

In Chancery

OF NEW JERSEY.

WILLIAM HANCE'S ADMINISTRATORS,
Complainants,

AND

HANNAH WALN, *et al.*
Defendants.

BILL.

To his Honor, Alexander T. McGill, Chancellor of the State
of New Jersey :

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First.—Humbly complaining show unto your Honor, your orators, Craig Ridgway, of the Town of Coatesville, in the State of Pennsylvania, and Lewis P. Thompson, of the City of Bordentown, in the County of Burlington and State of New Jersey, as surviving administrators of the estate of William Hance, late of said City of Bordentown, deceased; that the said William Hance departed this life on or about the twenty-second day of March, in the year one thousand eight hundred and seventy-six, intestate, and seized and possessed of certain real estate and personal property; that after his death, and prior to the thirteenth day of April, one thousand eight hundred and seventy-six, George Hance and your orators were duly appointed administrators of the estate of said William Hance, and that the said George Hance is also now deceased, and your orators, Craig Ridgway and Lewis P. Thompson are now sole surviving administrators of said William Hance, deceased.

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Second.—That a part of the personal property which the said William Hance, deceased, owned and possessed at the time of his death consisted of certain horses, mules, cattle, wagons, carriages, farming machinery and imple-

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ments, grain and other personal property upon a certain farm belonging to the said William Hance, deceased, in the County of Burlington, in the State of New Jersey, which farm, at the time of his decease, was occupied by his daughter, Hannah Waln, and his said daughter's husband, William W. Waln, and which personal property was inventoried by the said administrators and duly appraised at the value of two thousand six hundred and twenty-seven dollars and fifty cents.

- 10 *Third.*—That the said Hannah Waln was a daughter of said William Hance, deceased, and one of his heirs-at-law, and entitled to a distributive share of his personal estate, and to an undivided interest, as heir-at-law, in his real estate.

- 20 *Fourth.*—That after the inventory and appraisement of the aforesaid personal property, to wit, on the thirteenth day of April, one thousand eight hundred and seventy-six, the said administrators sold and delivered the personal property, inventoried and appraised as aforesaid, unto the said Hannah Waln at the appraised value thereof, and that thereupon the said Hannah Waln delivered to the said administrators, being the said George Hance, deceased, and your orators, a writing duly signed by her of which the following is a true copy, to wit:

- 30 “*Received, April 13, 1876, of the administrators of William Hance, deceased, Two thousand six hundred and twenty-seven 50/100 dollars on account of my distributive share of said estate as one of the heirs-at-law of said William Hance, deceased, and which I hereby direct, authorize and empower said administrators to take out of and deduct from my share on a final settlement of his said estate.*

\$2627.50.

(Signed) HANNAH L. WALN.

Witnesses present :

W. W. WALN,
G. S. CANNON.”

Fifth.—That the said administrators, being the said George Hance, deceased, and your orators, duly presented their account as such administrators to the Orphans' Court of the County of Burlington, in the September term of that Court, in the year one thousand eight hundred and eighty-four, which account was duly allowed by said Court and in and by which account said administrators charged themselves with the receipt of the aforesaid sum of two thousand six hundred and twenty-seven dollars and fifty cents.

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Sixth.—That no part of the said sum of two thousand six hundred and twenty-seven dollars and fifty cents has ever been paid to said administrators, or to any of them, by the said Hannah Waln or by any person for her.

Seventh.—That by a certain instrument in writing, bearing date the twenty-fifth day of March, one thousand eight hundred and seventy-six, the heirs-at-law of said William Hance, deceased, including the said Hannah Waln, together with the respective husbands and wives of said heirs, under their respective hands and seals, did grant, demise and lease unto Margaret Hance, the widow of said William Hance, deceased, *all the lands and real estate whereof he, the said William Hance, died seized*, wheresoever the same might be situate, to have and to hold the same and every part thereof with the appurtenances unto the said Margaret Hance for and during such time as she should remain and continue to be the widow of said William Hance, deceased; which instrument in writing was subsequently duly acknowledged by the parties executing the same and recorded in the office of the Clerk of Burlington County, in Book G. 9, of Deeds, on pages 326, etc.

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Eighth.—That the said Margaret Hance continued to be the widow of said William Hance, deceased, and unmarried, from the date of the aforesaid lease until on or about the twenty-eighth day of April, eighteen hundred

and ninety-one, when she died, in possession of the lands and real estate so demised to her as aforesaid.

Ninth.—That some time in the year eighteen hundred and ninety-two, Henry L. Hance, one of the heirs-at-law of said William Hance, deceased, filed a Bill of Complaint in this Honorable Court against the said Hannah Waln and others, the heirs-at-law of said William Hance, deceased, for a partition of the aforesaid lands, or for a sale thereof, according as this Court should order and
 10 direct, and that under and by virtue of a decree of this Court made in the said cause, wherein Henry L. Hance is complainant and Hannah Waln and others are defendants, and bearing date the twenty-first day of October, eighteen hundred and ninety-three, Philip S. Scovel, one of the Special Masters of this Court, sold the aforesaid lands at public sale on the eighth day of December, eighteen hundred and ninety-three, unto one Thomas S. Bishop, for the sum of fourteen thousand seven hundred and nine dollars and twenty-six cents, and that the said
 20 Hannah Waln is entitled to a distributive share of the proceeds of said sale.

Tenth.—That the said Hannah Waln *now* resides in the City of Philadelphia, in the State of Pennsylvania, and refuses to direct or authorize the said Philip S. Scovel, Master, as aforesaid, to pay over the share of the proceeds of said sale belonging to her to your orators, as surviving administrators of William Hance, deceased, or to pay over to them any portion thereof, but insists that said money should be paid to her by the said Philip S. Scovel, Special
 30 Master, as aforesaid.

Eleventh.—And your orators further show that they *have not yet finally settled the estate* of said William Hance, deceased, but that they are desirous of so doing as soon as they shall have received the amount due as aforesaid from the said Hannah Waln, and that they are advised and therefore insist that, pursuant to the terms of the

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instrument in writing hereinabove set forth and duly signed by the said Hannah Waln, it is her duty to authorize her share of the proceeds of the sale of the said lands now in the hands of said Philip S. Scovel, Master as aforesaid, or such portion thereof as may be necessary, to pay the aforesaid sum two thousand six hundred and twenty-seven dollars and fifty cents, to be paid unto your orators, to the end that the same may be properly distributed by your orators, as surviving administrators of said William Hance, deceased, amongst his next of kin. 10

Twelfth.—And your orators further show that on or about the twenty-third day of March, in the year one thousand eight hundred and ninety-four, a writ of attachment was issued out of the Supreme Court of this State at the suit of your orators, surviving administrators of William Hance, deceased, against the said Hannah Waln, directed to the Sheriff of the County of Burlington in this State, wherein and whereby the said Sheriff was commanded to attach the rights and credits, money and effects, goods and chattels, lands and tenements of Hannah Waln, wheresoever they might be found in his county, so that she should be and appear before the Supreme Court of this State to be held at Trenton on the sixth day of April, one thousand eight hundred and ninety-four, to answer unto your orators, surviving administrators of the estate of William Hance, deceased, in an action upon contract. That prior to the issuing of the aforesaid writ of attachment, there was filed in the office of the Clerk of the said Supreme Court an affidavit in writing made by Lewis P. Thompson, one of your orators, setting forth that the Surrogate of the County of Burlington on or about the first day of April, A. D. one thousand eight hundred and seventy-six, appointed George Hance, Craig Ridgway, and said deponent, Lewis P. Thompson, administrators of the estate of William Hance, deceased. That subsequently said George Hance died, leaving Craig Ridgway and said deponent, Lewis P. 20 30

Thompson, surviving administrators of the estate of William Hance, deceased. That Hannah Waln, a debtor, is not, to said deponent's knowledge or belief, a resident of this State, and that she owes to Craig Ridgway and said deponent, Lewis P. Thompson, surviving administrators of the estate of William Hance deceased, the sum of two thousand seven hundred dollars as said deponent verily believes for money loaned and advanced to her by said surviving administrators.

- 10 That the said Sheriff of the County of Burlington has returned the aforesaid writ of attachment into the office of the Clerk of the said Supreme Court in manner following, that is to say :

"I executed the within writ on the twenty-fourth day of March, A. D. one thousand eight hundred and ninety-four, at eight o'clock, on the forenoon of that day as appears in the schedule hereto annexed.

" WILLIAM A. TOWNSEND,
" *Sheriff.*"

- 20 "By virtue of the writ of attachment hereunto annexed, "I, William A. Townsend, Sheriff of the County of Burlington, in the presence of Mahlon Hutchinson, a creditable person, on the twenty-fourth day of March, A. D. "one thousand eight hundred and ninety-four, executed the "said writ of attachment by going to the house of Philip S. "Scovel (garnishee), and then and there in the presence "of the said Mahlon Hutchinson, declared that I attached "the rights and credits, moneys and effects, goods and "chattels, lands and tenements of Hannah Waln, the
30 "defendant at the suit of Craig Ridgway and Lewis P. "Thompson, surviving administrators of William Hance, "deceased.

" WM. A. TOWNSEND,
" *Sheriff.*"

"Inventory and appraisement of all the real and personal estate of the defendant, Hannah Waln, by me

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“attached, Hannah Waln, decedent, being said defendant, on
 “the twenty-fourth day of March, A.D. one thousand eight
 “hundred and ninety-four, by virtue of the writ of attach-
 “ment hereto annexed, made on the day and year aforesaid
 “by me, William A. Townsend, Sheriff of the County of
 “Burlington, with the said Mahlon Hutchinson, a discreet
 “and impartial freeholder of the said County of Burlington.

“All the moneys in the hands of the said Philip S.
 “Scovel, a special master of the Court of Chancery of
 “New Jersey, and belonging to the said defendant, Hannah 10
 “Waln, as the proceeds of sale in a certain partition suit
 “in the Court of Chancery wherein Henry L. Hance was
 “complainant and the said Hannah L. Waln, *et al.*,
 “defendants.

“Valued at two thousand dollars, \$2000 00

“WM. A. TOWNSEND, *Sheriff*,

“MAHLON HUTCHINSON, *Appraiser*.”

Thirteenth.—And your orators further show that by
 virtue of the proceedings and matters hereinabove men- 20
 tioned and set forth they are advised, and therefore insist
 that they have a lien upon the funds of the defendant,
 Hannah Waln, now in the hands of the said Philip S.
 Scovel, Special Master as aforesaid, and that they are in
 equity entitled to have the aid of this Honorable Court in
 securing the retention of the moneys now in the possession
 of the said Philip S. Scovel, either by him as such Special
 Master or by the Clerk of this Honorable Court, until the
 determination of the aforesaid suit at law now pending in
 the Supreme Court of this State.

In consideration whereof and forasmuch as your orators 30
 are remediless in the premises at the common law, and can
 have adequate relief only in and by the aid of this Honor-
 able Court. To the end, therefore, that the said Hannah
 Waln and Philip S. Scovel may without oath full, true and
 perfect answers make to all and singular the premises
 aforesaid according to the best of their knowledge, informa-

tion, remembrance and belief; and that the said Philip S. Scovel, Special Master as aforesaid, may be directed and ordered by this Honorable Court, either to hold the said moneys of the said Hannah Waln, now in his possession, until the further order of this Court, or that he be directed to pay the same over to the Clerk of this Court, to be held by said Clerk until the further order of this Court; and that the said defendants, Hannah Waln and Philip S. Scovel, or one of them, may be decreed to pay the moneys attached
 10 as aforesaid in the hands of the said Philip S. Scovel unto your orators, surviving administrators of William Hance, deceased, and that your orators may have such other and further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orators the State's writ of subpoena issuing out of and under the seal of this Honorable Court directed to the said Hannah Waln and Philip S. Scovel,
 20 therein and thereby commanding them and each of them at a certain day and under a certain penalty to be therein expressed personally to be and appear before your Honor in this Honorable Court, then and there to answer the premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your orators will ever pray, etc.

W. M. LANNING,

Solicitor of Counsel with Complainants.

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IN CHANCERY OF NEW JERSEY.

Between WILLIAM HANCE'S ADMINIS- TRATORS, <i>Complainants,</i> and HANNAH H. WALN, <i>et al.,</i> <i>Defendants.</i>	}	On Bill, Etc., Answer.
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The Answer of **Hannah H. Waln, Defendant, to the Bill of Complaint of Craig Ridgway and Lewis P. Thompson, Administrators, to the Estate of William Hance, deceased.** 10

1. This defendant admits that the said William Hance departed this life on or about the twenty-second day of March, one thousand eight hundred and seventy-six, intestate, and seized and possessed of certain real estate and personal property; that George Hance and the said Craig Ridgway and Lewis P. Thompson were duly appointed administrators of the estate of the said William Hance, and that the said George Hance is deceased, leaving the said Craig Ridgway and Lewis P. Thompson, the complainants, the surviving administrators to the said William Hance, deceased. 20

2. And this defendant further answering, denies that part of the personal property of which the said William Hance, deceased, owned and possessed at the time of his death, consisted of certain horses, mules, cattle, wagons, carriages, farming machinery and implements, grain and other personal property upon the certain farm belonging to the said William Hance, deceased, in the County of Burlington, which, at the time of his decease, was occupied by this defendant and her husband, William W. Waln, now deceased; and further denies that said personal property was inventoried by the said administrators 30

and appraised, but on the contrary, this defendant further avers that said goods and chattels and personal property belong to this defendant.

3. And this defendant further answering, admits that she is the daughter of the said William Hance, deceased, and one of the heirs-at-law, and entitled to a distributive share of his personal property, and to an undivided interest as an heir-at-law in his real estate.

