washington, in Middlesex County, and about three miles from the farm ; I was well acquainted with the old man, as long as I can remember, and until his death.

The defendant, William Simpson, excepts to so much of the foregoing examination as is founded on hearsay, and to so much of the foregoing examination as is irrelevant.

J. S. BLAUVELT, Exam'r. 2600

The said witness, Vincent Barkelew, being cross-examined on the part of the said defendants, says : I was sixty-seven years of age last July. Old George Obert has been dead, I should say, rising twenty years ; Peter G. Obert lived on the Stillwell Place and had removed, I think, from there, as much as twenty years before his father's death, and went out of the neighborhood entirely. I understood that he went to Flemington. At the time when I heard old George Obert talk hard against Peter, Peter lived in the city of New-York, and it was not over ten or twelve years before his father's death. 2610

I used to be, about forty years ago, very particularly acquainted with David Smith ; I had no more acquaintance with him than I have with fifty people here in town, whom I frequently see and do ordinary business with ; I can't call to mind any one particular conversation with any person, in which

that person expressed an opinion that David Smith was in poor circumstances ; I can't now remember that I ever had any conversation with any body about Mr. Smith's circumstances ; I had no such knowledge myself of Mr. Smith, as to know whether Mr. Smith was in good or bad circumstances ; I never heard any person say he was at the sale of the farm ; I do not distinctly remember to have had any conversation with any one respecting that sale ; I don't remember ever to have heard any one say that he questioned Peter G. Obert's right to sell that farm. I don't recollect of any single remark made by George Obert against his son Peter, nor any particular time when old George Obert talked against Peter ; it is so long ago that I can't specify when Peter G. Obert offered to sell me the property at Washington ; I think it likely I should have bought it had it not been for the talk in the neighborhood that he could not give a good title for it. I do not know whether Peter G. Obert was or was not acquainted with David Smith at the time of the sale. I think Peter G. Obert returned to live in the neighborhood about twenty years after he removed.

I never heard from themselves or others, that the following persons were at the sale of the farm, viz : James Brown, Garrett Van Arsdale, Furman Throckmorton, Abraham Barkelew, Robert Carson, James Manahan, Paul Obert, Isaac Perdun, David Smith, James Dunham. I heard a short time after the sale that David Smith bought the farm.

If I remember right, when Peter G. Obert lived on the Stillwell place he owned it.

The witness being again examined in chief, says : I think it was understood at that time, that Peter G. Obert owned the Stillwell place. I can't say that there was a fear or hesitation expressed by the people at the time that I heard of, about buying the farm.

V. BARKELEW.

Sworn and subscribed before me, by the said Vincent Barkelew, the day and year aforesaid.

2050

J. S. BLAUVELT, Examiner, &c.

John S. Obert, a witness produced and examined on the part of the complainant, being first duly sworn, according to law, to testify the truth, the whole truth, and nothing but the truth, on his oath says :

This witness waived for the present, by consent.

J. S. BLAUVELT, Ex. &c.

Samuel Whitehead, a witness produced and examined on the part of the complainant, being first duly sworn according

to law, to testify the truth, the whole truth, and nothing but 2660
the truth in the above stated cause, on his oath says—

To this witness the defendants except, and say that he is
incompetent.

J. S. BLAUVELT, Exam'r.

I am in my fifty-sixth year ; I reside in Washington, or in
the immediate neighborhood ; I was acquainted with old George
Obert in his life-time, and for a number of years, say four or
five years before and until his death. From eighteen hundred
and seventeen till his death, George Obert was the owner of a
farm, situate about three miles from Washington ; he died on 2670
this farm ; I was acquainted with the farm ; I never knew
exactly how many acres were in the farm ; I think I heard
old George Obert say that there were from two to three hundred
acres in this farm. I suppose that at the time of the old man's
death and a year afterwards, this farm was worth three thou-
sand dollars, and it was cheap at that ; I heard that this farm
was sold after the old man's death by Peter G. Obert, as Ad-
ministrator of old George Obert, deceased ; at the time of the
sale I was acquainted with Peter G. Obert and David Smith,
and also with Cornelius Bordine ; Bordine was also acquainted 2680
with Peter G. Obert and David Smith at that time.

To the questions—Were you ever present at any conver-
sation between Peter G. Obert and Cornelius Bordine, as to
the manner in which the sale of the farm, by Peter G. Obert,
had been made ? witness says : Yes, repeatedly. Had they
more than one conversation ? witness says : They had. To the
question, what was said by Bordine and Peter G. Obert in any
of these conversations, in reference to the sale of this farm ?
witness says : Sometime after the vendue, Peter said to Bor-
dine—"Why were you not at the vendue ?" Bordine an- 2690
swered, "What was the use of me coming to the vendue ? for
I understand that you have got the farm yourself—that you
agreed with David Smith to purchase it for you," says Bordine ;
"That won't do—your title is not worth (some phrase he made,
but the sum and substance of it was) it was not worth any-
thing." Obert said, "it was good enough for him, for he had
a right to employ whoever he pleased to do his business, and,"
he added, "there is more ways than one to whip the
devil around a stump." Question—Did Bordine in that con-
versation, say anything in reference to Smith's having told 2700
Bordine that he was going to buy the property for Peter G.
Obert ? witness says He did. Question—What did Bordine
say Smith had told him ? witness says Bordine told Peter G.
Obert that Smith had told him, Bordine, that he, David Smith,
had agreed with Peter G. Obert, for a certain compensation,

- to buy in the place for him, Peter G. Obert. Question--Were you ever present at any interview between Bordine and David Smith, previous to, but on the day of sale, where the subject of Smith's buying the property in for Peter was mentioned? witness says: Bordine and I were in New-Brunswick on the
- 2710 morning of the day of sale; we sat on the sill of the door in the south end of the old Court House; David Smith came across the street; he had some business with Bordine, and appeared to be in a hurry; they got through their business, and Smith said, "I ought to have been off before now, I am quite in a hurry." Bordine said to him, "Where are you going?" Smith said, "I am going to sell the real estate of George Obert, deceased." "Take your time," says Bordine, "I guess I'll go with you." Says David to Bordine, "it's of no use your going, for Peter has agreed with me to buy it in for him." Bordine
- 2720 answered, "well if that is the case, there is no use of me going, but Mr. Smith will you stop at my house as you return from the vendue?" Smith said, "I will." Smith went away then. Question--Where did David Smith come from when he came across the street to where Bordine and you were? witness answers: He came from the walk on the opposite side, and he came in a hurry. Question--On Smith's return from the vendue, was there any conversation between him and Bordine, or between Smith and you, in reference to the sale? There was, and a very lengthy one, at Bordine's house; Smith
- 2730 stopped there on his return, early in the evening. Bordine asked Smith if the sale had been; Smith said it had, and that he, Smith, had purchased it for Peter G. Obert, according to contract, as he had told him in the morning; Bordine said to David, "Has he gave you a deed?" Smith said no, they were to meet in a few days, receive a deed and his compensation, and then give back a deed to Peter G. Obert.

The conversation, as above testified to, as having taken place between Peter G. Obert, Bordine and myself, I think was had on the farm.

- 2740 Bordine and I had a little understanding together, for to try, if David purchased this property in that way, to get him to give Bordine a deed for it; Bordine in the conversation that evening, at Bordine's house, told Smith what a dreadful thing it was to deprive the orphan children from their rights; Bordine plead up this considerable, and said he would see the heirs and buy them out, so that they should have something; but David said it was bad enough, but being he had agreed to do, he did not like to be worse than his word, and if Peter did not do, pay him the compensation, and began to cavil, he would

deed the property to Bordine. David went away ; I stayed 2750
at Bordine's all night ; I understood it was the farm that had
been sold that day.

It was a general talk, and it was considered that Smith was
poor ; he had been or was a constable, and did anything he
could get to do. Smith and I used to talk then of poverty,
together ; I was pretty well poverty-struck just about that time.

The witness being cross-examined on the part of the said
defendants, says : I have not one smite of interest in this con-
troversy, and never had ; I did tell Mr. Speer, in the presence
of J. W. Scott and John S. Blauvelt, at the last meeting be-2760
fore said John S. Blauvelt, that I had an interest in this suit ;
my reason for telling Mr. Speer that I had an interest in this suit
was that I had then some mortgages given to me by John I. Sned-
iker, Dean Van Deventer and Henry Gordon, on three houses
and lots in Washington, which lots had formerly been George
Obert's, and the title for which was derived through the said
Peter G. Obert ; John I. Snediker's mortgage was for one
thousand dollars ; Dean Van Deventer's mortgage was for
one hundred dollars, and the interest for several years ; Henry
Gordon's mortgage was for two hundred dollars, with interest. 2770
The doubtful mortgage, Van Deventer's, I some while ago, and
since I made the said declaration to Mr. Speer that I was in-
terested in this suit—upon reflection, I can't say whether it
was before or since—assigned to Ann Tuttle. Van Deventer and
Ann Tuttle gave me their note for the amount of the mortgage
and interest due, which is not yet paid, but is, I think, secure.
I still hold the other two mortgages ; I have no mortgage or
other lien upon the Obert farm. These mortgages are on rec-
ord, to the best of my knowledge. It runs in my mind that
there was a place called the Stillwell Place ; I put down the 2780
the value of three thousand dollars as the value of all the land
that George Obert owned there ; George Obert's farm, as he
showed me the lines, was not all enclosed ; I don't recollect of
a tract of eight acres and four-tenths, referred to in the answer
as belonging to David Freeman ; Sheriff Van Arsdalen want-
ed to sell me a piece of land down there ; I don't know that
it adjoined, but it may have joined the Obert place. I have
heard something of a lot in the neighborhood, that Henry
Obert owned. I know nothing of fourteen acres of land which
was included in that conveyed by Peter G. Obert, Administra-2790
tor, to David Smith, and which was claimed by the heirs of
Robinson Thomas. I was not at the vendue of the farm, and
don't know where it was ; I think it was either on the farm or
at Blew's tavern.

I don't recollect that David Smith told me that James Brown, Garret Van Arsdalen, Furman Throckmorton, Abraham Barkelew, Robert Carson, James Manahan, Paul Obert, Isaac Perdun or James Dunham, were at the sale, or who was there.

2800 Prior to the sale I had been much at law with Peter G. Obert ; on James Dunham's docket, there were many suits between Peter and myself.

I could not be positive what time in the year it was that Smith told Bordine and me that he was going to buy the farm for Peter G. Obert ; I think at Bordine's we set in the kitchen part of the time, and there was fire there ; we took supper in another room ; can't say whether there was fire there or not ; I can't say now how David Smith came to Bordine's, whether
2810 in a wagon or a horse-back, or a foot ; the first I saw of him he came in the house ; I forget what compensation David was to have, but it was some few dollars which he thought a good compensation for his day's work ; David Smith lived then in New-street, New-Brunswick, I think ; I am not much acquainted with the streets and can't say whether it was New or Schureman-street, but I think I can show the house ; I think that he kept tavern in Jail-street once, but am not certain ; I don't know that David Smith left a house and lot free of incumbrances ; I have heard David say, and I have reason to believe,
2820 he was poor ; I lent him money and he could not pay me, and said he was poor, ; he afterwards paid me ; I don't recollect David Smith's death ; I heard tell of it ; I don't recollect talking about David Smith's funeral with Moses Smith ; I thought David was poor, and I believed him when he said he was poor ; he built himself upon his word, and was a man of truth, so far as I know of ; he seemed to stick very tight to his promises made to Peter G. Obert.

Complainant objects to the testimony of the witness in respect of his opinion of David Smith.

2830

J. S. BLAUVELT, Ex.

At the time David Smith told us he had agreed to purchase the property for Peter G. Obert, and when he said he had so bought said property, I believed him ; I never heard anything disrespectful of David Smith's character for truth and veracity.

I am not now on bad terms with Peter G. Obert ; we are on the best of terms, and I like Peter G. as well as the rest of the family.

I might have said this afternoon that I hated both parties as I did the devil, but it was an idle word ; both sides have

treated me badly, and I wish to have nothing to do with either 2840 of them.

The witness being again examined in chief, says : I called the Van Deventer mortgage doubtful because he was good for nothing, and is now crazy, and if the title failed, I would get nothing ; I can't say whether David Smith became the purchaser of the Washington lots, for I don't know ; Peter G. Obert sold them to the present owners. I was examined as a witness on the trial of the ejectment of complainant ; this was some years ago ; I had not the mortgages above named at that time ; I have the same interest in the suit now that I had 2850 when I made the declaration to Mr. Speer above stated ; I made the declaration to get clear of being a witness.

Being again cross-examined, says : I can't say how long it is since the ejectment was tried ; it appears to me it was in the new Court House ; I do not know that I have testified the same things to day that I testified then ; I have now testified to everything as I recollect it. Question—Had you a conversation on the night before or a few nights before the trial, with any man, and where, and did you inform that man that you were to be a witness on that trial, and if so, did that man ask 2860 you what you were about to swear, and did you answer him—I don't know at present, but I mean to swear enough to knock Peter Obert in the head, at all events ? the witness answers that there is not one word of truth in it.

Being again examined in chief, says : I was subpoenaed to testify on the first trial in the old Court House and absented myself to avoid testifying.

SAMUEL WHITEHEAD.

Sworn and subscribed the day and year aforesaid, by the said Samuel Whitehead, before me. 2870

J. S. BLAUVELT, Exam'r, &c.

The further examination of witnesses, was, by the consent of the parties, adjourned till to morrow morning at 10 o'clock, at my said office in the city and county aforesaid.

December 5th, 1848. J. S. BLAUVELT, Exam'r, &c.

Further examinations and depositions of witnesses in the above stated cause, taken at the office of said Examiner, on this sixth day of December, A. D. 1848, pursuant to adjournment and consent of the parties, in the presence of the solicitors and counsel aforesaid. 2880

J. S. BLAUVELT, Exam'r, &c.

John Outcalt, a witness produced and examined on the part of the complainant, being first duly sworn according to law,

to testify the truth, the whole truth, and nothing but the truth, in the above stated cause, on his oath says : I am in my eighty-second year ; I have been a Judge of the Court of Common Pleas of the County of Middlesex, and as such was in the habit of taking the acknowledgments and proofs of deeds. The deeds dated the fifth day of June, in the year eighteen hundred and twenty-two, and marked Exhibit M, Dec. 6, 1848, on the part of the complainant, was acknowledged by the granters therein, before me, as appears by my certificate of such acknowledged, endorsed thereon and signed in my own proper hand-writing.

2890 The deed now shown to me and marked Exhibit N, Dec. 6, 1848, on the part of the complainant, was also acknowledged by the grantor therein, before me, as appears by the certificate of acknowledgment endorsed thereon, and signed in my own proper hand-writing.