4. And this defendant further answering, says that she
 10 denies that the said administrators sold and delivered said personal property to this defendant on the thirteenth day of April, one thousand eight hundred and seventy-six, for the sum of two thousand six hundred and twenty-seven dollars and fifty cents, but admits that she did on that day sign a writing to the purport and effect as set out in the complainant's said Bill; and this defendant says that at the date of said writing she was the true and legal owner of said personal property, and had been
 20 for a considerable period prior to the death of her father, the said William Hance; that about the year eighteen hundred and seventy-two, and during the lifetime of her husband and her father, and about four years prior to the date of said writing, her husband, the said William W. Waln, for and in consideration of the sum of one dollar and other good and valuable considerations sold, transferred, assigned and set over certain of his personal property, goods and chattels to his father-in-law, the said William Hance, *upon the agreement* that the said William Hance was to sell, transfer, assign and set
 30 over the same to his daughter, this defendant, or at her request was to sell the same for full consideration and pay the proceeds thereof over to this defendant; that said agreement was carried out by the said William W. Waln, and that the said William Hance, deceased, became and was the owner of the personal property, goods and chattels which was sold and transferred to him by this defendant's

husband, the said William W. Waln, and that the said
 William Hance sold the greater part, if not all, of said
 goods and chattels that was so sold and transferred to
 him, and with the proceeds thereof purchased other stock,
 farming implements, goods and chattels for this defendant,
 and made the purchases in this defendant's name, and
 delivered the same into this defendant's possession within
 a short time after said goods and chattels had been sold
 and transferred by this defendant's husband to her father,
 as aforesaid; that from the time of the delivery of the 10
 goods and chattels so purchased by the said William
 Hance, deceased, and transferred and delivered to this
 defendant, up to the death of the said William Hance, the
 same remained in the possession and control of this
 defendant, and were used and enjoyed by her without the
 let or hindrance of the said William Hance or any other
 person whatever; *that she sold and exchanged the same for
 other stock and farming implements in the usual course of
 husbandry,* and occupied and tilled the farm belonging to
 the said William Hance until the same was sold by his 20
 administrators under an order of the Burlington Orphans'
 Court for the sale of lands for the payment of debts,
 under an agreement and an arrangement between her and
 her husband on the one part and the said William Hance
 on the other; that at the time of said sale and transfer of
 said personal property by the said William W. Waln to
 the said William Hance, now deceased, he, the said
 William W. Waln, was in failing circumstances, and soon
 thereafter was declared bankrupt and an assignee in bank-
 ruptcy appointed, who was duly qualified and took pos- 30
 session of and administered the estate of the said William
 W. Waln; that foreclosure proceedings were commenced
 about the same time against the farm then owned and
 occupied by the said William W. Waln, and subsequently
 the same was sold under said foreclosure proceedings and
 purchased by the said William Hance, under whom this
 defendant and her husband occupied and tilled said farm

- until the death of the said William Hance as aforesaid; that said transfer and sale of said personal property was made with the full knowledge of the said complainants, this defendant's brothers-in-law, and without objection on the part of any of the creditors of the said William W. Waln, and without the same being in any way questioned by the said assignee after his appointment; that after the death of the said William Hance, the said administrators did not inventory any of the goods or chattels or personal property set out in complainant's said Bill at the time they made their inventory and appraisement of the estate of William Hance, deceased, and filed the same with the Surrogate of the County of Burlington, but inventoried and appraised only the goods and chattels that were upon the farm of the said William Hance, which he occupied at the time of his death; that after the administrators had made said appraisement and inventory, at or about the time they made application to the Burlington Orphans' Court for order to sell the lands of the said
- 10 William Hance, deceased, for the payment of his debts, the said administrators represented to this defendant that she had no good and sufficient title to said goods and chattels and personal property, and induced her to accompany them to their solicitor, Garrett S. Cannon, Esq., now deceased, for the purpose of drawing such papers as would give her evidence of her title to such goods and chattels; that said administrators and their counsel represented to her that it would be necessary and advisable for her to have some written evidence of her ownership to said goods and
- 20 chattels and personal property from said administrators; that this defendant had no counsel, trusting the management of the matter entirely to the said administrators, who were her brothers-in-law, and who were acquainted with all the facts connected with and the reasons for the said sale and transfer of said goods and chattels and personal property from said defendant to her father, and from her father to herself, and to their counsel who advised her
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to accept the suggestion of the said administrators, and signed the paper set out in complainant's said Bill, so this defendant assented to said arrangement, with the distinct understanding and agreement that no mention was to be made of this transaction in their accounting as administrators in the settlement of the estate of her father, the said William Hance, deceased, and that the same was done simply and solely for the purpose of giving her some evidence of title to said goods and chattels and personal property from said administrators, and that said administrators 10 then and there executed and delivered to this defendant, in pursuance to said agreement, the following receipt for said goods and chattels and personal property, which were then by them itemized and valued and annexed to the said receipt given to this defendant :

"Rec'd April 13, 1876, of Mrs. Hannah L. Waln, wife of William W. Waln, the sum of two thousand six hundred and twenty-seven dollars and 50-100 dollars in full of the appraised value of the goods and chattels, stock, etc., enumerated and specified in the foregoing list or 20 inventory, which goods and stock are now on the farm occupied by the said William W. Waln, in Chesterfield township, and which belongs to the estate of William Hance, deceased, and which goods, stocks, &c., are taken and delivered to the said Hannah L. Waln by the administrators of said William Hance at their said appraised value and as her property, by and with the consent of said administrators, for which sum as above they hold the said Hannah L. Waln's receipt as one of the heirs of said estate."

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"\$2627.50."

"(Signed) "LEWIS P. THOMPSON,
For himself and in behalf of the
administrators of Wm. Hance,
deceased."

Which list of goods, chattels and personal property with values attached and receipt signed by the said admin-

istrators is now in the possession of this defendant and ready to be produced as this Honorable Court may direct; that when said administrators took said receipt or paper writing signed by defendant and set out in Bill of Complaint, they well knew there would be no distributive share of the personal estate of the said William Hance, deceased, out of defendant's share of which they could deduct or retain the amount named in said receipt or paper or any other amount, that they under oath or at about 10 this same time made a statement of said personal property to the Burlington Orphans' Court, showing that the same was insufficient to pay the debts of said deceased, and that it was necessary to sell part of the lands of said deceased for the purpose of paying debts.

5. And this defendant further answering says that she admits by the first and final account filed by the said administrators, in the Surrogate's Office of the County of Burlington, and duly allowed by the Burlington Orphans' Court at the September term, one thousand eight hundred 20 and eighty-four; that in addition to the amount of the inventory and appraisement said administrators charge themselves with the personal property on the Wain farm not appraised, two thousand six hundred and twenty-seven dollars and fifty cents; that although said administrators appear to be charged with said sum, yet by said account they show themselves to have on hand a balance for distribution after deducting for commissions the sum of twelve hundred and ninety-four dollars and twenty-eight cents, and their other expenses the sum of one thousand 30 nine hundred and eighty-six dollars and thirty-one cents, no part of which sum has been distributed by said administrators to any of the next of kin or heirs-at-law of the said William Hance.

6. This defendant further admits that she has not paid to the said administrators or any of them, nor has any per-

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son paid for her, the said sum or any part thereof; and this defendant avers and insists that she does not owe said administrators said sums of money or any part thereof, nor was ever indebted to them, and that they never had had, nor do they have now, any just and legal claim or demand for the said sum, nor any part thereof whatever, against her.

7. And this defendant further answering, admits that by a certain instrument in writing, bearing date the twenty-fifth day of March, one thousand eight hundred and eighty-six, the heirs-at-law of the said William Hance, including this defendant, granted unto the widow of the said William Hance, deceased, during her life or widowhood, the homestead farm of the said William Hance, but whether the said instrument conveyed all the lands of which the said William Hance died seized, this defendant is unable to state, but says upon information and belief, that all the other lands and real estate outside of the homestead farm was sold by the administrators under order of the Orphans' Court for the payment of debts. 10
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8. And this defendant admits that the said Margaret Hance continued to be the widow of the said William Hance, deceased, and unmarried, until the twenty-eighth day of April, one thousand eight hundred and ninety-one, when she died, being in possession of said homestead farm, but whether she was in possession of any other lands of the deceased, this defendant has no knowledge.

9. And this defendant admits that the partition proceedings were begun and prosecuted in this court as set out in the complainant's said Bill, and sale made of said homestead farm, and this defendant is entitled to an equal undivided one-eighth part of the proceeds of said sale, amounting to the sum of one thousand seven hundred and eighty-three dollars and ninety cents, as appears by the report of Philip S. Scovel, one of the Special Masters of 30

the Court of Chancery, and which sum has been paid by said Master to the Clerk of this Court, and pursuant to an order made in this cause.

10. And this defendant further says that she resides in the City of Philadelphia, and has resided there for the last two years; that it is true that she has refused to direct or authorize Philip S. Scovel to pay over the share of the proceedings of said sale belonging to her, to the complainants, or any portion thereof, and that she insists,
 10 and has always insisted, that she is entitled to her one-eighth part of the proceeds of said sale, representing her undivided one-eighth interest in said farm and real estate, granted to her mother for life by the aforesaid indenture, and that she is now entitled to receive the same without any deduction or charge whatever.

11. And this defendant further answering, says that it appears by the records of the Burlington Orphans' Court that the said administrators have made final settlement of said estate, but have made no distribution of the
 20 balance shown by their account to be in their hands, and she denies that it is her duty to authorize her share of the proceeds of the sale of said lands, or any portion thereof, to be paid to the said administrators for distribution, either according to the terms of the receipt of the paper signed by her, and set out in the complainant's said Bill, or as a settlement of any debt or obligation which she owed the deceased, or which the administrator claimed that she owes or did owe to them for the sale of any goods, chattels, or personal property; and this defendant avers and
 30 insists that the several causes of action or claims in the said Bill mentioned and set forth did not arise or accrue unto the said administrators at any time within six years next before the filing of their said Bill in this cause; and of this defense she hopes she may have the same benefit as if she had demurred to said complainant's Bill.

12. And this defendant, further answering, admits that on or about the twenty-third day of March, eighteen hundred and ninety-four, a writ of attachment was issued out of the Supreme Court of this State at the suit of said complainants against this defendant, and that she was not indebted to the complainants as administrators in the sum of two thousand seven hundred dollars for money loaned to defendant by said administrators as as contained in their affidavit and set out in their said Bill of Complaint; that she admits that proceedings were taken upon said writ as set out in said Bill, and that the same are pending undetermined by agreement between counsel; that the matters in dispute between said administrators and this defendant should be determined in this Court upon the Bill filed in this cause. 10

13. And this defendant, further answering, denies that said complainants have any lien upon the share of this defendant in the sale of said land and real estate made by the said Philip S. Scovel, and denies that they are entitled to any aid in this Court in securing the detention of the moneys in the possession of said Master or of the Clerk of this Court, and that she is entitled to the same, and that she is entitled to have the same paid to her by the Clerk of this Court, having received the same from said Master as aforesaid; and this defendant avers that from the death of the said William Hance up to the time of the sale of said homestead farm in said partition proceedings said administrators never made any demand upon this defendant for the sum of money named in said receipt or paper signed by this defendant, nor requested nor demanded of her any security for the same, nor demanded that she should convey to them her share in said homestead farm, nor did they commence any suit at law or equity or take any proceedings whatever to enforce their said claim, so that even if this defendant ever was indebted to said complainants, as administrators as set out in their said Bill, that any right 20 30

of action they might have had has become barred by the statute of limitation, and the said complainants are barred by the statute of limitation from proceeding further at law or in equity to enforce any claim that they have on account of said indebtedness, and this defendant hopes to have the same benefit of this defence as if she had demurred to the said Complainant's Bill.

All of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court may direct, and humbly prays to be hence
10 dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

J. H. GASKILL,
Solicitor and of Counsel with Defendant,
HANNAH H. WALN.

**Transcript of Shorthand Notes of Testimony in the
Above Stated Cause, Taken Before his Honor,
John T. Bird, V. C., March 7, 1895, at Tren-
ton, N. J.**

20 By MR. LANNING: I offer in evidence a certified copy of a lease made by the heirs-at-law of William Hance, deceased, with their respective husbands and wives, to Margaret Hance, widow of William Hance, deceased, of the lands of which William Hance died seized, for the term of Margaret Hance's widowhood, bearing date March 25, 1879. Marked "Ex. C 1."

By MR. GASKILL: Is that recorded?

By MR. LANNING: Yes, sir; recorded in Burlington County Clerk's office, Book G 9 of Deeds, page 326, etc.

30 Also, a copy of the inventory of the personal estate of William Hance, deceased, duly certified by the Surrogate. Made April 11, 1876, as appears by the caption, though sworn to by the appraisers April 10, footing up

\$15,749.33. Made by the administrators and by William W. Reeve and Benjamin Rogers, appraisers, and it does not include the farm stock in question in this suit. Marked "Ex. C 2."

I offer also, the counsel for the defendant not requiring me to make formal proof, but admitting the genuineness of the document, a petition to the Orphans' Court of Burlington County, by the administrators of William Hance, deceased, for an order to sell lands of the deceased to pay debts, to which is appended an inventory and appraisement of the estate, which reads as follows: Amount of estate to inventory and appraisement of said estate \$18,369.83, and which was filed in the office of the Surrogate, June 23, 1876. 10

By THE COURT: Does it appear on the paper whether the difference between that and—

By MR. LANNING: No, sir. It is admitted that the amount of the inventory marked "Ex. C 1," together with the appraised value of the farm stock set forth in the pleadings makes the amount contained in the list set forth in the petition for order to sell, being "Ex. C 3," except that there appears to be a discrepancy of just \$5. 20

I offer the copy which is marked "Ex. C 3," and which by agreement need not be certified under seal.

I offer in the next place a copy of the account of the administrators, allowed by the Orphans' Court of Burlington County, in the September term of 1894, duly certified. The first two items of which on the side on which the accountants charge themselves, read as follows: To amount of inventory and appraisement, \$15,747.33. That is the amount of the inventory filed. To amount of personal property on Waln farm, amount appraised \$2627.50, which account is marked "Ex. C 4." 30

By which account it appears that the total charges; suppose I give you that, Judge:

By MR. GASKILL: Yes, sir.

By MR. LANNING: Are \$55,214.31. The total allowance on credits are \$53,228, leaving the balance as appears

by the accounts in the hands of the accountants of \$1986.31.

By MR. GASKILL : There was another matter that didn't pray any allowance for not having received the allowance of the stock on the Waln farm.

By MR. LANNING : That is a fact, that they pray no allowance for it and we will admit that. It is admitted by the complainant that the administrators in this account have charged themselves with \$2627.50, the amount of the
10 appraisement of the stock on the Waln farm, and have not prayed allowance for it or any part of it.

By MR. GASKILL : And they make no statements there showing that the settlement with the estate is in an unfinished condition.

By MR. LANNING : That is a fact ; I am not willing to have that go in as part of my case, however.

It is further admitted that there is appended to account in schedule setting forth of what the balance may consist.

By MR. GASKILL : That is right ; the commissions as stated in the answer are admitted.

By MR. LANNING : It appears by the account that commissions were allowed to the administrators amounting to \$1294.28.

I also offer a record of the proceedings in the attachment suit of *Craig Ridgway, et al., administrators, vs. Hannah Waln*.

By THE COURT : They are admitted, are they not ?

By MR. LANNING : So they are ; yes, sir. I need not
30 put in the partition proceedings.

By THE COURT : It is admitted that the attachment proceedings as set forth in the Bill are truly set forth.

By MR. LANNING : And it is also admitted by both counsel that there has been paid to the Clerk of Chancery, as the share of Hannah Waln in the partition suit, the sum of \$1783.90.

By THE COURT : That is what you spoke of, Judge ?

By MR. GASKILL : Yes, sir.

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LEWIS P. THOMPSON, a witness called on the part of the complainants, being duly sworn, testifies as follows:

DIRECT EXAMINATION.

By MR. LANNING :

Q. Where do you live? A. In Bordentown Township.

Q. And have for a great many years? A. Yes, sir.

Q. Did you know William Hance, late of Bordentown? A. I did, sir.

Q. You married his daughter, did you not? A. Yes, 10
sir.

Q. One of his daughters? A. Yes, sir.

Q. You are a brother-in-law to the defendant, Hannah Waln? A. I am.

Q. And I believe you are one of the administrators of the estate of William Hance? A. Yes, sir.

Q. Did you take part in the making of the inventory of William Hance's personal estate which is embraced in the document that I have offered in evidence this morning and which was filed in the Surrogate's office? A. Home- 20
stead farm?

Q. Yes, sir. A. Yes, sir.

Q. Did you take any personal part in making any inventory or appraisement of the stock upon the farm occupied by the defendant, Hannah Waln? A. I did not.

Q. She was at that time married. A. Yes, sir.

Q. And her husband was then living? A. Yes, sir.

Q. Who was her husband? A. William W. Waln.

Q. Is he now living? A. He is not.

Q. The farm upon which they resided belonged to 30
whom? A. Belonged to William Hance, to the best of my knowledge and belief.

Q. Did you at any time after the inventory of the property upon the homestead farm meet Mrs. Waln with respect to the stock upon the Waln farm? A. One time

I met her was at Mr. Cannon's office, by his order, to see that the receipt was signed there.

Q. You say this was at Mr. Cannon's office? *A.* Yes, sir.

Q. Do you mean Garret S. Cannon? *A.* Our solicitor.

Q. Did he have an office in Burlington? *A.* Yes, sir.

Q. Very many years? *A.* Yes, sir.

Q. He is dead now? *A.* Yes, sir.

10 *Q.* Have you any recollection as to how long after you made the inventory on the homestead farm it was that you met Mrs. Waln at Mr. Cannon's office—when was that? *A.* I could not say that, sir; I have a very poor memory on dates.

By THE COURT :

Q. Does that paper show?

By MR. LANNING :

Q. Do you remember who were present at that conversation at Mr. Cannon's office? *A.* William Waln, 20 Hannah Waln, Garret S. Cannon and myself.

Q. That is all? *A.* Yes, sir.

Q. None of the other administrators were there? *A.* No, sir.

Q. The other two administrators were George Hance and Craig Ridgway, were they not? *A.* Yes, sir.

Q. What relation was George Hance to William Hance, the decedent? *A.* Brother-in-law.

Q. What relation was Craig Ridgway to William Hance, if any? *A.* Son-in-law.

30 *Q.* Then you and Craig Ridgway were both sons-in-law of William Hance? *A.* Yes, sir.

Q. Where does Craig Ridgway live? *A.* Coatesville, Pennsylvania.

Q. Where did George Hance live? *A.* Shrewsbury, Monmouth County.

Q. Is he living or dead? *A.* Dead.

Q. Craig Ridgway living? *A.* He is living

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By THE COURT :

Q. When did George Hance die? A. Chancellor, I could not answer.

Q. About how long ago? A. I should judge three or four years ago; I could not say certainly.

By MR. LANNING :

Q. Then you were the only one of the three administrators residing at Bordentown? A. I was the only one.

Q. Mr. Ridgway resided at Coatesville, Pennsylvania, 10 and Mr. Hance in Monmouth County? A. Yes, sir.

Q. You met Mrs. Waln at Mr. Cannon's office? A. Yes, sir.

Q. Were there any papers signed at that time, do you remember? A. Yes, sir.

Q. What did they relate to? A. Related to receipt of stock; charging her share, took out her portion.

Q. Do you know Garret S. Cannon's handwriting? A. I do, sir.

Q. I show you a paper purporting to be in the handwriting of G. S. Cannon. 20

Counsel for the defendant admits that the paper shown the witness, being the receipt set forth in the Bill of Complaint, dated April 13, 1876, is in the genuine handwriting of Mr. Cannon, and his signature thereto as a witness is in his handwriting.

By MR. LANNING :

Q. Did you see Mrs. Waln sign that receipt? A. Yes, sir.

Q. It was signed where? A. Mr. Cannon's office at that time. 30

Q. When you were there? A. Yes, sir.

By THE COURT :

Q. Does it appear that Mr. Cannon is dead. A. Yes, sir.

By MR. GASKILL : We admit the signing of the paper, your Honor.

By MR. LANNING : I would like it to appear that Mr. Cannon is dead.

Q. About how long ago did Mr. Cannon die, as near as you can give it? A. Five or six years; in that neighborhood, I would not say positively. Perhaps longer; I never can remember dates.

By MR. GASKILL : We will say from six to ten years
10 on the record if you wish, Judge.

By MR. LANNING : All right.

By THE COURT : Won't you let it appear there, if the witness can state, who Mr. Cannon was employed by or for?

By MR. LANNING :

Q. By whom was Mr Cannon employed at this time in this matter? A. By the administrators.

Q. Do you know how Mrs. Waln came to go to Mr. Cannon's office; have you any personal knowledge? A.
20 No, sir.

Q. How came you to meet her there? A. By Mr. Cannon's orders.

Q. Then you were requested by Mr. Cannon? A. No, sir.

By THE COURT :

Q. Didn't you ask her to meet you there? A. Not that I remember.

By MR. LANNING :

Q. Was there any conversation at any time in Mr.
30 Cannon's office between Mrs. Waln and any of the other persons present concerning the ownership of this stock on the Waln farm? A. I have no recollection.

Q. You have no recollection of any such conversation; is that what I understand? A. Yes, sir.

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Waln that she claimed to own the stock on the Waln farm? *A.* No, sir.

Q. When did you first hear that she claimed to own that stock? *A.* Judge, I could not say about that, I did know, of course; we were not on intimate relations.

Q. So you say this occurred in 1876? *A.* Mr. Ridgway owned the book, him and George Hance, and I think the book was handed to me to take to Mr. Cannon and deliver it to him, and I went there to see it signed. We were not to the Waln farm. 10

Q. When the inventory was made? *A.* No, sir; never but once on the farm, I can't get that quite right.

Q. This took place in 1876? *A.* Yes, sir.

Q. Let me ask you, whether you remember making an affidavit for me upon which to commence the ejectment suit in the Supreme Court a little over a year ago. *A.* In Mr. Hutchinson's office?

Q. Yes, sir. *A.* I did.

Q. Had you before that time heard that Mrs. Waln claimed to own this stock? *A.* No, sir; we had no intercourse with them at all. 20

By THE COURT: That is not the point; the point is not whether you had had any intercourse with her or not. you might have learned it from a thousand different sources.

By MR. LANNING:

Q. Whether you ever heard anybody say that she claimed to own it? *A.* I do not know that I did.

Q. Then this claim of hers is a matter, so far as your recollection serves you, that arose after this litigation was commenced? *A.* I think so; yes, sir. 30

Q. Let me ask you whether, when this receipt was signed in Mr. Cannon's office on April 13, 1876, you and Mrs. Waln had any agreement or understanding different from what is herein set forth? *A.* Not that I am aware of; I do not remember anything of the kind.

CROSS-EXAMINATION.

By MR. GASKILL :

× Q. You live in Bordentown, and have lived there a great many years past? A. Yes, sir.

× Q. Where did William Hance live? A. Adjoining my place in Bordentown.

× Q. How near was this farm of his son's on which the defendant lived? A. I should judge six or seven miles.

× Q. Bordentown was the principal town nearest to
10 it, wasn't it? A. I think so.

× Q. The town to which they would come for their business transactions? A. Yes, sir.

× Q. Now, after you had commenced to serve as administrator, did it not come to your knowledge from the advertisements posted up, or the advertisements in the newspapers, or by talk in the family, or with the defendant and her husband moving off of this farm that all the goods on the farm were sold in her name, and as her property? A. I could not say about that.

20 × Q. Will you say that it did not come to your knowledge? A. Not to my recollection now.

× Q. You simply say you have no recollection of it? A. No, sir.

× Q. You won't say you didn't hear that at the time? A. I might have heard the talk about it; I do not know about that; I have no recollection of it.

By THE COURT: Can you fix the time when that sale took place?

By MR. GASKILL: Yes, sir; in the year 1877.

30 By THE COURT: Do you remember when it was, about, that that sale did take place, Mr. Thompson? If you don't recall never mind. A. I don't recall.

By MR. GASKILL: You know there was a sale there, Mr. Thompson? A. As I said before, I had no communication with them.

× Q. You sold that farm under the order of the Orphans' Court for the payment of debts? A. Yes, sir.

× Q. The title to it and possession of it? A. Yes, sir.

× Q. They lived on it at the time when you sold it?

A. Yes, sir.

× Q. And they moved off of it and possession was given to your purchaser? A. I suppose they did.

× Q. Don't you remember they had a sale at that time? A. No, sir; I do not remember. I did not go to the farm afterwards.

× Q. You do not mean to say to the Court you never have spoken to Mrs. Waln? A. No, sir; I speak to 10 everybody that will speak to me.

× Q. And you had some conversation with her after the death of your father-in-law in reference to the settlement of the estate, did you not? A. I had some?

× Q. Yes, sir. A. I don't recall it.

× Q. And you had some conversation with her, in reference to this stock that is now in question, hadn't you? A. I can't remember it.

× Q. Didn't you say to her in Bordentown, in the month of April, 1876, on the street, that you were going 20 to make a clean sweep of the stock and farming utensils on the Waln farm? A. No, sir.

Q. Didn't she say to you that you could not, because there was not a horse on the place belonging to William Hance? A. I do not recall any such conversation; I do not think I ever said so; I won't say I didn't.

Q. Did I understand you to say you would not say? A. I say I never have any recollection.

Q. But you would not say the conversation did not take place? A. I will say pretty near it didn't. 30

Q. You would not be positive? A. I do not want to be positive on a thing so far back as that; to the best of my knowledge I didn't say it.

Q. Didn't you say when you told her there was nothing belonging to William Hance that you would show her? A. No, sir.

Q. I show witness paper dated April 13, 1876, signed

by Lewis P. Thompson, for himself and on behalf of the administrators of William Hance, deceased, it being on the third page of a sheet of foolscap, the first heading of which is Bordentown, April 13, 1876; goods taken at appraisalment by Mrs. William Waln, of the estate of William Waln, deceased, and I ask the witness if the signature at the bottom of the third page is his signature and in his handwriting. Marked for identification Ex. D 1? *A.* Yes, sir.

10 *Q.* Mr. Thompson, are you clear that you were not out at the Waln farm at the time that Mr. Ridgway and others made this list of articles? *A.* I wasn't there; no, sir.

Q. You are positive of that? *A.* I do not have any recollection of being there only once—when the farm was sold.

CRAIG RIDGWAY, a witness called on the part of the complainants, being duly affirmed, testifies as follows:

DIRECT EXAMINATION.

20 By MR. LANNING:

Q. Mr. Ridgway, where do you live? *A.* Coatesville, Pennsylvania.

Q. How long have you lived there? *A.* About thirty-two years.

Q. Did you know William Hance, of Bordentown?
A. Yes, sir.

Q. Were you related to him in any way? *A.* I was by the marriage to his daughter.

Q. You are one of his administrators? *A.* Yes, sir.

30 *Q.* At the time of his death, and ever since, you have resided at Coatesville, Pennsylvania? *A.* Yes, sir.

Q. You attended his funeral? *A.* Yes, sir.

Q. A paper has been offered in evidence here, being a lease of lands, to which your name seems to be appended;

by whom was that executed? *A.* It was done merely for the purpose of securing a home for Margaret Hance during her lifetime?

Q. That is your mother-in-law? *A.* Mother-in-law.

Q. Was it signed by all the children? *A.* All the children.

Q. And gave to her the lands for life, or rather for widowhood? *A.* For life.

Q. Was she ever married? *A.* No.

Q. Is she dead? *A.* Yes; died about four years 10 ago.

Q. Did she occupy the homestead farm up to the time of her death? *A.* Yes, sir.

Q. Mrs. Waln signed that lease I believe? *A.* Yes, sir.

Q. When was that lease signed with respect to the time of Mr. Hance's funeral? *A.* I think signed in the afternoon of the funeral or next morning.

Q. He died on March 26th, and this is dated on March 25th; I notice you say the funeral then was either 20 on the 24th or 25th? *A.* Yes, sir.

Q. Do you know Benjamin Rogers? *A.* Yes, sir.

Q. Charles W. Reeves? *A.* Yes, sir.

Q. They appear to be appraisers at the time the personal property was inventoried? *A.* Yes, sir.

Q. Were they employed for that purpose by you and the other administrators? *A.* Selected by the administrators.

Q. Did you take part in the making of that inventory, personally? *A.* Yes, sir. 30

Q. I speak now of the inventory that was filed? *A.* Yes, sir; amounting to \$15,000 and a little over.

Q. What did that include? *A.* It included the personal property of the homestead.

Q. Homestead farm? *A.* Yes, sir.

Q. Did it include anything on the Waln farm? *A.* No.

By THE COURT :

Won't you ask him why not ?