2900 These two deeds were acknowledged before me at the same time ; there was no money paid at the time, I am well satisfied. Peter G. Obert brought the deeds, I think ; I can't say who took them away ; at some time I did remark to Peter G. Obert that David Smith did not want the property, and was not able to pay for it ; I don't remember what reply Obert made, but my impression was that David Smith had bought the property for Mr. Obert, as he was the Administrator and could not buy it for himself ; I am not sure whether I got this impression from Mr. Obert or somebody else ; I was told that 2910 this was the case by Peter G. Obert or some body else ; I knew David Smith at the time ; I considered him at the time a poor man ; I can't say whether he was able at that time to pay for the property or not ; my impression is that he was not able, though he may have been ; the fact of David Smith becoming the purchaser of the property surprised me a little ; don't know what others said about it. Being asked whether he heard other persons express surprise at David Smith's buying the property, witness says, I can't say that I did ; I can't say who paid for the acknowledgments of the deeds, but I think Peter 2920 G. Obert did, because I don't remember of David Smith being present, although he must have been present ; I once spoke to David Smith about his buying the property, and I think he told me that he had bought it for Peter G. Obert.

The witness being cross-examined on the part of the said defendant says : I think it was shortly after, that I spoke to David Smith about his buying the property, for David Smith did not live a great while after. At the time the deeds were executed, David Smith lived in New-Brunswick, in Schureman-

street, and kept tavern there ; the house, I supposed, belonged to David Smith's wife ; I did not live in town at the time the 2930 deeds were acknowledged ; I don't remember that Elisha N. Blew was present then ; there have been many deeds acknowledged before me, and I don't recollect any one single instance in which the consideration money was paid at the time.

The witness being re-examined in chief, says : These two deeds were acknowledged before me, at my house, about three miles from New-Brunswick.

Being again cross-examined, says : David Smith owed me a little money ; I called upon him for payment ; he said he could not pay me ; I laughed at him about buying the Obert 2940 farm ; this was very probably the time when David Smith told me that he had bought the farm for Peter G. Obert, but I don't know ; I was in earnest in asking him for my money ; I am not positive that David Smith told me that he had bought the farm for Peter G. Obert, but I think he did ; I may have heard it from some other person.

JNO. OUTCALT.

Sworn and subscribed this 6th day of December, A. D. 1848, by the said John Outcalt, before me.

J. S. BLAUVELT, Exam'r. &c. 2950

Matthew Brown, a witness produced and examined on the part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth, in the above cause, on his oath says : I remember the trial of a suit in which Throckmorton Obert was a party concerned ; Peter G. Obert had a good deal to do with it ; Richard S. Field tried it for the complainant ; Mr. Scott was opposed to Mr. Field, I think, although I am not positive ; I do not remember hearing George Hammel's name mentioned ; this trial, I think, was about six years ago ; it was an ac-2960 tion of ejectment, brought, as I heard at the time, for one-twentieth of some piece of land, that came from one George Obert, I can't remember what was said about the relation between this George Obert and the complainant, but my impression is that the land had belonged to the grandfather of the complainant ; this impression is fixed upon my mind from the fact that Mr. Field remarked with emphasis, that at the time that Peter G. Obert had charge of this old Mr. Obert's estate, the complainant and the other heirs were very young.

I remember that on this trial, a conveyance from Peter G. 2970 Obert, as an Administrator or Executor, to David Smith, was spoken of, but don't recollect the words that impressed upon my mind the idea of re-conveyance, although the idea of a re-

conveyance has always been associated with that trial whenever I thought of it ; the reason of my recollecting it is that I had an interest in a similar case ; this conveyance was of a farm belonging to old Mr. Obert, in the neighborhood of Washington.

Henry Perrine, of New-Brunswick, was sworn as a witness
 2980 upon that trial ; he was examined, and testified in relation to the circumstances of David Smith, at the time this conveyance was made ; he was asked a question, the answer to which involved David Smith's responsibility ; he was asked Do you know anything about David Smith's responsibility ? he answered, I think I do ; the peculiar manner of his answer impressed it upon my mind, and I can see the old man before me, just as he stood at the time. To the next question, which I do not recollect, he answered in substance, that he had paid some money for David Smith, or some money which David Smith
 2990 was equally bound with himself to pay, and did not ; it strikes my mind it was on a constable's bond, but I am not positive of this ; I don't remember that Mr. Perrine testified that David Smith had failed, but the fact that he had failed was testified to by several witnesses.

Being cross-examined on the part of the said defendants, says : I don't know whether, at the time that Henry Perrine testified, he was drunk or sober, but he appeared to be like he was the last seven years of his life, and he had the reputation of being always pretty well corned.

3000

MATTHEW BROWN.

Sworn and subscribed this 6th day of December, A. D. 1848, by the said Matthew Brown, before me.

J. S. BLAUVELT, Exam'r, &c.

John S. Obert, a witness produced and examined on the part of the complainant, being first duly sworn, according to law, to testify the truth, the whole truth, and nothing but the truth, in the above stated cause, on his oath, says : Peter G. Obert got the two notes, heretofore marked Exhibits No. 2 and 3, for the defence, Aug. 25, 1848, John Van Dyke, Master and
 3010 Examiner, from me ; he said he wanted to find his father's name, to prove his hand-writing, and I found these two notes for him, among my father, Henry Obert's, papers ; I expect my father paid off these two notes, or he would not have had them ; I know the lot that was sold by Peter G. Obert to Lewis Selover ; I know where the farm is on which old George Obert died, but I know nothing about the lines ; I know about the lines of the lot that had belonged to my father's thirty-five acres, sold by Sheriff Snowhill, under a power from my father,

to Peter G. Obert ; it joined George Obert's farm. The description of the lands, conveyed by David Smith to Peter G. 3020 Obert, by deed, Exhibit M, Dec. 6, 1848, &c., does not include the above named thirty-five-acre lot of Henry Obert, but binds on it ; my father had no other lot on this part of the George Obert farm, but this thirty-five acres ; I expect Peter G. Obert owns the thirty-five-acre lot now ; he is in possession of it ; I understood that Peter G. Obert had sold this lot to Selover, with the Stillwell Place, and subsequently had taken it back, the corner described in the above-named deed, Exhibit M, &c., as the south corner of Henry Obert's land, near the close of the description of the farm, is the south corner of said Henry 3030 Obert's thirty-five acre lot, sold by Snowhill, as attorney of said Henry Obert, to Peter G. Obert ; whether it be the south or other corner, it is the said thirty-five-acre lot, and that is the place where it lays ; the last two courses, as described, binds on the thirty-five acre lot and excludes it.

The witness being cross-examined on the part of the said defendants, says : The said Obert thirty-five-acre lot is not included in the description contained in said deed, Exhibit M, &c. I helped to run out the said thirty-five-acre lot, about 3040 twenty years ago ; I have never been all around it since ; the first course from the pepperidges is not very long, and is not over a chain or two—it may be five chains ; I have not been there in ten years, that I recollect ; this thirty-five-acre lot begins at pepperidge trees, and goes easterly three or four chains, I can't tell how many, to a stake ; then it goes a southerly course ; westwardly, a good long distance, to a corner of the George Obert farm ; then it goes a westwardly or north-westwardly course, cannot tell exactly which, a good long distance along the line of said farm, then the next course goes eastwardly a good ways, don't know how far, pretty near down 3050 towards the pepperidges, then it turns again and goes south, and then it turns and goes to the pepperidges ; this, to the best of my knowledge, is the description of the lot sold by Snowhill, attorney of Henry Obert, to Peter G. Obert. I am about forty-two years of age.

Being re-examined in chief, witness says ; this thirty-five-acre lot is near Stanly's brook, and the brook runs through the lot ; my father owned no other lot that I know of, on this side of the Obert farm, except this thirty-five-acre lot, and this 3060 lot lies on the east side of the Obert farm.

Complainant is a little younger than I am, and we have been acquainted from boyhood.

JOHN S. OBERT.

Sworn and subscribed this 6th day of December, A. D. 1848, by the said John S. Obert, before me.

J. S. BLAUVELT, Exam'r, &c.

Paul Van Arsdalen, a witness produced and examined on the part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth in the above stated cause, on his oath says : I am in my 3070 fifty-second year, and will be fifty-two next May ; I live near Milltown, in this Township ; I knew old George Obert and have known him since I was a child, until his death ; I know the farm which he owned and on which he died ; George Obert owned two farms ; the one was called the Stillwell Farm and the other was where he died ; they joined ; as far as I have understood, there was in the whole, including a lot at Dunham's Corner of thirty acres, between two and three hundred acres ; the description contained in the deed from David Smith 3080 to Peter G. Obert, Exhibit M, &c., is a true description of the two farms, except that it takes in a small lot of David Freeman's, and a lot of Sheriff Van Arsdalen ; the Van Arsdalen lot, I understood, contains seventeen and three-quarters acres, and David Freeman's lot is about eight acres ; Robinson Thomas, or his heirs, owned a lot adjoining this farm, and the description of land, conveyed by said deed of David Smith, does not include said Robinson Thomas's lot, except one chain in width on the first course, which George Obert bought of the said Robinson Thomas ; I know the thirty-five-acre lot, sold by Snow- 3090 hill, attorney of Henry Obert, to Peter G. Obert ; the line described in said deed, which goes to a stake in Phillip Hooper's field, includes from three to five acres of land, or perhaps more, which was vacant and was taken up by Jonas Hager, and sold by Hager to Peter G. Obert ; the description in the deed from David Smith to Peter G. Obert, does not take in the thirty-five-acre lot sold by Snowhill, attorney of Henry Obert, to Peter G. Obert, but it binds upon the thirty-five-acre lot on the south and west, and near down to the pepperidge ; I know the lot sold by Peter G. Obert to Lewis Selover ; this thirty-five- 3100 acre lot is in that ; the Stillwell farm, and a little piece of George Obert's farm, and the thirty-five-acre lot, is what Peter G. Obert sold to Selover ; George Obert owned the Stillwell farm as long I can remember ; I did hear that George Obert sold the Stillwell farm to Peter G. Obert, and took it back ; I heard this from Peter G. Obert.

There was a bargain between Peter G. Obert and myself, by which I agreed to purchase the land he subsequently sold to Selover ; while I was was making this bargain something

was said between us about the title being in dispute ; I told Peter G. Obert that a part of the land belonged to his father ; 3110 he said it had belonged to his father ; that the other part had belonged to Henry Obert, and he had bought it of Snowhill, and for that he could give a good title. For the other he agreed to make me sure if there was any claim came upon it. The claim that I had reference to was the claim of the heirs, the grand-children of George Obert, who were not of age ; he said he would make this safe by taking a mortgage for three hundred dollars upon the property, which was to remain until it was settled, and this would make it all safe. He said he had applied to the Orphans' Court, and sold this land of his father, and that he had a 3120 good title to it from Smith. When Peter G. Obert, as Administrator, sold the farm it was worth three thousand dollars. I was told that when George Obert died that he was free of incumbrance, excepting two notes, which I was told were false ; there was a great rumor about it at the time.

George and Mahlon Hammel had possession of the farm under Peter G. Obert, for one year each ; I understood they had possession of about sixty acres ; this I understood from Peter G. Obert ; afterwards Mahlon Hammel told me he had possession of the whole ; George Hammel also said that he had 3130 the whole. This farm is worth less now that it was when it was sold by Peter G. Obert, Administrator. There has been a new house, barn and hovel put on it ; there was more than double the wood on when Obert administered than there is now. The land is very poor ; a man would starve to death on it ; I would not till it now if they gave me all it grew ; when Peter first came there it ought to have been worth about one hundred dollars a year. Both farms are poor and always have been.

The witness being cross-examined on the part of the de- 3140 fendants, says : The Stillwell farm, as I understood, came from Peter G. Obert's mother's father ; it appears to me that the land is worse now than it was when Peter G. Obert first came there ; there is not now, and has not been for the greater part of the time, much stock kept upon it ; more or less of it is cultivated every year ; I don't know how much of the land was cleared when Peter G. Obert came there ; perhaps forty, perhaps fifty acres ; there were then two houses on the farm ; the fire-wood would be worth twenty-five dollars for each of the families in the two houses, and it would be strange if 3150 the land would not be worth the rest of the hundred dollars.— These houses were old buildings, and were but in indifferent repair ; and one of them I put a family in, but it was a negro

- family ; this was in George Obert's time ; they were to pay twenty-five dollars. Both houses were torn down after the old man's death ; one or two years after, to the best of my recollection. George Obert was a man of property ; he had means of making money by selling wood ; he sold five or six acres of standing wood to Richard Stanly ; sold to different ones, my
- 3160 father among them, some rails ; George Obert sold thirty acres of standing wood to John Outcalt ; my father bought some wood of him, about eleven cords ; he sold wood to different persons at different times ; he sold the wood to John Outcalt in eighteen hundred and seventeen ; Guisbert Dehart cut off some wood on shares. I guess that George Obert's furniture and household goods were not of much value. I know that George Obert had some property at Cheesequakes, a house and lot, which was set off to the widow for her dower. The false notes above spoken of, I understood purported to be payable to
- 3170 Peter G. Obert ; I don't know whether these notes were false or true, except from report ; I understood that the Orphans' Court allowed these notes, and I have understood since that some Court has since told Mr. Obert that it was all wrong—the sale was wrong, and that he would have to begin again. Complainant told me this last, for one ; Richard Service for another ; I have heard it from different ones, but can't say who they were. George Obert had no great stock himself, for some years before his death ; I don't know what he had ; when Richard Stanly
- 3180 lived there he had a clever stock ; he had two horses, several head of cattle ; this was a little before George Obert was married ; there is a house and a kitchen on one farm, and there is another house on the Selover farm ; they are better than the houses that were there at the time of George Obert's death ; Peter G. Obert built the house on the one farm, and Lewis Selover built the house on the Stillwell Place. Peter G. Obert has got lime on the farm several times ; he has put on lime a little every year, or every other year. The houses are worth more rent than the other houses were. There could be cut twenty-
- 3190 five dollars a year of fire-wood, and a great deal more, on each farm ; I can't say how much cleared land there is on the farm.
- Being re-examined in chief, says : That to put up such a barn and hovel as has been put up on the farm, would cost about two hundred dollars or upwards ; the house, I suppose, would cost four hundred dollars.

PAUL VAN ARSDALEN.

Sworn and subscribed this 6th day of December, A. D. 1848, by the said Paul Van Arsdalen, before me.

J. S. BLAUVELT, Exam'r.

Between Throckmorton Obert, } 3200
 Complainant, and
 Peter G. Obert, and others, } In Chancery of New-Jersey.
 Defendants.

Examinations and depositions of witnesses in this cause, taken before me, John S. Blauvelt, one of the Masters and Examiners of the Court of Chancery of the State of New-Jersey, at my office in the city of New-Brunswick, in the County of Middlesex, this fifteenth day September, A. D. eighteen hundred and fifty-one, in the presence of Henry V. Speer, Esq., Solicitor of the complainant, and Charles S. Scott, Solicitor, and Joseph W. Scott, Esq., of Counsel, with the defendants, upon due notice of the taking of the same, duly admitted before me by the parties attending.