By MR. LANNING :

Q. It appears that the inventory was taken April 11?

A. Yes, sir.

Q. Why did you not then take the inventory of the things on the Waln farm? A. I think it was on account of being undecided about what to do.

10 Q. That was because of the indecision, you say you were undecided? A. About the time we made the appraisement, we were not certain whether the property on the Waln farm belonged to William Hance, and in order to find out, we saw William Waln.

Q. Who saw him? A. I think George Hance and myself, so long ago.

Q. You saw William Waln; that is, the husband of Hannah? A. Yes, sir.

Q. And he said— (Objected to.)

By MR. LANNING: I think the objection is good.

20 Q. You say you saw him? A. Saw him.

Q. Where? A. I think on his place, on his own farm.

Q. Was that before the inventory of the stock on that farm was made? A. Yes, sir.

Q. And was after you had made the inventory on the homestead farm? A. I think we found out before we took the appraisement of either farm, ascertained about the stock being William Hance's.

30 Q. Did you have any conversation with Hannah Waln at any time about it? A. No.

Q. Did she at any time tell you to confer with her husband about it? A. No.

Q. I think that you said that you went to the Waln farm? A. Yes, sir.

Q. And helped make the inventory? A. Yes, sir.

Q. What appraisers did you have? A. Benjamin Rogers and Charles Reeves.

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Q. The first two appraisers that had made the first appraisal of the things on the homestead farm? A. Yes, sir.

Q. Who went with you—which of the administrators? A. George Hance and myself.

Q. Then there was at the Waln farm, George Hance and yourself, administrators, and Charles Reeves and Mr. Rogers, appraisers? A. Yes, sir.

Q. Whom did you see there? A. William Waln.

Q. Did you see Hannah? A. I think I did; yes, 10
sir.

Q. Are you clear about it or not? A. Yes, sir; I did; I saw her.

Q. State whether you went around the place and saw the things. A. William Waln took us around and showed us everything about the place.

Q. You are certain you saw Hannah Waln there at that time? A. Yes, sir; I can't remember whether I was at dinner or not. I saw her in the house.

Q. Did she see the appraisers also? A. I suppose 20
she must.

Q. Who took you around to show you the things? A. William Waln.

Q. Did the appraisers make their appraisal at that time? A. Yes, sir.

Q. Did you ever see this little book before? A. Yes, sir; that is my handwriting.

Q. The items and things in your handwriting? A. I kept an account.

Q. When? A. At the time of the appraisal of 30
William Waln's property.

Q. At the time you just referred to when there? A. Yes, sir.

Q. Was that memorandum made by you when William Waln took you around and showed you the things, made by you in lead pencil? A. Yes, sir; and figures placed opposite showing the value.

Q. By whom were they determined? A. The appraisers.

Q. And you put down what they determined, did you? A. I put down what they gave me.

Q. State whether Hannah Waln on that day made any claim that she was the owner of the property. A. Not at all; no claim whatever.

Q. Did you ever have any conversation with her respecting this property? A. I did after her mother's
10 death.

Q. And that occurred in 1891, or '92, was it? A. '91, I think.

Q. That occurred in '91? A. I think so.

By MR. GASKILL: Four years ago this May.

By MR. LANNING:

Q. Did you ever have any conversation with her respecting this property before her mother's death? A. No, sir.

Q. How soon after her mother's death that you had
20 that talk? A. I think her mother died in the spring, and I saw her in the summer.

Q. Where? A. First in Philadelphia, and then again at our own residence, Coatesville.

Q. Tell us what conversation you had with her in Philadelphia.

By MR. GASKILL: I would like to interpose an objection if it is for the purpose of showing this conversation, for the purpose of bringing this claim within the Statute of Limitations.

By MR. LANNING: I do not suppose I could bring it
30 in by this conversation.

By THE COURT: I will allow the testimony, you have the objection.

By MR. LANNING:

Q. State the conversation you had with her at Philadelphia? A. She commenced to talk about the real estate

of the homestead, and she claimed that the property was her husband's.

Q. Don't say what she claimed? *A.* She said the property was her husband's, and I told her if that was the case we never would have appraised it, I never would have taken any account of it, and she said that we never did take any account of it; and I asked her if she didn't sign a paper, the receipt or something to that effect, and she said no, had never signed it; then I told her if she was correct there had been no record made of that property; I didn't see anything to prevent her from coming in for a share of the estate. 10

Q. Did you have a copy of the account with you then? *A.* Not then, merely a conversation that occurred.

Q. Since, did you have this receipt with you at any time? *A.* I do not think I saw that, I haven't seen that receipt for a long time.

Q. In whose possession has it been? *A.* Lewis Thompson's.

Q. Lewis Thompson resided at Bordentown? *A.* 20 Yes, sir; he was the active administrator.

Q. Was there any other conversation at Philadelphia between you, that you recall? *A.* Not one, until I saw this memorandum and also the administrator's account, then I went down and told her.

Q. Where did you see her? *A.* Philadelphia; I told her she was altogether wrong.

Q. When was that? *A.* In the fall or winter of 1893.

Q. The fall after her mother died? *A.* Yes, sir; 30 after her mother died.

Q. Go on? *A.* I told her she was mistaken, and that everything there was all straight, and that her name was down on this receipt, and her husband's signature was there with it. She said she didn't remember ever signing, and I says, Lizzie, you did sign it.

Q. You say Lizzie, you mean Hannah? A. Yes, sir; we always called her Hannah Eliza.

Q. You say you told her that her husband's name was down here? A. Yes, sir.

Q. The subscribing witness, W. W. Waln, is that her husband? A. Yes, sir.

Q. Is that his signature? That is his name, I do not know that it is his signature.

By MR. GASKILL: We believe that to be his signature
10 as a witness.

By MR. LANNING:

Q. You say you told her that she was mistaken?
A. Yes, sir; that her name was on the receipt, and her husband's also.

Q. What did she say? A. Said she didn't remember ever signing it.

Q. Tell all that happened, as near as you can recollect it. A. She claimed to prove the stock was William Waln's, her husband; called my attention to the fact of
20 its being driven off the farm at one time, I do not know when, the sheriff came up to make a levy of the stock, and it was all driven off the place, and finally, in a short time, brought back again, and she wanted to make it appear by that that the stock was William Waln's.

Q. The Sheriff came up to levy against William Waln's? Yes, sir.

Q. Her husband? A. Her husband; it was to prevent the sheriff getting it; driven off the farm. She done that in order to show, to prove to me that the stock was
30 William Waln's. I do not know, I said, how that would make any difference, because the stock was there for several years afterward and the sheriff would come and seize it at any time that he wanted. About letting the sheriff take it, she said they were passed over to keep the creditors from getting it. I said the creditors could take it at any time, and I had no recollection of passing it over to keep

the creditors from getting it, and some other matters I do not think that it is necessary.

Q. Give all that does relate to this matter. *A.* I says the only way this thing could be settled would be to go to the Court of Chancery. She says Robert Waln says it will be very bad for us if they go into the Court of Chancery, is the reply she made to that.

Q. Was there anything further, do you remember of anything further; you have spoken of a conversation in the summer and fall of 1893, two, both in Philadelphia? 10
A. Yes, sir.

Q. Both at her husband's? *A.* Yes, sir.

Q. Let us see, there was another? *A.* At my house at Coatesville; I do not remember whether that last one was at Philadelphia or our house.

Q. Then the last conversation you were speaking of took place in Philadelphia? *A.* This took place at our house.

Q. Do you remember whether you ever had any conversation at your house? *A.* I think there was. 20

Q. After your mother's death? *A.* Yes, sir.

Q. Can you recall what it was? *A.* Pretty much the same line.

Q. You have spoken of two conversations now? *A.* Yes, sir.

Q. Do you say there were other conversations? *A.* There might have been other conversations, but pretty much over the same ground.

Q. Did you at any time before her mother's death ever hear her make any claim to this property? *A.* No; 30 the first I ever knew of it was the time she told me I spoke of.

Q. Did you ever hear any word, report, that she claimed to own that property? *A.* No, sir; I never heard that she had made any claim to that at all.

Q. Before her mother's death? *A.* No, sir.

Q. Do you know who made the arrangement for the

meeting in Mr. Cannon's office? *A.* Yes, sir; when the receipt was signed. I do not know anything about the arrangement, but I know there was an arrangement for them to sign it; I do not remember any time set.

Q. When did you know of that? *A.* We knew at—we did not know the exact time; we were informed that what claims—they had come to transfer this property over to Hannah Eliza Waln, and then we informed her and her husband of our decision.

10 *Q.* Who informed her and her husband? *A.* I can't remember who informed them.

Q. Do you remember how the information was given? *A.* I think it was at the time of the conversations, we got it to them; I can't remember how, and they were very willing to accept it, and we went out and proceeded.

Q. You must tell how you know that; you say they were very willing to accept, what happened to show that? *A.* We were talking the matter over in the lawyer's office.

20 *Q.* Who? *A.* The administrators, with Mr. Cannon, talking over the matter.

Q. You say you talked it over; as a result of that conversation what did you do, if anything? *A.* Transferred the stock to William Waln.

Q. Did you have any talk with her about it? *A.* I can't remember that there was anything said about the matter except to inform them of our decision; no.

Q. Did you know then yourself why it was that she came to go to Mr. Cannon's office? *A.* No; I could not say exactly how it came, any more than that they came to sign the receipt, on account of our putting the property over to her possession.

30 *Q.* Had they any children at that time—Mr. and Mrs. Waln? *A.* Yes, sir.

Q. Small or not, and how many? *A.* I could not say exactly how many; I think there was three or four; I do not remember exactly how many.

Q. You have said something about the Sheriff having gone out to levy upon the property of Mr. Waln? A. Yes, sir.

Q. Were they in needy circumstances or not? A. Not at that time; that was long before the property was appraised.

Q. At the time the inventory was made? A. That is way long before that.

Q. At the time the inventory was made, which seems to have been on or about April 13, 1876, were the Waln 10 family in needy circumstances or not? A. Not then, no; they would have been if we had sold the stock. If we had sold the stock they would have been deprived of the means of making a living, and we were very much concerned about that. When we found that William Hance owned the property, why then we didn't know what to do with the matter, and we talked with George Hance; he was an uncle of Hannah Eliza, and he was especially concerned about it, and he said—

(Objected to.)

20

Q. Said in Hannah's presence? A. No.

Q. Had Hannah at that time money with which to pay for the value of the stock? A. No; if we had sold the stock there would have been no resource whatever, and they would have been in needy circumstances, and the property was not sold merely to save them from being impoverished.

Q. How much of that land of the estate of William Hance was sold to pay the debts?

By THE COURT: Would not the record show that? 30

By MR. LANNING:

Q. What did you sell? A. The three farms besides some of the personal property.

Q. Do I understand you sold all the William Hance real estate except the homestead farm? A. Yes, sir.

Q. And there she remained—the widow—until she died? A. Yes, sir.

Q. And after her death you claimed from Hannah a settlement of this receipt? A. Yes, sir.

Q. It appears by the account that has been filed by you that commissions were allowed to the administrators amounting to \$1,294.28? A. Yes, sir.

Q. Have the administrators received those commissions?

10 (Objected to.)

A. No.

By THE COURT: I will allow it. I think it is competent, but if I find I am mistaken I will deal with it accordingly.

By MR. LANNING:

Q. Has there ever been any division of commissions amongst the administrators?

(Objected to.)

A. No.

20 CROSS-EXAMINATION.

By MR. GASKILL:

× Q. With reference to your going to Colonel Cannon's office and consulting with him and then afterwards going to make an inventory, I want to see if I understand you correctly. I understand you to say that you administrators were informed that William Waln was going to transfer this personal property to his wife, and that you went to consult Colonel Cannon? A. No, that is not correct.

30 × Q. What led you to go to Colonel Cannon's office?

A. On account of the condition they placed me in—on account of having the property sold; we wanted to place it so that he could retain the property.

× Q. You had, as I understand you, satisfied yourself as to the ownership before you had made either appraisal? A. Yes, sir.

× Q. Then why was it that as administrators under your oath of office you did not include in your first inventory all the property which you had reason to believe belonged to the deceased? A. I could not tell you the reason that was given, but Mr. Cannon told the reason after the homestead property was appraised before the other appraisement took place, but what reason he gave I can't remember, but we acted under advice of counsel altogether.

× Q. Then the reason you didn't make an inventory of all the estate of the deceased was because your counsel advised you not to? A. The appraisement took place different days.

× Q. You had filed one inventory in the Surrogate's office? A. Yes, sir.

× Q. And that did not include all the things on the Waln farm? A. No.

× Q. Then the only inventory that you ever made of the goods on the Waln farm is the inventory attached to the receipts signed by Mr. Thompson? A. Yes, sir. 20

× Q. And that was never filed in the Surrogate's office? A. We had never received anything for that letter; no money received for it.

× Q. The certified copy of the inventory produced says that it was taken by the administrators and appraisers on the eleventh day of April? A. Yes, sir.

× Q. This was taken, referring now to the inventory attached to the receipt, on the thirteenth day of April? A. Yes, sir; that might have been signed after the appraisement. 30

× Q. Hannah Waln and her husband had to come into Bordentown and sign, and isn't it dated April 13? A. That is there.

× Q. Can you say it is not the date it was taken? A. I do not say it is not the date, but it might have been signed after the inventory, might not have been signed the same day.

× Q. The paper signed by Mr. Thompson attached to the inventory on the Waln farm was signed in Mr. Cannon's office, as I understand? A. Yes, sir.

× Q. And that wasn't done the same day that you were out there with the appraisement of the Waln farm, was it? A. I didn't have much to do with them.

× Q. My question is a simple one. It is this, was this paper now shown you, being a receipt attached to the inventory of things on the Waln farm, signed on the same
10 day that you were out to the Waln farm and made an inventory? A. I can't say.

× Q. Can you tell us how long you were engaged at the Waln farm, seven miles distant from Bordentown? A. Greater portion of the day.

× Q. In whose hand-writing is that list of articles? A. I do not know; not mine.