J. S. BLAUVELT.

James S. Nevius, a witness produced and examined on the part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth in this cause, on his oath says : I was one of the Justices of the Supreme Court of this State, in December, eighteen hundred and forty-two : there was an ejectment suit pending in said Supreme Court, which was tried before me at the Middlesex Circuit Court, in December Term, eighteen hundred and forty-two, wherein John Den, upon the demise of Throckmorton Obert, was plaintiff, and George Hammel was defendant ; Peter G. Obert was present at the trial ; I don't know that he took part in the defence ; he sat by the counsel who conducted the defence, and was in conversation sometimes with the counsel ; George Hammel was not there to my knowledge ; I don't know whether he was there or not. Question—What was the question raised and tried in that trial ? Witness says ; 3230
 The lessor of the plaintiff claimed title as one of the heirs of George Obert, deceased ; the defendant set up a title, by deed from the Administrator of said George Obert, deceased, made under an order of the Orphans' Court of the County of Middlesex, for the payment of debts ; and the question raised upon the trial was, as to the legal validity of that deed ; the order of sale, as well as the petition and rule to show cause, were offered in evidence upon the trial. There was a deed from Peter G. Obert, as Administrator of said George Obert, deceased, to David Smith, dated the fourth day of June, eighteen hundred and twenty-two, offered in evidence ; this deed was for the premises claimed in that suit, and was, as well as said order of sale, and rule to show cause, offered in evidence on the part of the defendant. The premises in controversy, 3240

were a farm lying in North-Brunswick, Middlesex County, about two and a half miles from Washington, and containing two hundred acres or more, and of which said George Obert had died seized. The defendant was in possession at the time this suit was brought, as the tenant of Peter G. Obert, that is
 3250 to say, from the Spring of eighteen hundred thirty-seven, to eighteen hundred and thirty-eight, as was testified on the trial by Richard Service. There was a deed offered in evidence, from David Smith and wife, to Peter G. Obert, for the same premises, offered in evidence on the part of the defendant, dated the fifth day of June, eighteen hundred and twenty-two.

The plaintiff, on the trial, objected to these deeds, alleging that David Smith, the purchaser at the Administrator's sale, purchased as the agent of Peter G. Obert, the Administrator, and that the sale was not *bona fide*, and offered evidence to sus-
 3260 tain and prove such allegation. The question submitted to the jury was, whether that sale was a *bona fide* sale—whether David Smith purchased as the agent of and for the said Peter G. Obert, or for himself.

Question—Was there any question made on that trial as to whether George Hammel was in the possession of the whole of the farm, or only of part? witness says: I don't recollect that any such question was raised.

The defendants in this cause except to the foregoing evidence as unlawful.

3270

J. S. BLAUVELT, Exam'r.

The witness being cross-examined on the part of the defendants, says: I have no personal knowledge of the location of this farm; I know that it lies two and a half miles from Washington, and that it contains two hundred acres or more, that the premises were in possession of George Hammel, only from the testimony of the witness upon the trial; I have no knowledge of the matters and things of which I have testified, except from what appeared on the trial; David Smith was dead at the time of the trial, and had been dead a good many
 3280 years.

JAMES S. NEVIUS.

Sworn and subscribed this 15th day of September, A. D. 1851, before me,

J. S. BLAUVELT, Ex.

Robert Adrain, a witness produced and examined on the part of the complainant, being first duly sworn, according to law, to testify the truth, the whole truth, and nothing but the truth, in this cause, on his oath says: I was present at the trial of a suit pending in the Supreme Court of this State,

and tried at the Middlesex Circuit Court, December Term, 3290 eighteen hundred and thirty-eight ; I was counsel for the plaintiff : the parties were John Den, upon the demise of Throckmorton Obert, against George Hammel ; I assisted in trying the cause ; I had been employed in the suit from its commencement ; Peter G. Obert was present at the trial and took a part in the defence ; I think George Hammel was not present at the trial ; Peter G. Obert undertook to try the cause ; Edward Wood came in and confessed lease, entry and ouster ; Peter G. Obert took an active part at the trial.

The defendant was called upon, at the trial, in the usual 3300 way, to confess lease, entry and ouster, after the case had been opened by Mr. Kirkpatrick, the attorney on record, of the plaintiff ; Peter G. Obert professed himself to be landlord, and willing to make the necessary confession of lease, entry and ouster, and applied to the Court to be allowed to try the cause : the Court admitted him to defend the suit, on condition of Mr. Wood, the attorney on record, coming into Court afterwards and making the usual confession ; the cause in the meantime, proceeded ; Mr. Wood subsequently appeared and made the usual confession of lease, entry and ouster. Peter G. Obert 3310 went on and tried the cause.

The claim of the lessor of the plaintiff, was to an undivided share of a farm in the county of Middlesex, of which his grandfather, George Obert, was alleged to have died seized, and in possession and intestate ; the lessor claimed as one of his heirs-at law : the farm was said to contain from two hundred and fifty to three hundred acres ; two witnesses were sworn for the plaintiff, who proved the pedigree, the possession of George Obert at his decease, and for years before that.

The defence, in substance, was of a sale of the lands in 3320 question, by an order of the Orphans' Court of the county of Middlesex, obtained by Peter G. Obert, as Administrator of said George Obert, deceased, to sell the lands in question, and of documents, consisting of orders of said Court, and of accounts in support of it—and also two deeds, or exemplifications of them—one deed from Peter G. Obert, Administrator of George Obert, deceased, to David Smith, for the lands in controversy in that suit, dated the fourth day of June, A. D. eighteen hundred and twenty-two, for the consideration of, according to my recollection, five hundred dollars ; the other was 3330 a deed from David Smith and wife, to Peter G. Obert, dated, as I find from my notes, the fifth day of June, eighteen hundred and twenty-two, and I think for the same consideration, for the same lands ; it was admitted on the trial that George

Hammel was the tenant of the said Peter G. Obert, of the same lands. They replied to this defence—1st, That the proceedings for the sale of this land by the Administrator were irregular and void ; 2d, That the sale by the Administrator was a fraud, being an indirect purchase, through David Smith, 3340 of said lands, by himself ; it was insisted on the part of the plaintiff, that David Smith was but an agent for Peter G. Obert in the purchase of the said lands for which said deeds were made, and that Peter G. Obert had employed David Smith to purchase said lands for him ; there was evidence offered by the plaintiff, to prove that Peter G. Obert had employed David Smith to purchase said lands for him at that sale ; the deed from the Administrator to David Smith, purported to be, and was alleged on the defence, to have been made in pursuance of the said sale, by the said Administrator, under the order of the 3350 Orphans' Court above named.

Cornelius Bordine was offered as a witness to prove that that Peter G. Obert had employed David Smith as his agent to purchase the property for him, the said Peter G. Obert ; Cornelius Bordine testified upon that occasion, according to my memory, aided and refreshed by my notes, that he and Peter G. Obert had conversed about the title to the lands in question, in that suit ; Peter G. Obert said that people said he had employed Mr. Smith to buy the farm for him, and that he, Peter G. Obert, thought he had a right to buy it, and get 3360 whom he pleased to do it ; that he, Bordine, told Mr. Obert what Smith had told him, that he, Obert, had employed Smith to buy the farm for him, and that he, Bordine, would like to hear of such a bargain ; that he, Bordine, had had similar conversations with Mr. Smith ; that he Bordine, was prevented from attending the sale, by what Mr. Smith said about the sale, and his Mr. Smith's being employed ; I find by my notes that Mr. Bordine testified that the farm was about two hundred and seventy or eighty acres, but that George Obert called it 3370 three hundred acres ; I have no recollection of the precise quantity ; Bordine testified that at the time of George Obert's death, as I find by notes, that in his opinion, it was worth from three to four thousand dollars.

The witness being cross-examined on the part of the defendants, says : I do not know George Hammel ; I don't know that I ever saw him ; I have no recollection of seeing him ; I think that if George Hammel had been present, I should have recollected the fact ; besides, I have an impression that it was stated that he had left, or had gone to the Western country ; I think this was stated in connexion with a difficulty made by

Mr. Wood in confessing lease, entry and ouster ; when the 3370
 cause was called on, Mr. Obert answered for the defendant ; no
 attorney answered for the defendant ; Peter G. Obert answer-
 ed. There was difficulty when the cause was called on, in con-
 sequence of Mr. Wood, the attorney of the defendant, not an-
 swering ; there was considerable difficulty and conversation, and
 finally the Chief Justice arranged that if Mr. Wood came in
 subsequently, and made the usual confession, the cause might
 proceed ; I think Mr. Wood was sent for ; I think he did not come
 into Court before the jury was sworn ; I think there was some
 progress made in the cause, before the jury, before Mr. Wood
 came in ; I do recollect of Mr. Wood making a statement to 3380
 the Court, but his language, or the substance, I do not recol-
 lect ; it ended in his making the confession.

As to the first objection made by the plaintiff to the de-
 fence, the Court decided that this defence was insufficient, and
 so charged the jury ; when the papers and deeds were offered
 in evidence, and objected to, the Court reserved the ques-
 tion until the cause was through, and then charged the
 jury that the proceedings of the Orphans' Court, and said
 deeds, constituted no defence in that action ; no summing up
 by counsel on either side. 3390

In the account of Bordine's testimony, I have taken the
 language mostly from my notes ; the substance and sense, I
 recollect distinctly ; I recollect that Bordine testified that he
 was prevented from attending the sale by what Smith said.

Question—Did Bordine say he was prevented from attend-
 ing, or that therefore he did not attend ? witness says : My be-
 lief is that he said he was prevented, either directly or in an-
 swer to a question, using such language ; I can't pretend at this
 distance of time to use the precise language, but the substance
 I have a distinct recollection of. 3400

My notes aid me in fixing the time of Bordine's conversa-
 tions with Obert, as he stated as taking place some eight or ten
 years after the sale ; I can't from memory or notes state when
 Bordine said he had the conversation with Smith.

Neither my memory or notes recall or enable me to say
 whether it was testified on the trial that James Dunham
 was present at the sale, but at the mention of the name in the
 connexion, some flickering idea passes over my mind that some-
 thing was said in relation to Mr. Dunham's being at the sale,
 but whether at the trial or between counsel I am not able to 3410
 say.

Question—Whether in the account given of Bordine's testi-
 mony that Peter G. Obert said that people said he had employed

Mr. Smith to buy the farm for him, he, Peter G. Obert, said he thought he had a right to buy it, and get whom he pleased to do it—do you give this language from your notes? witness says: Yes, the language; Bordine told Obert what Smith had told him, that he, Obert, had employed Smith to buy the farm for him, and that he, Bordine, would like to hear of such a bargain—I get from my notes; I never heard Mr. Bordine's reputation as a man of truth and veracity as a witness seriously impeached. Question—Did you ever hear his reputation for truth and veracity impeached? witness says: I say yes only in the usual arguments and discussions of law-suits.

Question—What was his moral reputation? (This question objected to by complainant) witness says: I desire to be guarded here; my impression is that his moral character did not stand high.

The witness being again examined in chief, witness says: To
3430 the best of my recollection and belief, I took down Cornelius Bordine's testimony in the language in which he gave it; I do not think that he stated when the conversation between him and Smith was had; I never heard Bordine's reputation as a man of truth and veracity impeached as above stated, except in law-suits between himself and others.

ROBERT ADRAIN.

Sworn and subscribed this 15th day of September, A. D. 1851, before me,

J. S. BLAUVELT, Ex.

3440

Nicholas Booream, a witness produced and examined on the part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth, in this cause, on his oath says: I have been Clerk of the County of Middlesex from November, in the year eighteen hundred and thirty-two, until the present time, and am such Clerk now; I made the paper marked Exhibit S, on the part of the complainant, from the record of judgments of the Circuit Court of the County of Middlesex, as Clerk of the said
3450 Circuit; said records being in my possession as Clerk of said Court, I presume I copied it from and compared it with the said record; it is a true copy of the record.

The paper produced and marked R, on the part of the complainant, is a true copy from the minutes of the Court of Common Pleas of the County of Middlesex, in my possession as Clerk of said Court; said copy is in my hand-writing, and made from said minutes; I have searched for the petition, and I cannot find it.

Exhibit P, on the part of the complainant, is a true copy from the minutes of the Circuit Court of the County of 3460 Middlesex, in my possession as Clerk of said Court ; I compared it with the original entry in the minutes, and certified it ; it is a true copy.

Cornelius Bordine is dead, and has been dead more than ten years.
N. BOOREAM.

The defendants except to the foregoing testimony as illegal.
J. S. BLAUVELT, Ex.

Sworn and subscribed this 15th day of September, A. D. 1851, before me, J. S. BLAUVELT, Ex. 3470

Mrs. Catharine Plum, a witness produced and examined on the part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth, in this cause, on her oath says : I knew David Smith ; when I first knew him he lived in Cranberry or Spotswood, or somewhere in that direction, ; I next knew him when he kept a public house in Neilson-street, in a house afterwards kept by Mr. Perrine, in the city of New-Brunswick ; afterwards he lived in Schureman-street, in said city ; while I knew him in 3480. New-Brunswick I considered him a poor man ; he was in low circumstances ; he was indebted to me, and he told me he was not able to pay me the debt ; he lived at the time in Schureman-street.

The witness being cross-examined on the part of the defendants, says : I don't know where he died ; I recollect that he kept tavern at the corner of Bayard and George streets, but can't recollect whether he lived there before he lived in Schureman-street or not. My debt was never paid, it was not fifty dollars.
CATHARINE PLUM. 3490

The Defendants except to the above evidence.
J. S. BLAUVELT, Ex.

Sworn and subscribed this 15th day of September, A. D. 1851, before me. J. S. BLAUVELT, Ex.

Samuel C. Cook, a witness produced and examined on the part of the complainant, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, in this cause, on his oath says : I knew David Smith all the time he lived in 3500 New-Brunswick ; the last place he lived in New-Brunswick was in Schureman-street, where he died ; I think while he lived

in New-Brunswick, he was generally looked upon as a poor man ; he was making a living, and that was all ; he died in eighteen hundred and twenty-five or eighteen hundred and twenty-six ; Cornelius Bordine died in eighteen hundred and forty-one ; I am not sure that David Smith made a living ; he was generally esteemed a poor man ; I had no particular knowledge about it.

S. C. COOK.

- 3510 • Sworn and subscribed this 15th day of September, A. D. 1851, before me. J. S. BLAUVELT, Ex.

John B. Kirkpatrick, a witness produced and examined on the part of the complainant, being first duly sworn, according to law, to testify the truth, the whole truth, and nothing but the truth in this cause, on his oath says : I am a brother of Littleton Kirkpatrick ; he is in England by the last accounts, dated the 22d day of August last ; his family is with him ; I have no reason to expect him home in a year or two ; I have access to all of his papers that I know of, and I presume

- 3520 I have access to all his law papers ; I have examined all the places where I suppose his law papers are, and have made a careful search for the postea, in the case wherein John Den, upon the demise of Throckmorton Obert, is plaintiff, and George Hammel is defendant ; the paper now produced by me and marked Exhibit T, on the part of the complainant, is the only postea I can find ; to the best of my knowledge, this is the only postea among his papers.