× Q. You know the hand-writing of Colonel Cannon? A. Yes, sir.

× Q. This wasn't written out until after you made
20 that appraisement, was it? A. No, sir.

× Q. Then if you were the greater part of the day out at the Waln farm, you didn't sign this, and have it drawn in Colonel Cannon's office the same day? A. After I got through with the appraisement I went home; I wasn't there.

By MR. LANNING: He didn't sign it at all.

By MR. GASKILL: You are quite right.

× Q. You were in Colonel Cannon's office, consulting him about this stock on the Waln farm, when the decision
30 was reached to inventory it? A. Yes, sir.

× Q. Did Colonel Cannon draw this receipt signed by Mr. Thompson at that same time? A. No.

× Q. Did you go to Mount Holly and take your oath or affirmation to the inventory? A. I went if it was required; I most forget.

× Q. Can you recall? A. I went to Mount Holly, if

it was required I went; we were acting altogether under the advice of counsel.

× Q. I am asking about your recollection now? A. I don't recall whether we did or not; I think, probably, we did, if it was required we did.

× Q. Do you have any recollection of it at all? A. No, sir; it is nineteen years ago, and it is pretty hard to get everything in.

× Q. Can you recollect whether you had been out on the Waln farm before you went to Mount Holly, if you did go to Mount Holly? A. No, sir. 10

× Q. I understood you to say that the lease from the children of William Hance to their mother for life or widowhood was signed the day of the funeral? A. Either that day or day afterwards.

× Q. Was it drawn out there on the farm that day? A. I can't remember.

× Q. Your recollection upon all these matters occurring so many years ago is somewhat indistinct, isn't it? A. I remember all the principal things, all the principal 20 events.

× Q. But you can't remember all the events? A. I forget the details.

× Q. Have you any objection to telling us your age? A. None at all.

× Q. How old? A. Sixty-five.

× Q. You are quite hard of hearing? A. Yes, sir.

× Q. Was that the condition of your hearing some years ago? A. It was twice better than it is now.

× Q. At the time you were serving as administrator? 30 A. Yes, sir.

× Q. Is it now about as it was in '81? A. Got worse.

× Q. After the death of Mrs. Hance you had a number of conversations with the defendant, Hannah Waln? A. Yes, sir.

× Q. As I understand, you married a sister of the defendant? A. Yes, sir.

× Q. And daughter of William Hance's, deceased? A. Yes, sir.

× Q. You were a son-in-law? A. Yes, sir.

× Q. She died in May, 1891, your mother-in-law? A. Yes, sir.

× Q. And from that time on up to the commencement of the partition proceedings there were frequent
10 communications between members of the family? A. Several; I can't remember how many; I called to see them in the city and they were up to our house.

× Q. And didn't those interviews and communications refer to the property, to the commencement of the proceedings for the sale of the farm? A. No, pretty much talk of what happened away back to the beginning.

× Q. Wasn't there any difficulty at all about getting some member of the family to start the partition proceedings? A. They were not any of them willing to make
20 applications.

× Q. They wanted your wife to do it? A. Yes, sir.

× Q. What is her name? A. Susan.

× Q. You wanted Mrs. Waln to do it? A. She was the only one willing to do it; she claimed she had a right.

× Q. And you wanted her to commence the partition proceedings? A. Yes, sir.

× Q. It was standing for three years, and it was time it was settled? A. Yes, sir.

× Q. In those communications between you, about
30 the partition proceedings, didn't she ask you about this pretended claim that somebody had against her share? A. No.

× Q. And didn't you answer that you knew of no claim against her share? A. No.

× Q. You know the son of the defendant, Waln, the young man sitting at the end of the table? A. Yes, sir.

× Q. He is known as Wood? A. Yes, sir.

× Q. He wrote to you about it, didn't he? A. I think he did at one time.

× Q. About some talk about the claim? A. Yes, sir; we had some conversation with his mother.

× Q. When was that conversation with his mother? A. After mother's death.

× Q. How long after? A. I don't know.

× Q. A year? A. I don't think that long.

× Q. The first conversation you say was after her mother's death? A. Yes, sir; some time prior to May, 10 1892. That is the best of my recollection.

× Q. Was it within the year 1891? A. I think it was; that is the best of my recollection.

× Q. To the best of your recollection you had the first conversation which you have given on your direct examination with the defendant, Mrs. Waln, during the year 1891? A. That is my impression.

× Q. Didn't you, early in the year 1892, write to her son that you knew nothing about any claim? A. That 20 might have been at that time.

× Q. (Paper shown witness.) That is your letter, isn't it? A. Yes, sir.

× Q. On your letter-head? A. Yes, sir.

× Q. And in your hand-writing? A. Yes, sir; that is with regard to her matter.

× Q. That is with regard to starting the partition proceedings?

By MR. LANNING: I do not know that you are entitled to read it; however, I won't raise the objection. 30

By MR. GASKILL:

"COATESVILLE, PA., 11, 11, '92.

Dear Wood: Your letter of the 10th received. In reply, you may make a mistake in regard to the estate. The claim (if a claim it is) is on account of William Hance's estate. Margaret Hance had no real estate separate from her husband's. In regard to the claim against your mother, I have no idea what it is. Lew Thompson

was left in charge of the affairs on account of Uncle George Hance and myself being so far away. Thomas S. Bishop kept all of the accounts and transactions between the creditors and father Hance's estate. And if there is anything like an offset against your mother he would be likely to know it. John P. Hutchinson should know what it is. But whatever it is it must have been against your father, as your mother had no transactions with William Hance to my knowledge. It looks as if there will
 10 be nothing done towards settlement before another year. Your Aunt Sue refuses to make application and the other sisters will not, and there seems to be no one except your mother to act. Your affectionate uncle,

C. RIDGWAY."

(Marked "Exhibit D, 2," for identification.)

× Q. Do you remember, Mr. Ridgway, making the deed of conveyance for the farm on which the Walns lived after you had sold it under the order of the Orphans' Court? A. I think I remember signing it; I think I remember signing something of that kind.

20 × Q. You gave possession of the property at that time? A. Yes, sir.

× Q. And don't you remember there was a sale out there? A. Yes, sir.

× Q. You remember that distinctly? A. Yes, sir.

× Q. A sale of all the stock and farming implements and stock? A. Yes, sir; sold pretty much a year after we transferred the property.

30 × Q. And don't you recall that that sale was had in Mrs. Waln's name? A. Yes, sir; she was supposed to own it at that time, that was after the transfer was made to her.

× Q. Don't you remember also, shortly after your father-in-law's death, having a conversation with Mrs. Waln about that stock out at the farm? A. No, no.

× Q. In the year 1876? A. No; I had no conversation with her at all with regard to the stock.

× Q. Did you send any word to her by Mr. Thompson that the administrators were going to make a clean sweep and sell off all that was on the farm? A. No.

× Q. Don't you recall having a conversation yourself with Mrs. Waln in her sitting-room out on the farm about this stock? A. No, no.

× Q. Didn't you tell her that you had been to Mount Holly and had looked over the records and had found that the stock on the Waln farm had no owner? A. No.

× Q. Positive about that? A. Yes, sir; positive of 10 that.

× Q. No doubt whatever in your mind? A. No.

× Q. Didn't she tell you that they belonged to her husband at the time of her mother's death? A. No.

× Q. Never before? A. No.

× Q. You knew before the mother's death about the stock, taking it off the farm? A. No, sir; I didn't live at Bordentown.

× Q. Didn't you hear of it? A. No, sir.

× Q. Didn't you hear of the bankruptcy of your 20 brother-in-law? A. Yes, sir.

× Q. You knew of the sheriff going there to levy? A. I didn't know it only from hearing.

× Q. Didn't you, at that time, at the time of the bankruptcy proceedings learn that fact? A. I didn't know any more than the fact itself, that is all I knew.

× Q. You knew that fact, that the goods on that farm had been removed from the farm? A. Only from information from her.

× Q. Didn't you know it at the time? A. I wasn't 30 in Bordentown; learned it afterwards.

× Q. Didn't you at the time learn it? A. No.

× Q. Positive of that? A. Yes, sir.

× Q. Didn't you, when she said these things belonged to her husband, say that then they ought to go to her husband's creditors? A. No; that is what she said herself.

× Q. Shortly after the death of your father-in-law?
 A. She said they done that to keep the creditors from getting it.

× Q. Told you that at the time? A. After her mother's death.

× Q. Right after her father's death was there any conversation? A. Wasn't anything said about that time, no, sir.

10 × Q. Didn't she tell you that the creditors had never bothered them or molested them? A. That I don't remember; no recollection.

× Q. Didn't you give her a paper, which she now holds, signed by Mr. Thompson, drawn by Mr. Cannon on that inventory? A. No, sir; I had nothing to do with it.

× Q. You didn't hand it to her yourself? A. No, sir; I wasn't there, I don't think.

× Q. Didn't you tell her that was held against the creditors of her husband? A. No, sir.

20 × Q. And that you were not going to make any account of it? A. No, sir; I never did.

× Q. Didn't you tell her that you had better let the administrators sell that stock and get a good title to it, and either you would buy it in or you would pay her the money? A. No, sir.

× Q. After your mother-in-law's death you told her that you were gald she was going to have an equal share? A. I said if her story was true she would come in for her share with the rest.

30 × Q. At that time you had forgotten all about this receipt? A. I do not think I had seen it at all till after the division of the estate was made.

× Q. And you had forgotten all about the inventory? A. I knew all about the inventory, I didn't know whether she was correct.

× Q. You had forgotten the transaction? A. She told me she had never signed it, then it was a question in

my mind, she was so positive she never signed it, and I said if you haven't signed any receipt, and there has been no account made of it, I said, there is nothing to keep you from coming in with the rest of the children.

× Q. And you had forgotten? A. Yes, sir.

× Q. Just within a few months ago you told her you did not know whether this stock had been put in the estate of William Hance, didn't you? A. Only upon the supposition that she was telling me the truth.

× Q. Then you afterwards looked it up for yourself? 10
A. I looked it up and found that she was mistaken.

× Q. And that it was in the account? A. In the account.

× Q. And then didn't you tell her that you found it in the account and there would be trouble? A. No, sir.

× Q. And didn't you say the administrators are in a hole and they would have to pay for that stock? A. No.

× Q. Where did Mrs. Waln move to when she went off the farm? A. Recklesstown.

× Q. How long did she live there? A. I could not 20
tell you at all.

× Q. About two years ago, wasn't it? A. No, that is the first time; afterwards they moved two or three different places; I think you mean the first time they moved away from the farm.

× Q. They lived in the neighborhood until about two years ago? A. Yes, sir; and then she moved to Philadelphia.

× Q. You never made any contribution of the balance shown by the account among the next of kin? A. No. 30

× Q. There were eight children of William Hance, deceased, as I understand it? A. Yes, sir.

× Q. So that if there were any balance it was divisible into eight parts? A. In the general fund.

RE-DIRECT.

By MR. LANNING :

10 *Q.* Judge Gaskill has asked you, didn't you say to Mrs. Waln that the administrators were in a hole, and that they would have to pay for that stock, and you said no, but you were going to say something else and he stopped you ; tell me what it was? *A.* The reason was, I didn't use those words, I merely told her if she came in for a share of the estate that we would have to put our hands in the pocket and pay it, because we are charged for the appraisement, and I said if you come in for a share we will have to make it up ourselves ; that is what I told her.

Q. Has she been visiting your place frequently? *A.* Not very often.

Q. You have been calling at her house in Philadelphia? *A.* Yes, sir.

Q. There has been no estrangement between you? *A.* Not that I know of.

20 *Q.* There has been this suit between you? *A.* Yes, sir.

Q. Up to the time of your mother's death? *A.* I have been very intimate, always been a friend of hers ; always very intimate.

Q. When did you, as near as you can now tell, first hear of this receipt that is signed by Hannah Waln? *A.* I think in 1893.

Q. Then you had never seen it up to—before Mrs. Hance's death. *A.* No ; never seen it.

30 *Q.* And when she first spoke to you about the matter in Philadelphia at her house in the summer or fall of 1893, had you at that time ever seen this receipt? *A.* I saw it then ; I saw it before I went down.

Q. Had you seen it before this first conversation that was after her mother's death? *A.* No.

Q. Then your uncertainty was due somewhat to that fact? *A.* And she was so positive she never signed it,

Q. You have already said you were not at Mr. Cannon's office? A. Not when that was signed.

Q. Before and when they concluded about making the arrangement, when you concluded to make an inventory, you were there? A. Yes, sir.

By MR. LANNING: I offer in evidence the receipt, with the list of items prefixed thereto, marked "Exhibit C5."

BENJAMIN ROGERS, a witness called on the part of the complainants, being duly affirmed, testifies as follows: 10

DIRECT EXAMINATION.

By MR. LANNING:

Q. Where do you live? A. At Crosswicks, in Mercer County.

Q. Did you know William Hance in his lifetime? A. I did.

Q. Were you one of the appraisers after his death to ascertain the value of his personal estate? A. I was.

Q. And signed the appraisement which was filed in 20 the Surrogate's office of the stock at the homestead farm?

A. Yes, sir; of course.

Q. Did you afterwards go to the Waln farm? A. I did.

Q. And helped appraise the stock there? A. I did.

Q. At whose request did you go? A. At the request of the administrators.

Q. Who went with you to the Waln farm? A. Mr. Craig Ridgway and George Hance.

Q. Do you recall how you went? A. We went in carriages.

Q. You went with whom? A. I rode with George 30 Hance; I do not know who Mr. Reeves went with.

Q. Then Mr. Reeves was there, too? A. Yes, sir; he was one of the appraisers.

Q. So there was present at the time the inventory was made, Mr. Ridgway and Mr. Hance, administrators, and yourself and Mr. Reeves, appraisers? A. Yes, sir.

By THE COURT: Q. Wasn't Mr. Thompson there? A. No, sir.

Q. Have you any recollection as to how long after you made the inventory at the homestead farm, you made the one at the Waln farm? A. No, sir; I can't say whether the next day or the next but one.

01 Q. Do you recall whether any arrangement was made to go to the Waln farm at the time you took the inventory at the homestead farm? A. I do not know anything about it.

Q. How came you to go to the Waln farm? A. By the request of the administrators.

Q. When was that request made? A. While we were taking the inventory at the homestead farm.

By MR. LANNING: Q. The request was made while you were taking the inventory at the homestead farm? 20 A. Yes, sir.

CROSS EXAMINATION.

By MR. GASKILL:

× Q. Can you say whether or not you had been to the Waln farm at the time you went to Mount Holly and swore to the inventory? A. I did not go to Mount Holly, I do not think; Charles Reeves went.

× Q. Do you know when they went to Mount Holly to perfect the inventory? A. No, sir.

30 × Q. The best you can tell us is that you went to the Waln farm within a day or two days, the next day or the next day but one after you had been at the homestead farm? A. That is my impression.

× Q. And you were requested to go to the Waln farm for the purpose of making an appraisement while you were engaged in making the appraisement at the homestead farm? A. Yes, sir.

× Q. You knew at that time then, did you, that there was something at the Waln farm to be appraised or looked after? A. Yes, sir.

× Q. Did you sign the inventory before you met at the Waln farm, or afterwards? A. Which inventory do you mean?

× Q. The inventory made at the homestead farm. A. That I can't say.

× Q. But the inventory which you signed did not contain anything at the Waln farm? A. Not to my 10 knowledge.

By THE COURT: Mr. Rogers, whom did you see at the Waln farm? A. I saw Mr. William Waln, he showed us the goods, and perhaps he was the only person there besides the two I spoke of and the appraisers.

× Q. You don't remember having seen Mrs. Waln? A. No, sir; I don't remember having seen her at all.

THOMAS S. BISHOP, a witness called on the part of the complainants, being duly sworn, testifies as follows:

DIRECT EXAMINATION.

20

By MR. LANNING:

Q. Where do you live? A. New Britton, Connecticut.

Q. Did you ever live in New Jersey? A. Yes, sir; up to 1880 I lived with my wife in New Jersey.

Q. Did you ever live in Bordentown? A. Yes, sir; several years.

Q. Did you know William Hance during his lifetime, late of Bordentown? A. Yes, sir.

Q. You married a daughter of William Hance's? 30
A. Yes, sir; I did.

Q. Then, of course, you were acquainted with the

administrators who, are your brothers-in-law, the surviving administrators? *A.* Very well.

Q. Did you ever have anything to do for the estate in anywise? *A.* I did, in a clerical capacity; I kept their accounts.

Q. For how long a time did you keep their accounts? *A.* I think from 1876 to 1884, as I recall it.

Q. Of course you are acquainted with Mrs. Waln, the defendant, your sister-in-law? *A.* Very well.

10 *Q.* Did you ever have any conversation with her as to this estate, the distribution and division of the estate after her mother's death? *A.* Yes, sir; I think I did.

Q. Where? *A.* At the homestead at Bordentown, sometime after her mother's death; I do not remember just how long ago.

Q. You said you thought you had, are you clear? *A.* Yes, sir; I am sure of that.

20 *Q.* You are referring to a conversation had with her at the homestead farm, where her mother died? *A.* Yes, sir.

Q. And after her mother's death? *A.* Yes, sir.

Q. How long after her mother's death? *A.* It was shortly, very shortly; I do not remember whether immediately after or my next visit at Bordentown, but it was shortly.

Q. A week, or month, or six months? *A.* It may have been a couple of months; I have forgotten.

Q. She died in April, and this conversation you had with her, then, was during that same visit?

30 *By THE COURT:* I think it was agreed May.

A. I think I was back in May; in April I was in Washington, and it was shortly after that.

By MR. GASKILL: Buried on the first day of May?

By MR. LANNING: Died April 28, 1891.

Q. Then you say you had a conversation with Mrs. Waln then, within two or three months after the mother's death? *A.* Yes, sir.

Q. With respect to the division of this estate? A. Yes, sir.

Q. What was it; tell us what happened? A. In the course of the conversation she spoke of the division, and the matter came up of her brother John's share, and I told her there would be nothing coming to John's heirs, because his indebtedness largely exceeded his distributive portion.

Q. He was dead? A. Yes, sir; sometime before. She made this remark, to this effect, if there is nothing coming to John, then there is certainly nothing coming to me, and I casually made this remark, I suppose that she would come in with the rest; like Mr. Ridgway, I had forgotten all about the receipt; I think at the time I had known it, but it passed out of my mind; I had a good deal to think of; that is the substance of it. It was prolonged a good deal, my wife was there. 10

Q. Give all that you remember about it, as fully as you can? A. That is the substance of it, and that is as fully as I can give it. 20

By THE COURT: Did you say your wife was present?

A. Yes, sir; Mrs. Waln and my wife and I.

Complainants rest.

HANNAH WALN, the defendant, being duly sworn, testifies as follows:

Direct examination by MR. GASKILL.

Q. You are the defendant in this suit, Mrs. Waln?

A. Yes, sir.

Q. Where are you now living? A. Philadelphia.

Q. Where did you live from the time of your husband's death up to the time that you went to Philadelphia? A. Chesterfield. 30

Q. In Burlington County, New Jersey? A. Yes, sir.

Q. Is that the place that was formerly called Recklesstown? A. Yes, sir.

Q. How far is that from Bordentown? A. Four miles.

Q. How far is it from the farm that you and your husband occupied at one time? A. Four miles.

Q. Then it is part way in from the road toward Bordentown? A. Yes, sir.

Q. Where were you living at the time of your father's death? A. On the farm. I was living on the farm used to belong to William Waln, my husband.

10 Q. Your husband was William W. Waln? A. Yes, sir.

Q. He is now deceased? A. Yes, sir.

Q. When did he die? A. He has been dead three years this New Year's.

Q. This last New Year's? A. Yes, sir.

Q. Do you remember the proceedings taken by the administrators of your father's estate towards settling the estate after his death? A. After his death, no.

20 Q. You remember their coming out to your farm to make an inventory at one time? A. Yes, sir; and drove in the side entrance and never came to the house.

Q. Now, Mrs. Waln, before that, before they came out there had you seen Lewis Thompson in Bordentown, or was it afterwards? A. He was in Bordentown three weeks after father's death.

Q. Was that before they came out to the farm? A. Yes, sir.

30 Q. Tell us what took place between you and Mr. Thompson? A. He came in on me like a lion and said he was going to make a clean sweep of all the stock, and I said there is not a hoof out there that belongs to him, and he said he would show me, and Mr. Carmine advised me; it was on his stoop.

Q. He is a storekeeper there? A. Yes, sir; I was going in the store.

Q. Were you and Mr. Ridgway on visiting terms at that time? A. Yes, sir; I was always very fond of him.

He was a great friend of mine until he found this receipt, and then he failed to ever visit me.

Q. At that time were you on good terms? *A.* Yes, sir; a bosom friend in every way until he found the receipt in this estate; the last dear friend I had.

Q. Do you remember at that same time having a talk with Mr. Ridgway concerning the stuff out on that farm?

A. No; not at that time.

Q. The day of the appraisalment, was it? *A.* No, sir.

Q. When was it, before or after the date? *A.* The 10 day of the appraisalment they didn't come near me; they showed me no respect whatever; just took the appraisalment and drove off and went to Mount Holly, and on returning they came back and said the stock had no owner.

Q. On that same day? *A.* I think the same day.

Q. Who was it that told you the stock had no owner?
A. Craig Ridgway.

Q. What did you tell him? *A.* I told him that it belonged to his friend William Waln, that his friends 20 took it off the day of the sale.

Q. What did Mr. Ridgway say in answer to that, about your husband's creditors, if anything? *A.* He said it must be fixed in a different shape else the creditors would seize upon it, and he advised me to let them sell it, and I said: "Craig, I can't trust you; money is tempting."

Q. What did he say about the proceeds of sale if you would allow them to sell it? *A.* I think he said I could have the money, but I was afraid of them; money is so tempting. 30

Q. When you refused to allow them to sell, what did Mr. Ridgway say then? *A.* He said I was very foolish; the creditors might come upon me and then I would be very much reduced.

Q. I show the witness paper marked "Exhibit D 1." Have you seen that paper before? *A.* Is that the paper I held? If it is Mr. Lewis Thompson witnessed about me I

know nothing about it because I wasn't in business with him.

Q. Look at the paper and tell me if that is the paper you have seen before? A. Yes, sir; that is the paper I held to show the creditors.

Q. Who gave you that paper? A. Craig Ridgway gave me that paper.

Q. Where? In my own home in the sitting-room.

Q. When was that? How soon after the appraisal
10 ment at your farm? A. In a day or two.

Q. Have you had it in your possession ever since then? A. Yes, sir.

Q. You can't tell how long it was before Craig Ridgway gave it to you? A. He came out in Rebecca Bishop's horse and carriage and gave it to me.

Q. Rebecca Bishop, that is your sister? A. Yes, sir.

Q. The wife of the last witness? A. Yes, sir.

Q. Was she alone? A. No.

Q. Was anyone with him? A. No.

20 Q. Had you at any time been to Colonel Cannon's office? A. Can't recall; I don't remember anything about that. I never was in Lewis Thompson's presence concerning my father's business, only on Mr. Carmine's steps.

Q. Did you sign any paper at the time that you received these papers from Mr. Ridgway that you recollect? A. No, sir; he didn't ask me to because it was nothing but sham.

30 Q. Do you remember going with your husband to Colonel Cannon's office? A. No; I do not.

Q. You have no recollection about it? A. I have not.

Recess.

MRS. HANNAH WALN resumes the stand.

DIRECT EXAMINATION continued by MR. GASKILL:

Q. Was William Hance, your father, the owner of the

crops, stock and personal property on your farm at the time of his death?

(Objected to.)

Q. Prior to your father's death did your husband become financially embarrassed and a bankrupt? Yes, sir.

Q. Can you tell us what was done with the stock on the farm, and the personal property at that time. A Yes.

Q. What was it? A. His friends took it off and took 10 care of it.

Q. Whose friends? William Waln's.

Q. Your husband? A. Yes, sir.

Q. Was it brought back afterwards? A. Yes, sir.

Q. The same stock that was taken off? A. Yes, sir.

Q. Did the Sheriff come in the meantime to make his levy and have a sale? A. Yes, sir.

By THE COURT: That is, came while the property was away?

By MR. GASKILL: Yes, sir. 20

A. Yes, sir.

Q. How long was it away from the farm? A. Close to a year.

Q. Then you were there on the farm nearly a year without this stock and the farming implements? A. Yes, sir.

By THE COURT: Where was it taken?

A. Mr. Chaffey's, Mr. Martin Dunn, Mr. Charles Chaffey, Mr. George Chaffey, Mr. Fred Waln, Mr. Richard Waln and Mr. Henry Hance and Mr. Stilwell. 30

Q. Did they each take some? A. Each took some.

By MR. GASKILL: They were neighboring farmers?

A. Yes, sir.

Q. And the same stock was all brought back or some sold? A. Some was butchered.

Q. What was done with the money from the sale, do you know? A. My father had it.

By THE COURT: Do I understand you your father had it?

A. Yes, sir.

Q. What did he do with it? A. He told me that he was going to renew the stock.

(Objected to.)

Q. Did any stock come back to the farm in the place of that which was sold? A. That was the bargain.

By MR. GASKILL: Did you tell Mr. Ridgway or Mr. 10 Thompson what this bargain was?

A. No.

Q. What was it that went off the farm that didn't come back, Mrs. Waln? A. Nothing but some cattle, fat cattle that the butcher took.

Q. Did other cattle come back on the place when the other things came? A. No.

Q. Did any stock come back in the place of the cattle other than what went off the farm; you have said that some cattle were taken off the farm that didn't come back?

20 A. Yes, sir.

Q. Now, then, I ask you, in addition to the other things which went off and which did come back, did any new cattle come in the place of those which had been taken off? A. No; they were slaughtered.

Q. Did you receive the money for the cattle that were slaughtered?

(Objected to.)

By MR. LANNING: She does not claim she owned the cattle.

30 By THE COURT: She has already said her father received it.

By MR. GASKILL: Do you know in what capacity your father received this money, whether as agent of your husband or not? Q. Yes, sir.

(Objected to.)

Q. Prior to this stock and personal property being taken off the farm had your father ever made any claim to the ownership of it? A. No.

Q. And after it came back on the farm did your father ever make any claim to its ownership? A. No.

By THE COURT: You must limit those questions to this, so far as she knows anything outside of any communication between herself and her father it must be limited to that. If she has any testimony outside of that it is competent and she may give it. 10

By MR. GASKILL: I suppose the fact stands that, so far as her knowledge goes, her father never made any claim? A. No.

By THE COURT: I must hold that anything between herself and her father could not —

By MR. GASKILL: I think there is this distinction—that outside of the transaction which we may not be able to prove, except inferentially, if her father made in her presence, or in the presence of any one, any declaration concerning his ownership of this property, it would be against 20 his interest or against the interest of his estate; I take it that that would be legal evidence—a declaration against his estate, etc.

By THE COURT: In any transaction or any conversations I think it is very broad; conversations must be regarded as part of the transaction.

By MR. GASKILL: I am willing to let the matter rest as it is.

CROSS-EXAMINATION.

By MR. LANNING: 30

× Q. Were you present, Mrs. Waln, at the homestead farm when the inventory was made there on April 10 or 11, 1876, were you present? A. At my father's home.

× Q. Yes? A. No.

× Q. You remember, of course, the occasion of the funeral of your father? A. Yes, sir.

× Q. Do you remember signing a lease for the lands of your father's estate to your mother? A. Yes, sir.

× Q. All the children joined in that, I believe? A. Yes sir; the afternoon after the funeral.

× Q. The same day of the funeral? A. Yes, sir.

× Q. What was the purpose of making that lease?
A. So that she could hold the homestead as long as she
10 lived.

× Q. The other lands outside of the homestead were sold for the payment of debts? A. Yes, sir.

× Q. Including the farm on which you were living?
A. Yes, sir.

× Q. You were home the day that the administrators, Mr. Ridgway, Mr. Hance and Mr. Reeves and Mr. Rogers came to your place, were you? A. Mr. Hance, did you say?

× Q. Yes, George Hance; were you home the day two
20 administrators and two appraisers came to your place and made the inventory? A. Yes, sir; but didn't see them.