- The witness being cross-examined on the part of the defendants, says : my brother left here on the eighth or ninth of
3530 May last, and sailed from New-York on the tenth day of May last, at noon, in the steamship Pacific, for Liverpool, England, and arrived there, as his letters announced, in ten days and fifteen hours thereafter.

JNO. BAYARD KIRKPATRICK.

- Sworn and subscribed this 15th day of September, A. D. 1851, before me. J. S. BLAUVELT, Ex.

Between Throckmorton Obert,
Complainant, and
Peter G. Obert, and others,
Defendants, } In Chancery of New-Jersey. 3540

Examinations and depositions of witnesses in the above stated cause, taken before me, John S. Blauvelt, one of the Masters and Examiners of the Court of Chancery of the State of New-Jersey, at my office in the city of New-Brunswick, in the County of Middlesex, and State aforesaid, on this sixth day of May, A. D. one thousand eight hundred and fifty-three, in the presence of Henry V. Speer, Solicitor of the complainant, and 3550 Charles S. Scott, Solicitor, of the defendants, on due notice of taking the same, admitted before me by the parties attending.

J. S. BLAUVELT.

Henry B. Poole, a witness produced and examined on the part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth, in the above cause, on his oath says : I reside in Washington, South River, in Middlesex ; I am acquainted with Peter G. Obert very well ; I did know Mahlon Hammel by sight, from any other individual, but I had no personal acquaintance with 3560 him ; I don't know where Mahlon Hammel lived at the time I knew him ; I am the subscribing witness to the lease now shown to me, and marked Exhibit O, on the part of the complainant, produced and marked Oct. 1, 1851, Jos. C. Potts, M. C. The name Henry B. Poole, signed as a witness to said lease, is my signature, and the said lease was signed and sealed in my presence, by Peter G. Obert and Mahlon Hammel, and I think in my office ; the said lease is in my hand-writing and was written by me in strict accordance with the directions of the parties ; I think said lease was executed at the time it bears 3570 date.

The witness being cross-examined on the part of the defendants, says : I think I have a full and perfect recollection of said lease ; I have a general impression that the whole business was done at the date of the lease.

HENRY B. POOLE.

Sworn and subscribed this 6th day of May, A. D. 1853, before me.

J. S. BLAUVELT, Exam'r, &c.

Henry Hoagland, a witness produced and examined on the 3580 part of the complainant, being first duly sworn according to law, to testify the truth, the whole truth, and nothing but the truth, in the above cause, on his oath says : I was a constable

of the Township of North-Brunswick, in the County of Middlesex, at the respective dates of the several executions, now produced and shown to me, and marked Exhibits A, B, C, D and E, on the part of the complainant, May 6th, 1853; these five executions were put into my hands, as a constable, to collect; I recollect old George Obert; I can't recollect his son Peter; his name is very familiar to me; his name was Peter G. Obert.—

3590 The said five executions appear to have been against him, though there is a variance in the name in the executions; I never knew any other Peter Obert than Peter G. Obert; I think I had one execution against old George Obert, but I don't recollect the particulars now; I may have had one, but I have no distinct recollection of it.

The witness being cross-examined on the part of the defendants, says: I can't say that I have any distinct recollection of those transactions any farther than as they are brought to

3600 my memory by examining said executions; I think I have a general recollection of doing business with said Peter G. Obert.

HENRY HOAGLAND.

Sworn and subscribed this 6th day of May, A. D. 1853,
before me.
J. S. BLAUVELT, Ex.

Between Throckmorton Obert, Complainant, and Peter G. Obert and others, Defendants.	}	In Chancery of New-Jersey. On Bill and Answer.
----------------------------------------------------------------------------------------------	---	---------------------------------------------------

3610 Depositions of witnesses, taken before me, J. Dickinson Miller, one of the Masters in Chancery, of New-Jersey, at my office in Jersey-City, on the seventh day of May, eighteen hundred and fifty three, in the presence of H. V. Speer, Solicitor and of counsel for the complainant, and of J. W. Scott, Esq., of counsel for the defendants; due notice of the taking of which is admitted to have been served by the complainant's Solicitor on the Solicitor of the defendants.

Nancy Conklin, a witness produced on the part of the complainant, being duly sworn according to law, on her oath de-

3620 posed and sayeth; I am a daughter of George Obert; he resided in New-Jersey; I am a sister of Peter G. Obert; I was married in eighteen hundred and one; my husband's name was

Jesse Conklin—he is dead ; he died four years ago about ; I had a brother John, he is dead ; there are four children of John living ; I mean of John Obert ; they are named as follows :— The oldest is Throckmerton, the next is Ann Magie, the next is Susan Verity, and the next is Jane Magie. I brought up Ann Magie ; she was between seven and eight years old when I took her ; I took Ann about two years before my father's death. The difference in the ages between the several children of John Obert, was about eighteen months between each ; I visited my brother John in his life-time occasionally—but seldom, and in my visits to my brother, I saw the children ; I knew the children. Peter G. Obert said something to me about a bond or note, said to be held by John Burrows against my father, for one thousand dollars. Question—Did your brother Peter ask you any question about that bond or note ? Answer—He did. Question—State what Peter asked you and said about the note or bond ? Answer—After the death of my father, he came to me and asked me if I knew anything about a bond that he, George Obert, had given to John Burrows, for one thousand dollars ; I said no, and said that I did not believe that father had ever given him a note for that—and he made me answer and said neither do I believe it, but he said, I have seen the bond, and it looks like father's writing ; in that conversation with my brother Peter, he spoke as if he had not known of the existence of that bond or note before that time ; I had a conversation with my brother Peter about some money due from Mrs. White to my father ; my brother Peter did not know of it until I told him of it ; I understood from Peter that he had collected that money of Mrs. White, but I do not know it ; I understood this from his family also ; my father said it was six hundred dollars or over, but it was as much as that—and that she had owed it to him for many years ; when I told my brother Peter of this debt I mentioned to him that it was six hundred dollars ; I know nothing, except by hearsay, of a note of five hundred dollars, held by my brother Peter against my father ; my brother Peter said something to me about that note ; he said that he had a note against his father for five hundred dollars—and he said that father had not kept the house, but had let the creditors take it, and he thought he ought to pay the five hundred dollar note ; he, Peter, said that his father George had let Peter Obert's creditors take the house ; the note had been given for the house which Peter sold to my father—so he told me ; Peter told me the house was worth \$500, besides the mortgage on it, and that is what father gave the note for ; that was the house Peter's creditors took

- from my father ; Peter's circumstances at that time were so embarrassed that he failed ; he went to the new countries before his creditors knew that he had failed, and this transpired whilst he was gone ; I mean by what transpired whilst he was gone, that the Sheriff's sale of the house took place whilst he was gone ; the house was sold by his creditors, by an officer, I suppose, of course ; Peter tried to get the money on the note before he went away ; he took it to New-Brunswick to get the money for it, but he could not get it cashed, so my father told me ; father was distressed about the note afterwards ; he said it was unjust for him to pay the note and he should not do it ; there was nothing done about it until the death of my father.
- 3670 I know John Burrows ; he was a son-in-law of my brother Peter ; I knew John Burrows a long time ago—when he first married my brother Peter's daughter ; he resided in the City of New-York ; I lived there also ; Mr. Burrows' first wife, Peter's daughter, is dead ; I was at Burrows' house during her last sickness ; I can't say how long it is since her death ; she had not been married over two years when she died ; my belief is that Burrows' was worth very little ; he was a mechanic and worked at his trade ; in visiting the family I observed that they lived comfortably, but very plain and indifferent ;
- 3690 they occupied a very small house ; I should not have thought that John Burrows' or his wife were worth a thousand dollars, or half that sum.

The counsel of the defendants except to the evidence hereinbefore taken.

- Being cross-examined, witness says : The house spoken of which Peter sold to his father, was in Hudson-street, New-York ; I am seventy years of age and over. The Mrs. White spoken of I have no knowledge of except from hearsay ; I cannot tell in what year my brother went to the new countries ; it is a good while ago ; I can't remember how long. I cannot tell how long ago my brother's daughter, Burrows' wife, died ; I don't know anything about Burrows' building the State Bank at New-Brunswick—never heard of it before ; I can't say Burrows' was very poor, he was comfortable ; I have not seen Burrows' for a long time ; may have seen him about thirty years ago, but can't tell when ; he lived in Varick-street the last time I saw him ; I have never heard of his death.
- 3700

- Re-examined in chief : My husband and myself conveyed 3710 to Throckmorton Obert my right in the real estate of my father ; we executed a deed for it ; I think the person who took my acknowledgement to the deed was William Maxwell, in the

City of New-York ; he took my and my husband's acknowledgement.

Cross-examined : I don't know that I shall say what we received for it ; I agreed to take five hundred dollars for it ; I can't say how much we got for it. Question—Did you receive five hundred dollars for it ? Answer—I did not.

Question—Did you receive four hundred dollars ? Answer—I can't say that I did ; Throckmorton had so much trouble 3720 about it, that I had not the conscience to take it. Question—Did you receive three hundred dollars ? Answer—Don't think I did. Question—Did you receive two hundred dollars ? Answer—I think I received about one hundred dollars ; I don't think I received much more. Question—Did Throckmorton Obert ever give you any note or bond for the money ? Answer—I don't know what he gave my husband, he never gave me any ; I think it likely he might have given a note or bond to my husband. Question—At the time when you agreed to take the five hundred dollars, was that agreement in writing ? An- 3730 swer—I think it was. Question—What became of the written agreement, was it delivered over to Throckmorton or not ? Answer—I can't say it was, or can't say it was not ; my husband is not living ; it was an agreement between my husband and Throckmorton. Question—You have before said that you had agreed to take five hundred dollars for it, was that your husband's agreement or your agreement ? Answer—It was the agreement of both of us. Question—Was any of the one hundred dollars you spoke of having received, paid in the lifetime of your husband ? Answer—It was. Question—How 3740 much of it ? Answer—I cannot tell. Question—Has any of it been paid since the death of your husband ? Answer—I believe there was, but it could not have been much.

NANCY CONKLIN.

Taken and subscribed at Jersey City, May 7th, 1853, before me.

J. D. MILLER, Master and Exam'r in Chancery.

3750	Between Throckmorton Obert, Complainant, and Peter G. Obert, et. al. Defendants.	}	In Chancery of New-Jersey. On Bill, &c.
------	-------------------------------------------------------------------------------------------	---	--------------------------------------------

Depositions taken on the part of Complainant, before Joseph C. Potts, a Master in Chancery, at his office in Trenton, on the first day of October, 1851, in the presence of Henry V. Speer, Solicitor of the Complainant, and Joseph W. Scott, Solicitor of the Defendants, due notice of the examinations being admitted by Solicitor of Defendants. Mahlon Hammell, a witness produced on the part of complainant, being duly sworn, says : I reside in Hamilton Township, Mercer County ;

3760 I know Peter G. Obert, of Middlesex County, New-Jersey ; I occupied his farm in that County, Township of North-Brunswick ; was there two years ; about fifteen years since I removed from thence ; was a written lease.

Paper marked Exhibit O, on the part of complainant, shown the witness, he says :

That is the lease, I believe ; the description of the premises in the lease describes the land I occupied ; the signature to the lease (my name) is mine ; I wrote it ; the other is the signature of Peter G. Obert ; I had the same land under rent

3770 the second year that I had the first ; when I left, my brother George Hammell came on to the place ; I had it from the spring of 1835 to the spring of 1837 ; my brother had possession of the same lands I had, and which are described in this lease.

MAHLON HAMMELL.

Sworn and subscribed this first day of October, 1851, before me.

JOS. C. POTTS, M. C.

George P. Hammell, a witness produced on the part of the complainant, being by me duly sworn, deposes and says : I reside in Trenton ; I know Peter G. Obert, of Middlesex County, New-Jersey ; I occupied his farm in North-Brunswick, Middlesex County ; it was the same farm previously occupied by my brother Mahlon ; I went into possession at the time he went out of possession ; I had a written lease ; I think I went on it in the spring of 1837 and went off in the spring of 1838 ; I had possession of the lease ; I have searched for it several times recently—have made diligent search—but have not been able to find it ; I believe it to be lost ; my lease read that I had the same farm that my brother Mahlon had ; the land described

3790 in Exhibit O, on the part of the complainant, is the same land I had in possession, as tenant of Peter G. Obert ; while

I was in possession of this farm, there was a writ served on me ; the writ was brought, I think, by Throckmorton Obert ; I did not charge my memory with it ; was never but one writ or declaration of ejection served on me while I was in possession ; it stated that there was a suit about to be brought about the farm of which I was in possession ; the suit was brought—I understood it was for the recovery of that farm—it was Sheriff Brown who served the writ ; I think I gave it to Peter G. Obert, my landlord, but I am not positive ; I gave him notice that such a writ had been served upon me, the first time I saw him afterwards ; I never appeared to that writ, nor did I ever authorize any one to enter an appearance for me ; nor did I ever take any part or concern in the suit—nor do I know who did ; I believe I had in possession all the lands my brother had.

GEORGE P. HAMMELL.

Sworn and subscribed this 1st October, 1851, before me.

JOS. C. POTTS, M. C.

James Wilson, a witness produced on the part of the complainant, being by me duly sworn, on his oath says : I am Clerk of the Supreme Court of New-Jersey ; Exhibit P, on the part of the complainant, is a copy of a rule entered in the cause John Den, ex dem. Throckmorton Obert v. George Hammell, in the Supreme Court of New-Jersey ; I copied it myself. Exhibit N, on the part of the complainant, is a copy of a rule from the minutes of the Court, and I suppose it to be in the same cause ; I copied it myself. Papers marked Exhibit D and E, on the part of the complainant, being shewn witness, he says : E, is a copy of the original execution, and the return thereto, in the same cause, on file in my office ; I have compared it with the original ; Exhibit D, is a copy of the consent rule in that cause, on file in my office ; I have compared it with the original. I have examined the records and files of my office for a postea of a trial had in that cause, December Term, 1838, but have not been able to find any such postea.

J. WILSON.

Sworn and subscribed this 1st day October, 1851, before me.

JOS. C. POTTS, M. C.

L

3830 *The following are the depositions taken on the part of the Defendants :*

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the State of New-Jersey, wherein Throckmorton Obert is complainant, and William Simpson, impleaded with others, are defendants, taken at the office of Abraham V. Schenck, in the City of New-Brunswick, on the thirtieth day of May, in the year of our Lord, 1848, before Abraham V. Schenck, one of the Masters and Examiners of the said Court, in the presence of Henry V. Speer, Esq, Solicitor and of Counsel for the said Complainant, and of Charles S. Scott, Esq., Solicitor and of Counsel for the said defendants.

3840 Elisha N. Blew, of the County of Middlesex, a witness produced on the part of the aforesaid defendants, being duly sworn, deposes and sayeth : I live in North-Brunswick, in the County of Middlesex ; I am in my fifty-eighth year ; I have lived where I now live for thirty-three or thirty-four years ; I knew old George Obert in his life-time, very well ; I was acquainted with him ; I lived where I now live at the time of his death ; I was one of the appraisers of George Obert's estate, for the

3850 Administrator ; I think we appraised all the personal estate we could find, but am not certain ; it is so long ago that I cannot pretend to remember all the particulars ; I have no doubt but that we appraised all that we could find, but am not certain that all was found. The family that lived there was not disposed to give all up ; the family that lived there was George Obert's widow, and her mother, Thomas Brewer's wife ; Thomas Brewer himself was a transient man ; was there off and on, but did not stay there all the time ; he had no other home. Witness thinks that one of the boys was there ; one of the

3860 Brewer boys ; he had been there farming for the old gentleman, but is not certain that he was there at the time of the appraisement. The widow of George Obert was said to be the daughter of Thomas Brewer ; was one of his family ; was one of the children of Mrs. Brewer, at any rate. Witness can't say positively how old Mrs. Obert was at the time of the appraisement ; thinks she was in the neighborhood of twenty years of age at that time ; she had then been married about two, three or four years. Question—What was the reputation, character and standing of the family of old Thomas Brewer ?

3870 [Objected to as irrelevant.] He bore the character of a drunken, lazy, drinking, quarrelsome fellow ; he bore the name of being not honest ; he bore the name of being a thief. His wife was a hard-working sort of a woman ; rather quarrelsome and slanderous ; she was thought to be not the most chaste woman in

the world ; but witness does not know positively. The reputation of the family was bad ; as a general thing it was bad.— The reason why witness said he did not know whether Mrs. Obert was Thomas Brewer's daughter or not, is because Brewer's wife did not bear the character of a chaste woman. Witness does not think that he knew or heard anything at that time against the character of Charlotte, the widow of George Obert ; does not remember how old her son was at that time ; does not remember how long Charlotte staid there, but she staid there for a short time afterwards ; she went to live with Samuel Whitehead afterwards, and has lived with him ever since ; and it is now said that about a year ago she became his wife ; she has a family of some six or eight children, reputed to be by Mr. Whitehead ; these children were all before they were married. Whitehead had a wife living at the time that Charlotte went to live with him ; Whitehead's wife died about two years ago, but witness is not positive.

Objected to by complainant's counsel.

ABM. V. SCHENCK, Ex'r.

Witness lived about one mile across the fields, and one mile and a half by the road, from George Obert ; there were nearer neighbors ; none now surviving, that witness remembers, except Richard Service, and he lived about the same distance as witness from George Obert. I remember of there being a vendue of the farm, but was not at it ; it was at my mother's, who kept tavern on the road ; I heard that David Smith became the purchaser of the farm.

Objected to by complainant's counsel.

ABM. V. SCHENCK, Ex'r.

Question—Did you at that time, or about that time, and if so when, have any conversation with Peter G. Obert on the subject of Smith's purchase of the farm, and what was the substance of the conversation ? Objected to. Not long after, but how long I cannot pretend to say, I met with Mr. Obert either on the road or at my mother's ; he there stated to me that Mr. David Smith had become sick or dissatisfied with the purchase he had made, and wanted to know if I would not buy the farm on the same terms that Smith was to have it ; stating that he thought it was a cheap property, and he thought it would be to my advantage to buy it. The reason why I did not buy it was that I was young, poor, had just began the world, and did not want to run in debt ; I don't know that Obert assigned as a reason that Smith was afraid of the Brewers ; I think, to the best of my recollection, he said that Smith

thought he would have trouble with the Brewers, and that was
 3920 one reason why he would not take it ; that reason had no operation with me ; my reasons were as I have stated before ; that I did not want to involve myself. The oldest son of Charlotte, George, has lived with Whitehead up to within three or four years ; Whitehead brought him up as his own son ; he was called George Obert.

Witness being cross-examined on the part of the complainant, says : at the time that I went to make the appraisalment of which I have spoken, George Obert had been dead
 3930 five or six weeks, but I am not positive ; Charlotte, the widow of George Obert, it runs in my mind, staid on the farm some eight or nine months after the appraisalment ; I may be wrong with regard to the time, but such is my impression ; I had lived in the neighborhood some two or three years before the appraisalment ; I followed the business of house carpenter ; I am not certain whether Peter G. Obert, or some other person before him, moved on the farm after Charlotte, the widow of
 3940 George Obert, left it ; Peter G. Obert moved on not long after it ; I think that Abraham Accor, who married the sister of Charlotte, lived on the farm, and was there one or two years after George Obert's death, and before Peter G. Obert moved on ; but am not positive. I am not positive that Charlotte was there at the time that Accor was there, or whether she had then gone to Whitehead's. I think that George Obert was in the neighborhood of eighty years of age at the time of his death, but am not certain ; I am acquainted with young George Obert, the son of Charlotte ; he resembles the Obert family a good deal ; I should not think that he resembles Whitehead, nor any of Whitehead's boys ; I have no doubt in my mind that George was the son of old George Obert ; by Whitehead's
 3950 boys, I mean the boys he had by Charlotte ; he has no other boys ; I can't say how long it was after the sale of the farm that I had the conversation with Peter G. Obert, of which I have spoken ; but I suppose it was before. David Smith conveyed it to Peter G. Obert ; I remember of having witnessed the deed from Peter G. Obert, as Administrator of George Obert, his father, to David Smith, and the deed from David Smith to Peter G. Obert, for the farm ; if my memory serves me they were both done at once ; it was done at David Smith's house in New-Brunswick ; I don't know of any second transaction.
 3960 It is my impression that they were both executed at once ; I don't remember of seeing any money paid ; I don't remember any reason assigned for the transfer to Peter G. Obert ; but it was so long ago that I have no distinct recollection of what

passed ; I don't remember that there was anybody but Peter G. Obert, David Smith and myself, present at the time ; I don't remember who asked me to become a witness to the deed ; my impression is that one or the other of the parties met me in New-Brunswick, and called me in to witness the deed, but I can't tell which of them ; this is not a matter of memory, but an inference from what went before. I can't tell how long I was engaged in executing the deed ; I can't tell in what part of the house it was done. When Mr. Peter G. Obert spoke to me about purchasing the farm, I owned a small place of about fifty-seven acres, and I own the same place now ; my place was then incumbered to the amount of some four or five hundred dollars ; I paid, I think, about one thousand dollars for my farm.

ELISHA N. BLEW.

Sworn and subscribed at the time and place aforesaid, before me. ABM. V. SCHENCK, Master and Exam'r.

Between Throckmorton Obert Complainant, and William Simpson, and others, Defendants.	}	In Chancery of New-Jersey. 3980 On Bill, Answer, &c.
-----------------------------------------------------------------------------------------------	---	---------------------------------------------------------

It is hereby agreed that the examinations and depositions of any witness or witnesses, may be taken without farther notice, at Jersey City, before any of the Examiners of this Court, resident at Jersey City, or who may happen to be there.

And that the depositions taken there in pursuance of this agreement, may be read on the hearing of this cause, provided that the testimony so taken, be confined to the following particulars :—

3990

1. That John Adams Smith was on the sixth day of April, eighteen hundred and fifteen, and before and after that time, a Master in Chancery of the State of New-York, and that he was doing business as such, and that he was then residing in the City of New-York—

2. That the certificate and signature thereto, endorsed upon a certain paper, writing, and which paper, writing, sealed, purports to be a mortgage from George Obert to John Burrows, is in the proper hand-writing of the said John Adams Smith—

3. That the said paper, writing, sealed, and which is marked Exhibit No. 9, in this cause, was executed by the said George

Obert, in the presence of him, the said John Adams Smith, or that the said George Obert acknowledged to him, the said John Adams Smith, as a Master authorized by law to take such acknowledgement, that he, the said George Obert had executed the said paper, writing, sealed—

4. That B. C. Leveridge, purporting to be an attesting witness to the said paper, writing, sealed, has either departed this life, or that he cannot be found.

4010 H. V. SPEER, Solicitor of Complainant.
CHARLES S. SCOTT, Solicitor for Defendants.

It is further agreed that the deposition or examination of the said John Adams Smith may be taken before Stephen C. Parmenter, Esq., at any place where the said Stephen C. Parmenter shall happen to be, within the State of New-York, and for that purpose the said Stephen C. Parmenter is to be considered as a commissioner, by special agreement of the parties, provided that the deposition or examination of the said John Adams Smith, be confined to the particular points in the above first
4020 agreement set forth—

And it is further agreed that the said deposition or examination so as aforesaid to be taken, may be read in evidence upon the hearing of the cause.

H. V. SPEER, Solicitor of Complainant.

CHARLES S. SCOTT, Solicitor of Defendants.

The examination and deposition of John Adams Smith, of the town of Newburgh, in the County of Orange, and State of New-York, taken in pursuance of the annexed agreement, before Stephen C. Parmenter, Esq., a Justice of the Peace in and for
4030 said Orange County in said State, this fourth day of September, 1850, at the town aforesaid.

The said John Adams Smith being duly sworn, testifies : I was, on the sixth day of April, eighteen hundred and fifteen, and before and after that time, a Master in Chancery of the State of New-York, doing business as such, and then residing in the City of New-York. The certificate and signature thereto, endorsed upon a certain paper, writing, and which paper, writing, sealed, purports to be a mortgage from George Obert to John Burrows, and is marked Exhibit No. 9, is in my
4040 hand-writing. On the sixth day of April, 1815, George Obert, whose identity was satisfactorily proved to me by the oath of B. C. Leveridge, a subscribing witness to the aforesaid paper, writing, marked Exhibit No. 9, personally came before me and acknowledged that he executed said paper, writing, purporting to be a mortgage from George Obert to John Burrows, as aforesaid. The said B. C. Leveridge at said time, testified

under oath, that he saw George Obert, the person described in said mortgage, execute the same, and knew him to be the same person described in said mortgage, and that he, the said Leveridge, had subscribed his name thereto as a witness. From 4050 said acknowledgment and proof, I made a certificate thereof, endorsed on said mortgage and subscribed the same, as there set forth in my own proper hand-writing, with my name as Master in Chancery. As such Master in Chancery, I was duly authorized by law to take such acknowledgment. I have no knowledge whether said B. C. Leveridge, the attesting witness aforesaid, is dead or living, not having heard of or from him for many years.

JOHN ADAMS SMITH.

Taken, subscribed and sworn to, before me, this 4th day of September, 1850, at the town of Newburgh aforesaid. 4060

STEPHEN C. PARMENTER,

Justice of the Peace in and for Orange County.

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the State of New-Jersey, wherein Throckmorton Obert is complainant, and William Simpson, Peter G. Obert and others, are defendants, taken at my office in the City of New-Brunswick, on the twenty-fifth day of February, A. D. eighteen hundred and fifty-one, before me, Abraham V. Schenck, one of the Masters and Examiners of the said Court, in the presence of Henry V. Speer, Esq., Solicitor of Complainant, 4070 and of J. W. Scott, Esq., of Counsel with defendants; due notice of taking said examinations admitted before me by the parties attending.

ABM. V. SCHENCK, M. C.

Joseph W. Scott, a witness produced on the part of the defendants, being duly sworn, deposeth and sayeth: I know the hand-writing of Robert Boggs, and have seen him write; the writing of the whole of the paper marked Exhibit A, a, on the part of the defendants, February 25th, 1851, is in the proper hand-writing of the said Robert Boggs, and also the signature of R. Boggs to the same paper, is in the proper hand-writing 4080 of the said Robert Boggs.

Sworn and subscribed February 25th, 1851, before me,
ABM. V. SCHENCK, M. C.

The defendants offered in evidence a paper, writing, signed B. Boggs, dated 11th November, 1821, and marked Exhibit

A, a, on the part of the defenlants, February 25th, 1851 ; also, a commission of John A. Smith, as Master in Chancery of the State of New-York, marked Exhibit C, c, on the part of the defendants, February 25th, 1851 ; also, an exemplified copy of records and proceedings of the Orphans' Court of the County of Middlesex, marked Exhibit D, d, ex parte defendants, February 25th, 1851. ABM. V. SCHENCK, M. C.

Josiah Ford, a witness produced on the part of the defendants, being duly sworn, deposeth and sayeth, that the affidavit marked Exhibit B, b, on the part of the defendants, February 25th, 1851, was taken, sworn and subscribed before me, as a Judge of the Inferior Court of Common Pleas, in and for the County of Middlesex, on the twenty-ninth day of November, A. D. eighteen hundred and twenty-five, by David Smith, the deponent therein named. I was then one of the Judges of the Court of Common Pleas, in and for said County of Middlesex ; David Smith, the said deponent in said affidavit, is now dead, and has been dead for a number of years ; my name signed to said affidavit, is in my hand-writing, and the name of David Smith signed thereto, is in the hand-writing of said David Smith. I think the writing of the body of the said affidavit is in the hand-writing of Peter G. Obert.

JOS. FORD.

4110 Sworn and subscribed February 25th, 1851, before me,
ABM. V. SCHENCK, M. C.

The defendants offered in evidence a paper, writing, purporting to be an affidavit taken before Josiah Ford by David Smith, November 29th, 1825, and marked Exhibit B, b, ex parte defendants, February 25th, 1851.

ABM. V. SCHENCK, M. C.

All of the above Exhibits and testimony objected to by complainant's Solicitor.

ABM. V. SCHENCK, M. C.

*William Simpson, one of the Defendants, having departed this 4120
life and his heirs-at-law having been lawfully substituted in
his stead, the Chancellor after hearing, made the following
decree, which was filed March 20th, 1854.*

Between Throckmorton Obert,	}	In Chancery of New-Jersey. Decree.
Complainant, and		
Peter G. Obert, and others,		
Defendants.		

This cause coming on to be heard at the Term of October,
in the year of our Lord one thousand eight hundred and fifty-4130
three, in the presence of Henry V. Specer, of counsel with the
complainant, and of Joseph W. Scott, of counsel with the def-
endants, Peter G. Obert, and of William Simpson, Peter Simp-
son, Peter D. Oakey and Nancy his wife, John Thompson and
Catharine his wife, Barbara Simpson, Abraham Simpson, Ellen
Simpson, George Simpson, David Simpson and Esther Ann
Simpson, the defendants; Samuel Magie and Nancy his wife,
Stephen Verity and Susan his wife, and George Obert, each
having appeared to the said suit, the said cause having been
regularly set down for hearing at the said term, and upon due 4140
notice given to Daniel B. Bordine, guardian of the defendants
George Simpson, David Simpson and Esther Ann Simpson, the
decretal order of this Court heretofore made in the cause for
the revival of the said suit against the said William Simpson,
Peter Simpson, Peter D. Oakey and Nancy his wife, John
Thompson and Catharine his wife, Barbara Simpson, Abraham
Simpson, Ellen Simpson, George Simpson, David Simpson and
Esther Ann Simpson, who by the death of William Simpson,
a defendant in the Bill of Complaint named, had become inter-
ested in the said suit, and who were absent from and non-4150
residents of the State of New-Jersey, having been published
within the time and in the manner directed in and by the said
order, and they or either of them not having caused any ap-
pearance to be entered, or put in any plea, answer, demurrer
or disclaimer, whereupon and upon reading the pleadings and
proofs in the cause, and the arguments of counsel on both
sides having been heard, and the Chancellor having taken time
to advise thereon, and now on this seventh day of February,
in the year eighteen hundred and fifty-four, due examination of
the said pleadings and proofs being given, and due deliberation
thereupon being had, it appearing to the satisfaction of the 4160
Chancellor, from the said proofs, that the deeds of conveyance
mentioned in the pleadings and proofs, and purporting to be
made by the said Peter G. Obert as Administrator of George

Obert, deceased, to David Smith, and by the said David Smith and Sarah his wife, to the said Peter G. Obert, is fraudulent and void as against the complainant, and was so declared by the verdict and judgment in the ejectment suit mentioned in the bill of complaint, and that the complainant recovered in and by the said verdict and judgment, one equal twentieth part
4170 of the lands in the bill of complaint mentioned, as one of the heirs-at-law of the said George Obert, deceased, his grandfather; and was lawfully put in possession of them.