× Q. You knew they came? A. I saw them from the window.

× Q. Then, when a moment ago you said you didn't see them, you meant you didn't speak to them? A. No, I didn't.

× Q. They were not in your presence; you did see them? A. Yes, sir; I saw them from the window.

× Q. Was your house directly along the road? A.
30 No, quite a distance from the road.

× Q. A lane led to it? A. Yes, sir; there are two entrances, a main entrance and the other a side entrance to carry our farming stock through.

× Q. Two separate roadways leading out to the main road? A. Yes, sir; one from the house.

× Q. And the other led from the farm buildings?
A. Yes, sir.

× Q. Which one did they come in at? When they came to appraise the stock they came to the lower one.

× Q. That is the one leading to the farm buildings?

A. Yes, sir.

× Q. They didn't come right to the one leading to the house? A. No.

× Q. When you on the direct examination said they came in the side entrance, you mean they came in the one leading to the farm buildings? A. Yes, sir.

× Q. Did you see them drive in? A. Yes, sir; was 10 watching them.

× Q. You didn't go out? A. Oh, no.

× Q. You knew what they were doing, did you. A. Well, I supposed so.

× Q. You didn't go out to make any objection to their making an inventory? A. No.

By THE COURT: Does it appear when this driving of the stock away to the different neighbors took place, how long before Mr. Hance's death?

By MR. LANNING: I will make it clearer. 20

× Q. Did you know those men that came there that day? A. After the stock?

× Q. No; the day of the making of the inventory. A. No.

× Q. Did you expect them to come at all? A. No.

× Q. Did you have any conversation with any of them about that time about the stock? A. No.

× Q. Are you quite sure? A. Yes, sir.

× Q. Didn't you have any talk with George Hance about it? A. No. 30

× Q. Before the day that he came there to make the inventory? A. No.

× Q. Didn't you have any talk with Mr. Ridgway about it? A. No.

× Q. Or Mr. Thompson about it, when in Bordentown? A. When in Bordentown.

× Q. When was that? A. Three weeks after my father's death.

× Q. Was that before or after this inventory was made? A. I do not know.

By THE COURT: What is the date of that inventory?

By MR. LANNING: April 11th.

By THE COURT: And the paper was dated April 13th?

By MR. LANNING: Yes, sir; and the funeral was on
10 March 25th.

× Q. Were you at any time at Mr. Cannon's office with respect to this stock that was on your farm? A. Can't recall it.

× Q. Do you remember ever having any conversation with Mr. Cannon on the subject at all? A. None whatever.

× Q. You were in Mr. Cannon's office, were you not? A. I can't recall.

× Q. You can't recall that Mr. Cannon ever did any
20 business for you? A. No.

× Q. Do you recollect whether you were ever at any time, for any purpose at all, in his office? A. I can't recollect.

× Q. Do you know where his office was? A. I do not know whether I do or not.

× Q. Do you have any recollection of ever signing a receipt to the effect that you had received this stock from the administrators? A. Don't recall it.

× Q. And that it was valued at \$2600 and odd, and that
30 they were authorized to retain it out of your share on the final settlement of the estate? A. I don't recall it.

× Q. When did you first learn, according to your present recollection, that such a paper was in existence? A. About six months ago.

× Q. After this suit was begun, or this litigation? A. The suit had been begun.

× Q. Now, have you thought much about the matter within the last six months? A. Yes, sir.

× Q. Have you heard anything before to-day that you were in Mr. Cannon's office? A. No.

× Q. Well you have heard before to-day that a paper was in existence supposed to have been signed by you? A. Mr. Ridgway told me so.

× Q. Where did he tell you that? A. At my home in Parry Street, 1927.

× Q. When? A. Last March, I think. 10

× Q. Do you remember his mentioning the matter to you sometime in the year 1893? A. No.

× Q. Do you remember his calling at your place in the year 1893 at all? A. I won't say.

× Q. Don't say? A. No.

× Q. Not sure? A. No.

× Q. I show you Exhibit C 5. A. I have seen that.

× Q. You have seen that to-day, haven't you? A. Yes, sir; they showed it to me.

× Q. Who is the witness? A. Two witnesses, W. 20
W. Waln and G. S. Cannon.

× Q. You observe there your name? A. I can't recall it.

× Q. You observe your name there? A. Yes, sir; I see it.

× Q. That is your handwriting, isn't it? A. I see it.

× Q. Isn't it your handwriting? A. I do not like that L; I cannot recall when I wrote my name.

× Q. When did you first get possession of the paper that you have produced here to-day, Exhibit D 1, which 30
I now show you? A. After they appraised the stock.

× Q. Can you tell how long after the stock was appraised it was? A. Only a few days, maybe a day; I do not remember; it wasn't long, I know.

× Q. Don't you recall now that that paper was handed to you at Mr. Cannon's office? A. No.

× Q. You don't recall that? A. No.

× Q. When was the stock on your farm taken from the farm and distributed among your neighbors that you have named? A. You mean the year?

× Q. Well, tell us whether it was before or after your father's death? A. Before my father's death.

× Q. How long before your father's death? A. I can't remember.

× Q. He died in March, 1876; now give it as near as you can; what year do you think it was? A. I can't
10 recall it, because I do not remember the date?

By THE COURT: Was it one, two, three or four years, as nearly as you can tell the date? A. I can't remember how many years.

By MR. LANNING: It was at a time when your husband was financially embarrassed, wasn't it? A. Yes, sir.

× Q. And wasn't that in the year 1872? A. I can't remember dates; I don't remember that.

× Q. Don't you think it was as much as three or four years before your father died? A. I can't recol-
20 lect it.

× Q. Don't you know it was as much as a year before your father died; you have already said the stock was off the farm for nearly a year? A. Yes, sir; it was over a year that the stock was taken off.

× Q. Before your father died; how long had it been brought back before your father died; had it been brought back before your father died?

(No answer.)

× Q. Mrs. Waln, you say that you don't recollect
30 ever having any conversation with Mr. Cannon about this stock any time, as I understand you, that is right, is it? A. I try to think, but I can't think.

× Q. In your answer filed in this case you have said, see if this will refresh your memory, "That this defendant," that is yourself, "had no counsel, trusting the management of the matter entirely to the said administrators, who were her brothers-in-law and who were acquainted

with all the facts connected with, and the reasons for the said sale and transfer of said goods and chattels and personal property from said defendart, and from her father to herself and to their counsel, who advised her to accept the suggestion of the said administrators, and signed the paper set out in complainant's said Bill, so this defendart assented to said arrangement, with the distinct understanding and agreement that no mention was to be made of this transaction in their accounting as administrators in the settlement of the estate of her father," does that help you or refresh your memory in any way as to your conversation with Mr. Cannon and the advice that you received? 10

By THE COURT: Can you recall anything about it, Mrs. Waln?

By MR. GASKILL: Answer it, if possible, Mrs. Waln.

By THE COURT: Answer, if you can, and if you can't it is your privilege to say that you can't recall anything.

A. I can't recall anything.

By MR. LANNING: Did you see this answer before it was filed; did your counsel, Judge Gaskill, show you this answer? A. What answer? 20

× Q. There is a paper filed here in this suit? A. Yes, sir.

× Q. It is an answer made by you to the paper that I filed for the administrators. A. Yes, sir.

× Q. Judge Gaskill drew it for you, did he show you that paper before he filed it? A. Yes, sir.

× Q. Then this clause that I have just read was in that answer, do you remember having seen that when you read the paper over, this clause that says that you accepted the advice that had been given to you and signed the paper that I showed you awhile ago with your name attached to, do you remember having seen that in the answer when Judge Gaskill gave it to you or not; if you do not remember, I want to get at the facts? 30

By THE COURT: Do you remember anything about it, Mrs. Waln?

A. The paper that Mr. Gaskill had, yes ; he read it to me.

By MR. LANNING : Do you now remember that what I read you a moment ago from it was in that answer?

A. Yes, sir.

× Q. Did it attract your attention at that time when Judge Gaskill showed it to you, or don't you recollect?

A. Yes, sir.

× Q. Did you speak to Judge Gaskill about it? A. Yes, sir.

× Q. What did you say to him when he read the paper? A. I said it was exact.

× Q. You said the paper was exact? A. The paper he read me.

By MR. GASKILL : You are unconsciously putting something to the witness that is not the fact in the case.

× Q. Now, Mrs. Waln, I think I better clear that up; you have not seen Judge Gaskill to speak with him until this morning, have you? A. No.

20 By MR. LANNING : Then you misunderstood me awhile ago ; Judge Gaskill didn't show you any paper at all, did he? A. No ; only what I saw this morning.

By MR. GASKILL : And that was a statement of what your testimony was? A. Yes, sir ; I could not understand it.

By MR. LANNING : How did you get possession of that paper that you produced this morning, signed by Lewis Thompson as one of the administrators? A. The one you showed me here?

30 × Q. This one, D 1? A. Craig Ridgway gave it to me.

× Q. Did you read it over at the time he gave it to you? A. He read it to me.

× Q. Did you object to anything that was in it at the time? A. Yes ; I didn't approve of it.

× Q. What did you say to him? A. I was willing

to take the risk that the creditors would not disturb me on account of my stock.

× Q. Anything else? A. No.

× Q. Now you have spoken of the stock having been taken from the farm and distributed amongst creditors?

A. Amongst friends.

× Q. His friends and neighbors; that is right, isn't it?

A. Yes, sir.

× Q. I understand the purpose was to keep that stock away from his creditors; is that right? A. Yes, sir. 10

× Q. And you say that the arrangement made was that that stock should be transferred to your father and then by your father, by your father to you? A. To my father, I so understand.

× Q. What was that? A. The stock was to come back and then we were to own it.

× Q. Who was to own it? A. William Waln, because his friends took care of the stock and brought it back after he got on his feet again.

× Q. Then you didn't claim to have ever owned it? 20
A. It belonged to William Waln.

× Q. Never belonged to you? A. Belonged to William Waln.

× Q. Let me ask you if you claim that this stock that is in dispute ever belonged to you? A. Only by that paper that they gave me.

× Q. That is the only claim you have or make to it, is it? A. That is all; the stock belongs to William Waln.

× Q. Did you, when this paper was given to you, object 30 to the language in it, which says it belonged to the estate of William Hance, deceased?

(Objected to.)

By MR. GASKILL: This paper don't state that the stock ever belonged to William Hance.

By MR. LANNING: Did you object to the language

which I quote, "which belonged to the estate of William Hance, deceased?" *A.* I do not understand.

× *Q.* I will not press the question, then. You never paid the administrators anything for this property?

By *THE COURT*: There is no pretence of that.

By *MR. GASKILL*: No; that may be admitted.

By *MR. LANNING*: You spoke of having been upon intimate terms with Mr. Ridgway formerly? *A.* Yes.

× *Q.* Up to what time did your intimacy continue?

10 *A.* The last visit he made me last March, as far as I can recollect.

× *Q.* Did your intimacy continue up to that time?

A. Yes, sir.

× *Q.* He had been doing some business for you, had he not; hadn't he transacted business for you? *A.* Only for me lately, about what they were doing.

× *Q.* Didn't he oversee some investments for you, look after them? *A.* No.

20 × *Q.* Didn't he collect interest for you? *A.* No.

By *THE COURT*: They both seem to agree as to their friendship until very recently, Judge.

By *MR. LANNING*: I think the intimacy did not continue until quite so late a day; that is what I am at. *A.* Yes; he was there.

× *Q.* Then you say you were upon intimate terms up to that time, do you? *A.* Yes, sir; we were.

× *Q.* No estrangement at all? *A.* No.

RE-DIRECT EXAMINATION.

By *MR. GASKILL*:

30 × *Q.* Mrs. Wain, the gentleman sitting by my side is a brother-in-law of yours, is he not? *A.* Yes, sir.

× *Q.* Robert W. Wain, and he is a member of the Philadelphia bar? *A.* Yes, sir.

× *Q.* When this suit was commenced, he took charge of your interests in the matter? *A.* Yes.

× Q. And, so far as you know, whatever has been done in it by myself, has been done through him or at his request? A. Yes, sir; and that is the reason I was backward about answering.

× Q. And the paper I read this morning was a paper purporting to be your statement of these occurrences? A. Yes, sir; but I understood it that way.

× Q. At that time, when I asked you about signing this receipt, did you not then say to me that you had no recollection of being in Mr. Cannon's office? A. Yes, I 10 did; I didn't.

× Q. Mrs. Waln, at the time you say that Craig Ridgway gave you this paper, which you were to hold to show the creditors of your husband, was anything said by him in reference to putting this transaction in this account as his father's administrator? A. Yes, sir; he said there would never be any account made of it, because the stock did not belong in the estate, and they would not go and make any account of it; that I only should hold that paper for the creditors; if the creditors bother me in any 20 way, I had that to show.

× Q. And it was with that understanding you took the paper? A. With that understanding I took the paper, that was to hold my property.

× Q. And not sign the receipt, if you signed it that was your understanding? A. Yes, sir; the whole thing they held in writing; they could not hold it, and they gave it to me to hold it; my husband was in bankruptcy; he could not hold it, and it had no owner.

× Q. Did Mr. Ridgway at that time tell you that he 30 had been to Mount Holly to look at the records? A. Yes, and found the stock had no owner.

× Q. Did he say anything then about the necessity of your having something to show in case of trouble? A. No, he did not.

× Q. Mrs. Waln, in this conversation with Mr. Ridgway, did he say anything about whether or not this course

had been advised by Colonel Cannon? *A.* About the stock—yes, sir.

× *Q.* That was his advice, how to put it, and you received that from Mr. Ridgway? *A.* Yes, sir.

ROBERT W. WALN, a witness called on the part of the defendant, being duly affirmed, testifies as follows:

DIRECT EXAMINATION.

By MR. GASKILL:

Q. Mr. Waln, you are a brother-in-law of the defendant? *A.* I am.

Q. Are you a member of the bar of the State of Pennsylvania? *A.* I am.

Q. Practicing in Philadelphia? *A.* Practicing in Philadelphia.

Q. You associated me with yourself in this case when a suit was brought? *A.* Yes, sir.

Q. So far as you know, did I have any communication with your sister? *A.* Nothing until this morning, I am quite positive you did not.