It is therefore ordered, adjudged and decreed, and the Chancellor, by virtue of the power and authority of this Court, doth order, adjudge and decree that the said deed, so as aforesaid, made by the said Peter G. Obert, Administrator as aforesaid, to the said David Smith, bearing date the fourth day of June, eighteen hundred and twenty-two, and the said deed so as aforesaid made by the said David Smith and his wife, to the
4180 said Peter G. Obert, for the lands and premises in the pleadings and proofs mentioned and described, are and were, from the time of the execution thereof, fraudulent and void, as against the said complainant, and that the same be set aside as to the complainant, and that a partition be made of the lands and premises in the bill of complaint mentioned and described, and that complainant is entitled to have six-twentieths thereof in value set off and assigned to him, the remaining fourteen-twentieths thereof in value, to be set off and assigned to the
said defendants, William Simpson, Peter Simpson, Nancy,
4190 wife of the said Peter D. Oakey, Catharine, wife of the said John Thompson, Barbara Simpson, Abraham Simpson, Ellen Simpson, George Simpson, David Simpson and Esther Ann Simpson, who are heirs-at-law of the said William Simpson, deceased; the complainant to be charged with five-twentieths of the purchase-money paid by William Simpson for the said lands, with interest from the time of payment, the said heirs to be charged with six-twentieths of the rents, issues and profits, or yearly value of the said lands, and of the wood and timber cut thereon during that time; and whereas it is alleged
4200 on the part of the said Peter G. Obert, that four certain lots, which never belonged to the said George Obert, are included in the boundaries of the said land described in the bill of complaint, one of which said lots of eight four tenths acres, he alleges was conveyed to him by one David Freeman; another of seventeen five-tenths acres was conveyed to him by Ferdinand S. Van Arsdalen; another of thirty-five twenty-six one-hundredth acres was conveyed to him by Andrew Snowhill, attorney for Henry Obert, and that the remaining one belonged

to the heirs of Robinson Thomas, and contained fourteen acres ; it is ordered that it be referred to John S. Blauvelt, Esq., Master, to ascertain and report whether the said lots, or any of them, are included and contained within the boundaries of the said land described in the bill of complaint, and if any of them are included in the said boundaries, that the Master do ascertain and report to this Court, the correct boundaries of the residue of the said land, described and mentioned in the bill of complaint, after deducting such or such parts of the said lots, or either of them, as are included in the boundaries of the said land described in the bill of complaint ; and that for that purpose he be at liberty to use the proofs and exhibits made and offered in this cause, and that the said Peter G. Obert produce to the Master, on his requisition, the deeds for the said lots, so as aforesaid conveyed to him, and also the deed from him, as Administrator, to David Smith. 4220

And that the said Master do also ascertain and report the amount of the rents, issues and profits, or yearly value of the said lands, and the value and amount of the wood and timber cut thereon since the same were conveyed to the said William Simpson by the Sheriff of Middlesex, to the time of making his report, and that he state the amount due for principal and interest, upon the sum of four hundred and ninety-five dollars, the interest to be computed from the time the said principal was paid by the said William Simpson to the said Sheriff. 4230

And that the said Master state an account between the complainant and the heirs of the said William Simpson on the one side, charging the said heirs with six-twentieths of the aforesaid amount of the rents, issues and profits, or yearly value of the said land, and of the value of the wood and timber cut on the same during the period aforesaid ; and on the other side, charging the said complainant with five-twentieths of the amount due for principal and interest upon the said sum of four hundred and ninety-five dollars, as aforesaid. 4240

And further directions be reserved till the coming in of the said report.

B. WILLIAMSON, C.

John S. Blauvelt, Esq., the Master to whom the subject was referred by the foregoing decree, having taken testimony in the case and heard Counsel, reported to the Chancellor.

Between Throckmorton Obert,
Complainant, and
4250 Peter G. Obert, and others, } In Chancery of New-Jersey.
Defendants.

This cause having been referred to me, John S. Blauvelt, one of the Masters of the Court of Chancery of the State of New-Jersey, by a certain interlocutory decree made therein, dated the seventh day of February, in the year of our Lord one thousand eight hundred and fifty-four, to ascertain and report whether certain lots, in the said decree mentioned, are included in the boundaries of the lands described in the bill of complaint, and if any of them are included in the said boundaries ;

4260 that he ascertain and report to this Court the correct boundaries of the residue of the said lands described and mentioned in the bill of complaint, after deducting such or such parts of the said lots, or either of them, as are included in the boundaries of the said lands described in the bill of complaint, and also to ascertain and report the amount of the rents, issues and profits or yearly value of the said lands, and the value and amount of the wood and timber cut thereon since the same were conveyed to the said William Simpson, by the Sheriff of the County of Middlesex, to the time of making such report ; and that said Master

4270 also state the amount due for principal and interest upon the sum of four hundred and ninety-five dollars, the interest to be computed from the time the principal was paid by the said William Simpson to the said Sheriff, and also state an account between the complainant and the heirs of the said William Simpson, on the one side, charging the said heirs with six-twentieths of the aforesaid amount of the rents, issues and profits, or yearly value of the said land, and of the value of the wood and timber cut on the same during the period aforesaid, and on the other side charging the said complainant with five-

4280 twentieths of the amount due for principal and interest upon the said sum of four hundred and ninety-five dollars. I do report to the Chancellor that I have been attended by Henry V. Speer, Esq., Solicitor, and of Counsel with the complainant, and Charles S. Scott, Esq., Solicitor of, and John Van Dyke, Esq., of Counsel, with the defendants, and in the presence of the parties attending, I have taken the testimony of witnesses hereto attached, and received certain Exhibits accompanying this my report, and considered of the matters so referred to me as aforesaid.

And I do certify and report that the said lot conveyed to the said Peter G. Obert by David Freeman, containing eight four-tenths acres, the said lot conveyed to the said Peter G. Obert by Ferdinand S. Van Arsdalen, containing seventeen five-tenths acres, and that the remaining lot which belonged to the heirs of Robinson Thomas, containing fourteen acres, are included and contained within the boundaries of the said land described in the bill of complaint, and that the lot laid down on the map appended hereto, and marked Exhibit B, on the part of the complainant, and designated "Peter G. Obert to Paul Obert, 28 acres," is also included and contained within the boundaries of the said lands described in the bill of complainant.

And I do further report, that the said lot conveyed to the said Peter G. Obert by Andrew Snowhill, attorney for Henry Obert, containing thirty-five acres twenty-six one-hundredths acres, is not included and contained within the boundaries of the said land described in the bill of complaint.

And I do further report to the Court, that at the request of the parties attending, from the evidence in the cause, the said map Exhibit B, and a paper hereto appended, dated "Old Bridge, N. J., Dec. 8th, 1854," and signed "A. J. Disbrow, D. S.," that excluding the four lots of land mentioned in the said interlocutory decree, and in the testimony of Andrew J. Disbrow, called "the David Freeman lot," "the Van Arsdalen lot," "the Henry Obert lot," and "the Robinson Thomas lot." and excluding the said lot laid down on said map, Exhibit B, and marked "Peter G. Obert to Paul Obert, 28 acres," the following is, and the parties agreed before me that the following is a true description of the lands in controversy in this suit, viz.:

Beginning at a stone heap in an old meadow, at a point on the map marked A ; thence, 1, north two degrees, east one chain, to the point on the map marked B ; 2, south eighty-nine degrees, west fifty-two chains and twenty-six links ; thence, 3, north two degrees, west eighty links ; thence, 4, north sixty-three degrees and fifteen minutes, west nineteen chains and fifty-five links ; thence, 5, south thirty-eight degrees and thirty minutes, east seven chains ; thence, 6, south fifty-four degrees, west twelve chains ; thence, 7, north thirty-eight degrees and thirty minutes, west seven chains ; thence, 8, south fifty-five degrees and fifteen minutes, west fifteen chains and forty links, to the point on said map marked F ; thence, 9, south twenty-one degrees, east twenty-eight chains and twenty-five links, to the point on said map marked G ; thence 10, north seventy-two degrees, east fourteen chains, to the point

on the map H ; thence, 11, north fifty-one degrees and forty-five minutes, east ten chains and forty-five links, to the point on the map I ; thence, 12, south thirty one degrees and forty-five minutes, east ten chains and forty-five links, to the point on the map J ; thence, 13, south forty-one degrees and thirty
 4330 minutes, west one chain and ninety-seven links, to the point on the map, K ; thence, 14, south ten degrees and thirty minutes, east one chain ; thence, 15, east eighteen chains and seventy five links to the point on the map marked P ; thence, 16, north eighty-seven degrees and thirty minutes, east thirty-eight chains to the point on the map, Q ; thence, 17, north seven degrees and thirty minutes, east two chains to the point on the map, R ; thence, 18, north sixty-two degrees, west twenty-eight chains and seventy links to the point on the map S ; thence, 19, north seventy degrees and forty five minutes,
 4340 east twenty-four chains and eighty links to the point on the map, T ; thence, 20, north forty-five minutes, east eight chains to the place of beginning, containing two hundred and fifty-five acres.

And I do further report to the Court, that the yearly value of the said lands, since the same were conveyed to the said William Simpson by the Sheriff of the County of Middlesex, by deed dated, as alleged in the answer, the nineteenth day of May, in the year of our Lord one thousand eight hundred and forty-three, is one hundred dollars.

4350 And I do further report, that the value and amount of the wood and timber cut upon the said lands and premises, since the same were conveyed to the said William Simpson by the Sheriff of Middlesex, to the time of making this report, is not definitely ascertained by the testimony taken before me, but is estimated only by the witnesses, and from their estimates, I report to the Court that the value and amount of the wood and timber cut on said lands during the period of time last aforesaid, is nine hundred and twenty-five dollars.

4350 And I do report further, that the amount due for principal and interest upon the sum of four hundred and ninety five dollars, from the date of the said Sheriff's deed to the said William Simpson, the nineteenth day of May, one thousand eight hundred and forty-three, the time when it is presumed that the said sum of money was paid by the said William Simpson, to the said Sheriff, to the day of the date of this report, is eight hundred and forty dollars and twenty-three cents, as by Schedule No. 1, appended hereto, and to which for greater certainty I refer, will more fully appear.

And I do further report to the Court, that I have stated

an account between the complainant and the heirs of the said 4360
 William Simpson, charging the said heirs of the said William
 Simpson, on the one side, with six-twentieths of the aforesaid
 amount of the rents, issues and profits, or yearly value of the
 said land, and of the value of the wood and timber cut on the
 same, during the period aforesaid; and on the other side,
 charging the said complainant with five-twentieths of the
 amount due for principal and interest upon the said sum of
 four hundred and ninety-five dollars, as aforesaid, which said
 account is marked Schedule No. 2, and is hereto annexed and
 to which for greater certainty I refer, by which said Schedule 4370
 it appears that the amount chargeable to the said heirs of the said
 William Simpson, is six hundred and twenty six dollars and
 twenty-five cents, and the amount chargeable to the complain-
 ant, is two hundred and ten dollars and six cents.

The evidence taken on the hearing before me, is appended
 hereto—all which is respectfully submitted.

Dated New-Brunswick, January 3d, 1855.

J. S. BLAUVELT, Master in Chancery of New-Jersey.

SCHEDULE No. 1.

4380

Amount of consideration money paid by William Simp-
 son to the Sheriff of the County of Middlesex,
 for deed dated the 19th day of May, 1843, men-
 tioned in the decree in this cause.....\$495 00
 Interest thence to January 3d, 1855.....345 23

Amount of principal and interest money of said con-
 sideration.....\$840 23
 January 3d, 1855.

J. S. BLAUVELT, Master in Chancery of New-Jersey. 4390

SCHEDULE No. 2.

The heirs of William Simpson in account with Throck-
 morton Obert, the Complainant, Dr.

To six-twentieths of the yearly value of the lands
 above named, and as is above stated, at per year
 \$100, from May 19th, 1843, to January 3d, 1855,
 11 years, 7 months, 15 days.....\$1,162 50
 Amount of wood and timber cut as above reported, 925 00

\$2,087 50 4400

Six-twentieths of which sum of \$2,087 50, herein
 charged to the heirs of said William Simpson as
 by the decree is directed, is.....\$626 25

Throckmorton Obert, Dr.

To five-twentieths of the amount due for the
principal and interest of the said sum of \$495 00
Whole amount due January 3d, 1855.....840 23
Five-twentieths charged to complainant.....\$210 06
4410 January 3d, 1855.

J. S. BLAUVELT, Master in Chancery of New-Jersey.

*The Chancellor having heard the exceptions made to the report,
made the following decree, which was filed July 17th, 1855 :*

4420 Between Throckmorton Obert, }
Complainant, and } In Chancery of New-Jersey.
Peter G. Obert, et al. } Decree, 5th July, 1855.
Defendants. }

This cause coming on to be heard upon the exceptions to the Master's report, and for further directions in the presence of Henry V. Speer, of counsel with the complainant, and John Van Dyke, of counsel for the defendants Peter G. Obert, William Simpson, Peter Simpson, Peter D. Oakey and Nancy his wife, John Thompson and Catharine his wife, Abraham Thompson, Barbara Simpson, Abraham Simpson, Ellen Simpson,
4430 George Simpson, David Simpson and Esther Ann Simpson, due notice of the said hearing also been given to Daniel B. Bordine, guardian of the said George Simpson, David and Esther Ann, and the said Abraham Thompson, infant defendants, the said bill having been dismissed as to the said defendants, Samuel Megee and Nancy his wife, Stephen Verity and Susan his wife, and George Obert, and the report in this cause, made by John S. Blauvelt, Esq., Master, bearing date the third day of June, A. D. 1854, and the exceptions taken thereto by the defendants in this cause being produced and read, and it
4430 appearing by the said report and exceptions, that the Master has charged the said William, Peter, Nancy, Catharine, Barbara, Abraham, Ellen, George, David and Esther Ann Simpson and Abraham Thompson, the heirs-at-law of William Simpson, deceased, a defendant named in the bill of complaint, with the sum of nine hundred and twenty-five dollars for wood and timber cut on the lands in the bill of complaint mentioned, and of which the said George Obert, Sr., in the bill of complaint named, died seized, and it appearing to the satisfaction of the Chancellor, that the said charge is erroneous and too

large, and that the sum of six hundred and seventy-five dollars-4450 only, ought to be charged for the said wood and timber. It is ordered that the said report be corrected in this particular, by deducting from said amount therein charged for wood and timber, the sum of two hundred and fifty dollars, and it is so corrected by the Chancellor.

And it further appearing that the other exceptions to the said report are erroneous and without foundation, it is ordered that they be, and the same are hereby overruled and disallowed.

And it is further ordered, that the said report, so corrected as aforesaid, and all the matters and things therein contained, 4460 do stand ratified and confirmed, by the order, authority and decree of this Court.

And it further appearing by the said report, as corrected as aforesaid, that the amount of principal and interest due from the complainant to the said William Simpson, Peter Simpson, John D. Oakey and Nancy his wife, in right of the said Nancy, John Thompson and Catharine his wife, in right of the said Catharine, Abraham Thompson, Barbara Simpson, Ellen, Abraham, George, David and Esther Ann, the children and heirs-at-law of the said William Simpson, in the bill of 4470 complaint named, for five-twentieths of the purchase money paid by the said William Simpson for the said lands, whereof partition is sought by the said bill of complaint, is the sum of two hundred and ten dollars and six cents.

And that the amount due from the said children and heirs-at-law of the said William Simpson to the complainant, for six-twentieths of the yearly value of the said lands, and of the wood and timber cut thereon, from the date of the said purchase, is the sum of five hundred and fifty-one dollars and twenty-two cents, and that there is a balance of three hun- 4480 dred and forty-one dollars and sixteen cents, due from the said children and heirs-at-law of the said William Simpson, to the said complainant, on account of the said six-twentieths of the yearly value of the said lands, and of the wood and timber cut thereon. It is further ordered, adjudged and decreed that the complainant is entitled to have and receive of and from the said William Simpson, Peter Simpson, John D. Oakey and Nancy his wife, John Thompson and Catharine his wife, Abraham Thompson, Barbara Simpson, Ellen, Abraham, George, David and Esther Ann, the said balance and sum of three hun- 4490 dred and forty-one dollars and sixteen cents, with interest thereon from the date of the said report, and that the same be made and levied out of and is hereby made and declared to be a lien upon their interest and estate in the said lands, and when

such part thereof as shall be set off and assigned to them by virtue of the decree in this cause, and in default of payment, that the complainant have execution by *feri facias*, against the said lands.

And it further appearing by the said report, that the lot
 4500 of eight four-tenths acres, conveyed to the said defendant, Peter G. Obert, by David Freeman; the lot of seventeen five-tenths acres, conveyed to him by Ferdinand S. Vanarsdalen, and the lot of fourteen acres belonging to the heirs of Robinson Thomas, and in the answer of the said Peter G. Obert mentioned and described, are included and contained in the boundaries of the said lands described in the bill of complaint, but that the lot of thirty-five twenty-six one-hundredth acres conveyed to the said Peter G. Obert by Andrew Snowhill, attorney of Henry Obert, is not included or contained therein,
 4510 and that the said Master has ascertained and reported a correct description of the boundaries of the residue of the said lands described and mentioned in the bill of complaint, after deducting thereout the said lots of eight four-tenths acres, seventeen five-tenths acres and fourteen acres, and of which said residue partition is to be made.

It is further ordered, adjudged and decreed by the Chancellor, that partition be made of the said residue of the said lands described in the said report in the manner ordered and directed by the interlocutory decree in this cause, and that a
 4520 commission do issue, directed to John Perrine, Henry Van Liew and Andrew J. Disbrow for that purpose.

And it is further ordered that the said commissioners do make division of the said lands into two parts, one whereof to contain six-twentieths, and the other fourteen-twentieths of the said lands, and that they make the said division by metes and bounds where they shall see occasion, and that all deeds, writings, surveys, muniments, relating to said lands in the custody or power of any of the parties, be produced before the commissioners upon oath as they shall direct; and it is fur-
 4530 ther ordered that the said commissioners shall examine witnesses on interrogatories or otherwise, relating to the matters in question, as they shall think fit; and that they shall set off and assign the six-twentieths of the said lands to the said complainant, to be enjoyed by him in severalty, and the said fourteen-twentieths of the said lands to the said William Simpson, Peter Simpson, Nancy Oakey, wife of the said John D. Oakey, Catharine Thompson, wife of the said John Thompson, Abraham Thompson, Barbara Simpson, Ellen, Abraham, George, David and Esther Ann Simpson, to be enjoyed by them in severalty.

And it is further ordered, that after such partition shall 4540
 have been made as aforesaid, the said complainant and the said
 defendants, William Simpson, Peter Simpson, John D. Oakey
 and Nancy his wife, in right of the said Nancy, and John
 Thompson and Catharine his wife, in right of the said Catha-
 rine, Ellen Simpson, Barbara Simpson, Abraham Simpson,
 shall convey such several rights and parts to each other res-
 pectively to be held in severalty, and that the complainant
 shall be at liberty to apply to this Court for a conveyance from
 the said Abraham Thompson, George Simpson, David Simp-
 son and Esther Ann Simpson, when and as they respectively 4550
 attain the age of twenty-one years, and that in the meantime
 the said complainant shall quietly hold and enjoy his said six-
 twentieths of the said lands in severalty, against each and all
 of the said defendants, and all persons claiming under them
 respectively.

And it is further ordered and adjudged, that the said de-
 fendants do pay to the complainant, his costs of this suit, to
 be taxed to the making of and including this decree, and the
 same be and are hereby made a lien upon the estate and inter-
 est of the said defendants, in the said lands and upon such 4560
 parts of the same as shall be assigned to the said defendants,
 and that complainant may have execution for the said costs
 against the said lands.

And it is further ordered that the costs and expenses of ex-
 ecuting the said commission, and making partition, be borne
 and paid by the parties ratably, and be a lien upon their re-
 spective interests and parts of the said lands, and that the said
 commissioners do proceed with all convenient despatch in exe-
 cuting and returning the said commission to this Court.

B. WILLIAMSON, C. 4570

*The Commission mentioned in the last mentioned decree hav-
 ing been issued, the Commissioners therein named, proceeded 4580
 to execute the duties thereof, and by a report filed on the 5th
 day of February, 1856, report d to the Court of Chancery
 that they had made partition of the premises in question by
 metes and bounds, giving to the Complainant six-twentieths
 thereof, and to the Defendants fourteen-twentieths thereof.*

On the coming in of the last mentioned report, the Chancellor made the following decree, which was filed on the 12th day of April, 1858.

4590	Between Throckmorton Obert, Complainant, and Peter G. Obert, et al., ii., Defendants.	}	In Chancery of New-Jersey. On Bill for Partition.
------	------------------------------------------------------------------------------------------------	---	------------------------------------------------------

This cause coming on to be heard for final decree in the presence of H. V. Speer, of counsel with the complainant, and upon due notice given to the defendants, and upon reading the report of John Perrine, Andrew J. Disbrow and Henry Van Liew, commissioners appointed by a decretal order of this court, made on the eleventh day of April, in the year eighteen hundred and fifty-five, in this cause, to make a division and

4600 partition of certain premises therein mentioned, situate in the County of Middlesex and State of New-Jersey, between the complainant, Throckmorton Obert, and the defendants, William Simpson, Peter Simpson, Nancy Oakey, wife of Peter D. Oakey, Catharine Thompson, wife of John Thompson, Barbara Simpson, Abraham Simpson, Abraham Thompson, Ellen Simpson, George Simpson, David Simpson and Esther Ann Simpson, the heirs-at-law of the defendant William Simpson, deceased, into two parts, one whereof to contain six-twentieths of the said premises, and the other part to contain fourteen-twentieths

4610 of the said premises, and to make the same by metes and bounds, and to allot the said six-twentieths to the said complainant, to be enjoyed by him in severalty, and the other fourteen-twentieths to the said above named heirs-at-law of the said William Simpson, deceased, to be enjoyed by them in severalty. By which said report it appears that the said commissioners, having been first duly sworn, and having given due notice to the parties, to wit, on the day of in the year aforesaid, did enter upon, walk over and survey the said tract of land and premises, and did then and there proceed to and did

4620 separate, set apart and divide the said tract of land and premises, with the appurtenances, into two parts, one whereof containing six-twentieths, and the other containing fourteen-twentieths of the said tract and premises, and did made division thereof by metes and bounds, and did allot the said six-twentieths to the complainant, to be enjoyed by him in severalty, which said part so allotted to the said complainant, is bounded as follows: Beginning at a stone heap where formerly stood two dead pepperidges, thence running north two degrees, east one chain; thence south eighty-nine degrees, west thirty-one

4630 chains and sixty links; thence due south thirty-three chains;

thence north eighty-seven degrees and thirty minutes, east thirty-three chains; thence north five degrees and thirty minutes, east two chains; thence north sixty-two degrees, west twenty-eight chains and seventy links; thence north seventy degrees and forty-five minutes, east twenty-four chains and eighty links; thence north forty-five minutes, east eight chains to the place of beginning, containing eighty-one acres. And in like manner did allot the said fourteen-twentieths of the said tract of land and premises, to the said William Simpson, Peter Simpson, Nancy Oakey, wife of the said Peter D. Oakey, 4640 Catharine Thompson, wife of the said John Thompson, Barbara Simpson, Abraham Simpson, Ellen Simpson, George Simpson, David Simpson, Abraham Thompson and Esther Ann Simpson, to be enjoyed by them in severalty, which said part so allotted by us to them, is bounded as follows: Beginning at a stake standing at the second corner of the aforesaid tract allotted to the said complainant in the line of the original survey, thence running south eighty-nine degrees, west twenty chains and sixty-six links; thence north two degrees, west eighty links; thence north sixty-three degrees fifteen 4650 minutes, west nineteen chains and fifty-five links; thence south thirty-eight degrees and thirty minutes, east seven chains; thence south fifty-four degrees, west twelve chains; thence north thirty-eight degrees and thirty minutes, west, seven chains; thence south fifty-five degrees and fifteen minutes, west fifteen chains and forty links; thence south twenty-one degrees, east twenty-eight chains and twenty-five links; thence north seventy-two degrees, east fourteen chains; thence north fifty-one degrees forty-five minutes, east ten chains and forty-five links; thence south thirty-one degrees forty-five minutes, east ten 4660 chains and forty-five links; thence south forty-one degrees thirty minutes, west one chain ninety-seven links; thence south ten degrees thirty minutes, east one chain; thence north eighty-seven degrees and thirty minutes, east twenty-four chains and seventy-five links; thence due north thirty-three chains to the beginning, containing one hundred and seventy-four acres, which said two tracts of land above mentioned and particularly described, are situate in the Township of North-Brunswick, County of Middlesex and State of New-Jersey.

And no objection appearing to the said report—it is there- 4670 fore on this sixth day of February, in the year eighteen hundred and fifty-six, by his Honor, Benjamin Williamson, Chancellor of the State of New-Jersey, ordered, adjudged and decreed, that the said report do stand confirmed in all things, and that the said complainant, Throckmorton Obert, is entitled to

have, hold, use, occupy, possess and enjoy in severalty, the said part of the said tract of land and premises, so as aforesaid allotted to him by the said commissioners; and described by metes and bounds, in their said report, to him, his heirs and assigns, 4680 forever, and that the said defendants William Simpson, Peter Simpson, Nancy Oakey, wife of Peter D. Oakey, Catharine Thompson, wife of John Thompson, Barbara Simpson, Abraham Thompson, David Simpson, George Simpson, Abraham Simpson, Ellen Simpson and Esther Ann Simpson, are entitled to have, hold, use, occupy, possess and enjoy in severalty, the said tract of land and premises so as aforesaid allotted to them, and described in their report by metes and bounds, to them and their respective heirs and assigns forever, and that the said partition, so as aforesaid made, stand and be held firm and 4690 effectual forever. B. WILLIAMSON, C.

—

Throckmorton Obert	}	February Term, 1854. Opinion.
<i>vs.</i>		
Peter G. Obert and others.		
		H. V. SPEER, for Complainant.
		C. S. SCOTT, } For Defendants.
		J. W. SCOTT, }

The object of the bill is for partition; it alleges also that some of the defendants have been in possession for a number of years, and prays an account; it is objected that the bill 4700 is incongruous, and that a complainant cannot have partition and an account by the same bill. I can see no objection to the bill for the reason alleged; there are numerous authorities for it; I do not know that the matter was ever questioned. In Tuckfield, et al., *vs* Buller and son, 1 Dickens, 241, the bill alleged that Buller the elder had got into possession of the estate and cut down timber; the bill besides praying partition, prayed an account, &c. *Wills vs. Slade*, 6 Ves. 488; the decree was made for an account and a commission for partition, between the plaintiff and defendant, according to the prayer 4710 of the bill. *Turner v. Morgan*, 8 Ves. 143; the bill was for partition and account; a question arose as to the mode of taking the account, but no doubt was expressed as to the propriety of the bill. It seems to be in conformity to precedents, (also *Hagar vs. Fairfax*, 17 Ves. 533.) The complainant may

properly include in his bill an account for rent, for timber cut and for improvements." It has always been the practice, and I know no authority or good reason to the contrary.

The only serious question involved, is as to the title of the respective parties. The defendants insist that the complainant has no title; Peter G. Obert disclaims by his answer, any interest; William Simpson claims title to the whole property; the other parties to the suit have not answered.

As to the complainant's title to the one-twentieth, which he claims by descent from his grandfather, I think it is very clear; it has been tried at law, and the character and result of the trial is satisfactory as to the title. It is true it was an ejectment suit, which does not conclude the parties from further investigation; but this Court will look at the questions which were really involved in that suit; and if the legal question as to the title which is raised on this bill was decided by the Courts of law, and more especially if the party was by the judgment and process of the Court put in possession under his title, what better proof of title ought this Court to require? If the title is denied, and there are serious doubts raised, the Court will not order the commission, nor will it dismiss the bill, but will retain the bill and afford the complainant an opportunity to establish his title at law.

Thus on a bill for a partition, defendant insisted that the plaintiff had no title, and that there was an entail subsisting; the Court gave plaintiff a year to try his title, and in ejectment he got a verdict. The cause came on upon the Equity reserved, and the defendant insisted he ought not to be bound by one trial in a matter of right of inheritance, *sed non allocatur*, being a decree only for partition. The reporter adds *Tamen quære*, (*Blimen v. Brown*, 2 Vern. 232.) but in this case I have no doubt as to the propriety of considering the trial at law satisfactory and conclusive. The title set up by the plaintiff was not questioned; it was the same title alleged in his bill. He claims under George Obert as one of his heirs-at-law. The adverse title is under the Administrator of George Obert, deceased, who sold the land by virtue of an order of the Orphans' Court. The only question in the Ejectment, was as to the validity of the title under the Administrator's deed; the Court decided that if the purchase was made by the Administrator *per interpositam personam*, it was invalid. The question of fact, viz: whether the purchase was made in fact for the Administrator, though in the name of another, was submitted to the jury; the jury found in the affirmative, and judgment was rendered for the plaintiff. He was put in

possession, and then filed his bill. His possession under that judgment has never been disturbed; it would be oppressive to 4760 compel the complainant to litigate further as to this one-twentieth.

But the complainant claims title to five-twentieths more under the same title, but not as the heir-at-law of George Obert, deceased; he claims as *purchaser* under other heirs. Simpson claims the whole premises under the Administrator's deed. The complainant insists that having been put in possession of the one-twentieth, and being entitled at the time to six-twentieths, under the same title, he then became legally seized according to his title and the extent of his interest. By his bill 4770 he alleges he was put in possession of one-twentieth, and does not allege that he has enjoyed an actual possession of any greater interest.

But it is not necessary to determine for the purposes of this suit, what legal protection was afforded to any additional interest the complainant might have had in the premises, by his possession of one-twentieth under the Ejectment suit.

All parties who have any interest in the partition, claim title under George Obert; the complainant purchased five-twentieths under George Obert's heirs; the validity of this title is not controverted. Simpson claims title to the whole 4780 premises, and the foundation of his title is the Administrator's deed. The complainant alleges that this deed is fraudulent; that while the property was struck off and the conveyance made to David Smith, the Administrator was the real purchaser, and the purchase was for his benefit.

Can the Court determine this question in this suit? and if it can, how does the Administrator's deed affect the complainant's title, and what are the equities of the parties? It is true this is not the proper tribunal to try the legal title to 4790 land, and although the Court has jurisdiction for the purpose of partition, if the legal title is drawn in question, the Court will not determine it; but the Court has jurisdiction, and it is its peculiar province to determine questions of fraud, and to set aside fraudulent conveyances interposed to defeat the legal title. The only question involved here is as to whether the Administrator was the real purchaser at the sale. That question determined, the law is plain, and it requires no interposition of a Court of law to make its proper application or to determine its effect upon the deed.

4800 If the fact is clearly established by the evidence, the Court will determine the fact, or in case of difficulty may refer the question to the proper tribunal for the purpose. This is a

very different question from one where the legal construction of a deed or of a will is involved. In *Coxe and others, against Smith and others*, 4 J. C. R., 241, which was a bill for partition, the Chancellor says: When the question arises upon an equitable title set up on the part of the defendants, this Court must decide the title, for equitable titles belong peculiarly to this Court, and the parties cannot be sent to law.

The complainant does not deny the authority of the Court 4810 to order the sale, or the right of the Administrator to make sale and convey the land under the order, but he alleges that the deed is fraudulent, and cannot prevail against his legal title. There can be no doubt that the heir-at-law may file his bill in this Court to set aside an Administrator's deed under such circumstances. This is the proper tribunal for such an investigation; there certainly can be no objection then to the Court's trying the question of fraud, because it is involved in a suit, the object of which is partition. If it is a question of title which the Court may try, it can determine it as well in 4820 this suit as in any other. It is not the fact, that the question of title arises in a suit for partition merely, that deprives the Court of jurisdiction; the question is, is it a legal title which exclusively belongs to a legal tribunal?

How does the complainant's case then stand affected by the Administrator's deed. The bill alleges that the order of the Orphans' Court was procured by fraud; that it was procured upon a false misrepresentation made by the Administrator as to the decedents debts. If it was proper for the Court to inquire into fraud as to the order, between the parties, the evi- 4830 dence is not satisfactory to sustain the charge of fraud in this respect. It is insisted also that the sale was fraudulent, and that the deed is void, not simply on the ground that the Administrator was seller and buyer, but because through the management of the Administrator, the property sold at a price much below its value. There was much testimony taken on this point; there was no evidence as to what took place at the sale, or as to how it was conducted. There is evidence to excite a strong suspicion that the Administrator did not act *bona fide* in conducting the sale; but a very large portion of the testi- 4840 mony was wholly illegal, and laying out of view this evidence, the proof is not satisfactory as to any positive fraud on the part of the Administrator. Was he the real purchaser at the sale? The property was struck off to David Smith for the sum of \$500; the fact that he was a man of no means, and that on the same day the Administrator conveyed the property to Smith, he re-conveyed it to Peter G. Obert, who was the Ad-

ministrator, is sufficient proof, without any explanation of the transaction that the purchase was made through Smith for the benefit of Obert. There is other evidence to corroborate this. That deed cannot stand then against the title of the complainant. But the deed is not absolutely null and void; it is a matter of right however, in the complainant, and not of discretion in the Court, to have the deed removed out of his way and set aside. I will not refer to the authorities on this point, as I have had occasion lately to refer to and examine them in the case of *Scott vs. Gamble and wife*; they were also lately examined by the Court of Errors and Appeals in the case of *Mulford vs. Mineh and others*; and the principle was fully sustained by that Court.

In setting aside such a deed, this Court will do it on equitable terms; there is no difficulty in adjusting the equities, if any exist, in case like this. In the case of *Michard et. al. vs. Harris, et. al.* 4 How, 563, it was part of the directions to the Master, where a similar deed was set aside, to make partition of the lands, if necessary for the purpose of settling the equitable rights of the parties.

The consideration money paid by Peter G. Obert, was five hundred dollars; this money was appropriated to pay off the debts of the estate which were liens upon the land; it is equitable, therefore, that the land should pay this amount.

But Peter G. Obert has no interest in this partition. The title under the Administrator's deed, is now in William Simpson, and the equities are to be adjudicated with him. It is insisted that the conveyance to him was fraudulent, and made to defeat the creditors of Peter G. Obert, and that he purchased with the full knowledge of the defendant's title and of the defect in the title of Peter G. Obert. These questions are not in issue by the pleadings; the bill merely alleges "that William Simpson claims, or did claim, some portion of, or interest in the premises, and leaves him to make out by proof, to the satisfaction of the Court, in the mode that may be designated therefor, in case the same becomes necessary." Simpson discovers his title by his answer, and affirms that he is a *bona fide* purchaser, for a valuable consideration, without notice. If the complainant desired to impeach his title for fraud, he should have made the proper allegations by his bill; or after his title was discovered, should have amended his bill for that purpose. The *bona fides* of Simpson's title is not put in issue; he was not bound to answer any evidence upon a question not in issue by the pleadings.

What equitable claim then can he make upon the land be-

fore a partition is decreed? He does not state in his answer what consideration he paid for the land; nor does the evidence show he paid anything except the payment he made to the Sheriff, which I shall notice. I think the evidence is satisfactory that he did not pay anything to Peter G. Obert; although the conveyance to him was a voluntary conveyance, it is good as between the parties to it; but if the complainant's title, which he obtained through Peter G. Obert, cost him nothing, 4900 he can claim nothing for its redemption. He did, however, make a payment on the land. Peter G. Obert mortgaged the premises for \$500; this mortgage was foreclosed, and Simpson purchased in the property at the Sheriff's sale. Thus Peter G. Obert raised out of the land the money to indemnify him for the payment he had made of the debts of the intestate. William Simpson having paid this mortgage debt, it is equitable he should be indemnified; but he must account for the rents and profits of the premises during the time he has occupied them. 4910

It remains to decide between whom this partition is to be made. The complainant is entitled to six-twentieths; as to one-twentieth, he is to receive it without any abatement, and is entitled to one-twentieth of the rents and profits chargeable to Simpson. Of this part he is in possession under a judgment at law. The Administrator's deed, as to that portion, having been set aside by a Court of law, this Court is not called upon to remove the deed out of the complainant's way to entitle him to a partition as to this one-twentieth; of course the Court can impose no terms upon him as to that. Upon 4920 the other portions of his interest, it is right that equitable terms should be imposed, because in order to grant the partition, the Court is called upon, in the exercise of its equitable powers, to remove a deed which is an obstacle in the way of granting the object of the bill.

There are other defendants in this suit: Peter G. Obert, George Obert, Samuel Magie and Nancy his wife, and Stephen Verity and Susan his wife. Peter G. Obert disclaims all interest in the partition; whatever interest he had has been conveyed to William Simpson. George Obert is one of the heirs-at-law of 4930 George Obert, dec'd, under whom all parties claim. He has no interest in the partition unless the Administrator's deed is removed out of his way. That deed is not a nullity and absolutely void; George Obert may avoid it, but until he does so the deed is valid and conveys the interest it purports. A stranger cannot avoid the deed; the complainant may avoid it, as it affects him, but he cannot interfere with it as between other parties;

nor because the deed is avoided and set aside as to six twentieths, does it follow that the decree which affects that, inter-
 4940 feres in any way as to the relative rights of other parties under the deed, as to the remaining fourteen-twentieths. George Obert has never avoided the Administrator's deed ; he has not appeared in this suit, and asks no aid of the Court on his behalf. The Court will not volunteer in this matter ; it may be that George Obert is willing to have the deed stand ; he may consider it his pecuniary interest not to interfere with the deed, and be unwilling to submit to the equitable terms imposed by the Court in decreeing its avoidance ; or other considerations may move him ; he may be unwilling to interfere with his
 4950 brother in a matter which he may consider merely technical in its character. As between George Obert and William Simpson, Simpson's title must stand. Samuel Magie and Nancy his wife, the bill alleges are entitled to one-twentieth, through Nancy, as one the heirs-at-law of George Obert, deceased, and Stephen Verity and Susan his wife, claim one twentieth, through Susan, as one of the children and heirs-at-law. These interests stand precisely on a footing with that of George Obert's ; the Administrator's deed has never been interfered with, and the parties do not now ask the interference of the Court.

4960 There is no one then interested in the partition except the complainant and William Simpson ; as to the other parties, the bill must be dismissed.

William Simpson sets up in his answer, as a bar to the complainant's title, the statute of limitations ; as to two-twentieths, the statute can have no application, on account of the non-age of the parties ; as to the other one-fifth or four-twentieths, Nancy, under whom the complainant holds was of age at the time of the Administrator's deed. But I do not think the statute should be applied ; although Court of Equity generally adopt the statutes of limitation, yet within what time
 4970 a constructive fraud will be barred must depend upon the circumstances of the case, and these are examinable, (Michond et. al. vs. Girod et. al. 4, How 503.

There is some difficulty as to the boundaries of the land which must be settled by the Master. There must be a reference for this purpose and for account, directing the Master to allow William Simpson the sum of four hundred and ninety-five dollars, with interest from the time of its payment to the Sheriff, and charging five-twentieths of the six-twentieth owned
 4980 ed by the complainant, with their proportional part, and charging William Simpson with the rents and profits during the time of his possession of nineteen-twentieths, and crediting five-

twentieths of complainant's interest with their proportion. Simpson claims nothing for improvements. Upon coming in of the Master's report, the Court will settle the terms upon which the decree will be made.

State of New-Jersey :

Court of Errors and Appeals in the last resort for all causes as heretofore.

Between Peter G. Obert, William Simpson, and others, Appellants, and Throckmorton Obert, Appellee. }	On Bill, &c.,	4990
	Petition of Appeal.	

To the Honorable, the Court of Errors and Appeals, in the last resort in all causes as heretofore :

The petition of Peter G. Obert, William Simpson, Peter Simpson, Peter D. Oakey and Nancy his wife, John Thompson and Catharine his wife, Abraham Thompson, Barbara Simpson, Abraham Simpson, Ellen Simpson, George Simpson, David Simpson and Esther Ann Simpson, the appellants in the above cause, respectfully sheweth that your petitioners are 5000
 aggrieved by a final decree made in the Court of Chancery, by the Hon. Benjamin Williamson, Chancellor of New-Jersey, bearing date the 6th day of February, A. D. 1856, and also by an interlocutory decree made in the said cause by the said Chancellor in the said Court of Chancery, bearing date the 5th day of July, A. D. 1855, and also by another interlocutory decree, made in the said cause, in the said Court of Chancery, by the said Chancellor, bearing date the 7th day of February, A. D. 1854, wherein your petitioners were defendants and the said Throckmorton Obert was complainant, in this respect, to 5010
 wit : That the said final decree sustains and affirms all the orders, adjudications and decrees contained and made in the said interlocutory decrees aforesaid, and all the acts and proceedings which have been had under and pursuant to them ; and also in this respect, that the said final decree adjudges that the deeds mentioned in the pleadings in the said cause, made and given by Peter G. Obert, Administrator as aforesaid, to David Smith, and also the deed made and given by the said David Smith and wife, to the said Peter G. Obert, are and 5020
 were fraudulent and void as against the said complainant, and that the same should be set aside as to him ; and that the said

complainant was entitled to have six-twentieths of the lands and premises mentioned, in value, set off to him by partition, leaving your petitioners but fourteen-twentieths thereof; and that your petitioners be charged with six-twentieths of the rents, issues and profits, or yearly value of the said lands and premises, for a long space of time, as well as for the wood that had been cut thereon.

And your petitioners are also agrieved in this respect, by 5030 the said final decree, because it adjudges that your petitioners shall be charged with the sum of five hundred and fifty-one dollars and twenty-two cents for the use of said premises and for wood cut thereon, and that partition of the said lands and premises be made between the said complainant and your petitioners, subject to such charge, and that your petitioners should pay the costs of the said suit, and because the said final decree sustains and affirms all the acts and proceedings of the commissioners appointed to make partition of the said lands and premises, as they are described and set forth in the 5040 report of the said commissioners.

And your petitioners are also agrieved in this, that in and by the said interlocutory decree of the date of February 7th, 1854, on which the said final decree in part rests, it is adjudged and decreed that the said deeds from the said Peter G. Obert, as Administrator as aforesaid, to the said David Smith, and from the said Smith and wife to the said Peter G. Obert, are void, and must be set aside as to the said complainant, and that a partition should be made of the said lands and premises, giving to the said complainant six-twentieths, and your petitioners fourteen-twentieths thereof, and charging them with the rents, issues and profits of the same, and with the wood cut thereon.

And your petitioners are also agrieved in this respect, that in and by the said interlocutory decree of the date of July 5th, 1855, it is adjudged and decreed that your petitioners should be charged with the sum of five hundred and fifty-one dollars and twenty-two cents for the rents, issues and profits of the said lands and premises, or some part thereof, and for the wood cut thereon, and that partition of the said premises should be 5060 made between the complainant and your petitioners, that a commission for that purpose should issue, and that your petitioners should pay to the complainant the costs of the said suit; and your petitioners respectfully appeal from the orders, adjudications and decrees of the Chancellor as aforesaid, on the ground that the same are erroneous, for that they ought to have been given and made for your petitioners; your petitioners

therefore pray that the said orders, adjudications and decrees may be reversed, set aside and for nothing holden; and that your petitioners may have such relief in the premises, as to this Honorable Court shall seem meet. 5070

Dated February 8th, 1858.

CHARLES S. SCOTT, Solicitor of Appellants.
JOHN VAN DYKE, of Counsel with Appellants.

The foregoing is agreed upon as a state of the case, the printing of the Exhibits being waived.

JOHN VAN DYKE, Counsel of Appellants.
H. V. SPEER, Counsel of Appellees.