20 By MR. LANNING: We will take your word for that.

By MR. GASKILL: I always knew you were a gentleman.

Q. We prepared this Answer at my office? *A.* Yes, sir.

Q. She wasn't present? *A.* She wasn't present.

Q. Now, go back some years; do you remember at or about the time of your brother's getting into financial difficulties? *A.* I do.

30 *Q.* Had you any claim against him? *A.* My father had four or five months previously, and I went to the executors and was desirous of obtaining the money.

Q. Did you call upon him for that purpose? *A.* I did; it was in the Spring of 1872.

Q. Where did you go? *A.* To see him?

Q. Yes, sir. *A.* His own residence on the farm.

Q. Where he and his wife were then living, the present defendant? A. Yes, sir.

Q. Just state to the court what the condition of that farm was with reference to stock and farming implements at that time, whether any there or not?

(Objected to.)

By THE COURT: I will allow him to say whether there was any there.

A. There was none on the farm at that time; all had been removed. 10

By MR. GASKILL: Do you know of your own knowledge how long the stock and farming implements were off of the farm? A. I do not.

Q. Did you learn how long they had been off when you were there in the Spring of 1872? A. They had only been off a few days, the sheriff hadn't come there; I was there before the time the sheriff came after the stock left the farm, before he came to make his levy.

Q. Had the sheriff come to make his levy? A. He was expected there almost any time. 20

Q. Did you see the deceased, William Hance, in reference to this matter? A. I saw him with reference to this claim that I had against my brother; he referred me to William Hance.

Q. Who referred you to William Hance? A. My brother; he referred me to George and William Hance and Mr. Young as the ones who had charge.

Q. Did you have a conversation with William Hance? A. I went to William Hance's, and I ascertained from him that he and some others were doing what they could 30 to secure this property.

(Objected to.)

A. I can't remember what was said; it was twenty-three years ago just about now; I could not give the conversation.

Q. As near as you can tell us all, be kind enough to

state what he said with reference to the removal of this stock, and why it had been done? *A.* From what he said, it was done for the purpose of preventing the sheriff levying on it.

(Objected to.)

By *MR. LANNING* :

Q. Did he say that? *A.* I can't recall the conversation; I can only recall what was the result, the impression made on my mind from what he said.

10 By *THE COURT* :

Q. Did he speak of the sheriff; did he make any allusion to the sheriff at all? *A.* We were talking it over, and it was known that the sheriff was expected very soon; we were talking about this stock, and from the talk I had with him I learned that he and some others—

(Objected to.)

A. I can't give conversation; I only give impressions made upon my mind by results of the transaction.

20 By *THE COURT*: I will let it stand for what it is worth; I do not think it ought to stand, for Mrs. Wain didn't speak of it very distinctly.

By *MR. GASKILL* :

Q. Did he at any time make any claim of ownership to this property that had been removed? *A.* I didn't hear of any at all.

CHARLES C. STILWELL, a witness called on the part of the defendant, being duly sworn, testifies as follows:

DIRECT EXAMINATION.

By *MR. GASKILL* :

30 *Q.* You live in Chesterfield Township, Burlington County? *A.* Yes, sir.

Q. Have you lived there how many years? *A.* Thirty years.

Q. Did you know William Hance, deceased? *A.*
Yes, sir.

Q. And did you know William W. Waln, now dead?
A. Yes, sir.

Q. Do you remember the time Mr. William W. Waln
failed? *A.* I do.

Q. State whether or not within your own knowledge
what was done with the stock and farming implements
upon the farm of William W. Waln. *A.* I wanted a cow,
and Mr. William Hance spoke and asked me if I didn't 10
want to buy a couple of cows, and I said no, I only wanted
one, and he says William Waln has some nice cows, and he
said William Waln has some to sell, and so I bought one.

Q. Who did you buy of; did you pay for the cow?
A. Yes, sir.

Q. You never returned that cow? *A.* No, sir.

Q. Did any money pass between you and William
Waln? *A.* And I bought a wagon; no.

Q. Neither for the cow or wagon? What became of
the wagon? *A.* Well, I sold it back to him. 20

Q. No money passed on either occasion? *A.* Not on
the wagon.

Q. That is all you did? *A.* Yes, sir.

Cross-examination by MR. LANNING.

× *Q.* When was this the sheriff came there to make
his levy? *A.* In the spring.

× *Q.* What year? *A.* I can't say.

By MR. GASKILL: Did Mr. Hance send and tell you
these things must be sold; give you the reason why? *A.*
Yes, sir; said the sheriff was coming. 30

By MR. LANNING: You bought a cow and a wagon?
A. Yes, sir.

× *Q.* You bought the cow for money price? *A.* Yes,
sir; and wagon too; I bought the cow and wagon for so
much money.

× *Q.* So much for each? *A.* Yes, sir.

× Q. Do you remember how much for the wagon?
 A. I think I paid \$65 for the cow and \$45 or \$55 for the wagon.

× Q. You didn't pay for the wagon? A. No, sir.

× Q. You agreed to pay \$45 or \$55, and sold it back for the same price? A. Yes, sir.

× Q. Was it the understanding at the time you bought you would sell it back for the same price? A. No; I bought out and out.

10 × Q. Did you give him a note? A. No, sir.

× Q. A memorandum or note? A. No, sir.

× Q. Within what time were you to make the payment of the \$45 or \$55? A. I can't recollect now just how long it was.

× Q. Were you acquainted with the stock on that farm before the removal? A. There was quite a good lot of stock there that day.

× Q. The day you bought? A. Yes, sir.

20 × Q. Was it all disposed of on one day? A. I guess within two or three days.

× Q. Were there several neighbors there? A. Not that day when I was there.

× Q. Do you remember how many cattle you saw? A. No; I do not know.

× Q. Do you remember whether there were any fat cattle there? A. No; I do not.

By MR. GASKILL: Had you any knowledge as to whether any of this stock went on any of the other neighbors' farms, whether they bought any? Q. There was
 30 some on the Chaffey farm; Mr. Hance wanted me to take more than one cow.

R. WOOD WALN, a witness called on the part of the defendant, being duly sworn, testified as follows :

DIRECT EXAMINATION.

By MR. GASKILL :

Q. You are the son of the defendant, Hannah L. Waln? A. Yes, sir.

Q. When were you born? A. 1862.

Q. Then, in 1872, you were about 10 years old? A. That is right.

Q. Did you live on the farm as long as your father 10 and mother did? A. Yes, sir.

Q. Do you remember the time when the stock and things were taken off the farm? A. I do.

Q. What neighbors do you remember its being distributed among? A. Mr. Stillwell, Mr. Charles Chaffey.

Q. And the others named by your mother? A. Yes, sir.

Q. All that stock come back again? A. Some of it did.

Q. The greater part or how? A. Most of it did I 20 think; yes, sir.

Q. How long was it off the farm? A. Well, that I don't remember.

Q. Can you remember whether or not it was the same stock that came back that went off? A. Some of it was; yes, sir.

Q. To what extent was it? A. Do you mean the things?

Q. Yes, sir.

By THE COURT : It is exacting a good deal of this 30 witness.

By MR. GASKILL : I offer the original account and ask that this may be placed upon the record, which appears on the last page, just before the concluding items of the account, " and these accountants further pray allow-

ance to amount of goods and stock on Waln farm, taken by Waln, one of the heirs at their appraised value," there are red ink lines drawn, one to each line of the writing, and no amount carried out in the column.

Defendant rests.

CRAIG RIDGWAY, recalled, in rebuttal.

By MR. LANNING: I show you Exhibit D 1.

A. Yes, sir.

Q. Being the original paper set up in the answer of
10 the defendant? A. Yes, sir.

Q. And ask you if you ever saw that before? A. No, no; never saw it; that is not my writing.

Q. Did you ever see that paper before? A. No, never did.

Q. Mrs. Waln says that a few days after the inventory was made on the Waln farm you drove up to her house in Mrs. Bishop's carriage, and that you brought this paper with you and gave it to her; what have you to say about that? A. I have no recollection of it whatever; I do not
20 think I was in Bordentown when that receipt was signed; I do not think I was in Bordentown, because Mr. Lewis Thompson was acting for the administrators, and if I had been there I probably would have seen it.

Q. After the inventory was made at the Waln farm do you remember whether you went directly home or not? A. I went home very soon after the arrangements were made to transfer the property; I wasn't in Cannon's office when that was signed.

Q. Mrs. Waln says that you said to her that no account
30 would have to be made of that property by the administrators; what have you to say about that? A. It is not true; it is not so.

Q. State whether you ever had any agreement or

understanding with Mrs. Waln than that expressed in the receipt that you have to this paper? *A.* No.

By MR. GASKILL: *Q.* Did you ever go out to the Waln farm in Mrs. Bishop's carriage? *A.* I do not recall having gone out there.

Q. You might have gone out in that carriage only you don't recall it? *A.* I don't think so; I would not have been in the Bishop carriage if I had been on the farm.

LEWIS THOMPSON, recalled, in rebuttal.

10

By MR. LANNING: *Q.* Mrs. Waln has spoken of having seen you in Bordentown?

By MR. GASKILL: He denied that.

By MR. LANNING: *Q.* Mrs. Waln has said that she met you in Bordentown on Mr. Carmine's steps, some time about when this inventory was taken, or a little later, and that you said in substance—I don't recall her exact language—that you proposed to dispose of everything on the farm?

By THE COURT: *Q.* And make a clean sweep? *A.* 20
I never said anything of the kind; I never said that.

By MR. LANNING: *Q.* Did you meet her there? *A.*
I have no recollection of meeting her there, and I never made use of any such expression as that.

Case is rested.

Inventory.

A true and perfect inventory and appraisement of the personal property of William Hance, late of the County of Burlington, deceased, made by George Hance, Craig Ridgway and Lewis P. Thompson, administrators, and 30

Charles W. Reeve and Benjamin Rogers, two disinterested freeholders, this eleventh day of April, A. D. 1876:

	Wearing apparel	5 00
	Cash in bank	360 87
	Household goods	347 00
	Farm stock and implements	3,762 00
	20 Shares Columbus and Turnpike Co.	20 00
	Due from M. L. Dunn	300
	Bond of John Hance	10,673 00
10	Debt due from Wm. Baldwin	113 00
	“ “ “ Wm. Newell	166 46
		<hr/>
		<u>\$15,747 33</u>

GEORGE HANCE,
CRAIG RIDGWAY, and
LEWIS P. THOMPSON,
Admst.

CHARLES W. REEVE,
BENJAMIN ROGERS,
Appraisers.

20 STATE OF NEW JERSEY, }
BURLINGTON COUNTY. } ss.:

CHARLES REEVES, one of the Appraisers of the inventory, being duly affirmed according to law, did declare and say that the goods, chattels and credits in said inventory set down and specified, were by him appraised according to their just and true respective rates and values, after the best of his judgment and understanding; and that Benjamin Rogers, the other Appraiser, whose name is thereunder subscribed, was present at the same time, and con-
30 sented in all things to the doing thereof; and that they appraised all things brought to their view for appraisal.

CHARLES W. REEVE.

Affirmed and subscribed at
Mount Holly, County and
State aforesaid, April 10,
A. D. 1876, before me,
WM. I. EMLEY,
Surrogate.

STATE OF NEW JERSEY, }
 BURLINGTON COUNTY. } ss.:

GEORGE HANCE, CRAIG RIDGWAY and LEWIS P. THOMPSON, administrators of the within named William Hance, deceased, that is to say, George Hance, Lewis P. Thompson, being duly sworn, and Craig Ridgway being duly affirmed, according to law, did depose and declare and say that the annexed writing contains a true and perfect inventory of all and singular, the goods, chattels and credits of the said deceased, so far as have come to their knowledge or possession, or to the possession of any other person or persons for their use. 10

GEORGE HANCE,
 CRAIG RIDGWAY,
 LEWIS P. THOMPSON.

Sworn and affirmed and subscribed at Mount Holly, County and State aforesaid, April 10, A. D. 1876, before me,

WM. I. EMLEY,
Surrogate.

20

STATE OF NEW JERSEY, }
 BURLINGTON COUNTY. } ss.:

{ SEAL } I, CHARLES B. BALLINGER, Surrogate for the Probate of Wills and Granting Letters of Administration and Guardianship in and for the said County of Burlington, do hereby certify that the above and foregoing writing is a true copy of the inventory and appraisement of the personal property of William Hance, late of the County of Burlington, deceased, as the same is taken from and compared with the original now remaining on record in my office. 30

Witness my hand and seal of office the fourth day of March, in the year of our Lord one thousand eight hundred and ninety-five.

CHARLES B. BALLINGER,
Surrogate.

Exhibit D 1.

BORDENTOWN April 13, 1876

Goods taken at appraisement by Mrs. Hannah Waln
of the Estate of Wm Hance dec.

	1 Pair mules.	\$125	Pitch Forks	Dung	
	1 bay mare	25	Forks & Shovels		5
	1 " Colt	50	3 Double sets wagon		
	1 Sorrel "	50	Harness		25
	7 Cows	280	4 sets plough Harness		6
10	4 Heiffers	112	Cart Harness		5
	1 Bull	35	2-set Carriage Harness		20
	1 Mower and Reaper	100	Balance of "		5
	1 Horse Rake	25	1 Brown Mare		130
	1 Marker	5	38 Ewe Lambs		494
	1 Market wagon	60	1 Buck		12
	1 Jenny Lynd	85	15 acres of Rye		75
	3 one-horse ploughs		9 " " Wheat		90
	& 2 2-horse ploughs		4 Tons Hay		60
	& Swivel trees	30	Grain Fan		10
20	2 Corn Harrow & fel-		3 Tons Millet		30
	low Harrow	15	2 " Straw		32
	2 Cultivators	4	1 Corn Sheller		10
	1 Sulkey	20	200 Bushel Corn		100
	1 2-seat carriage	75	6 Hogs		110
	Buffalos Blanket &		50 Fowls		35
	Bells	15	4 Duck		2.50
	1 Basket Sleigh	5	40 Bushels Rye		30
	1 Farm wagon	60	40 " Oats		18
	1 " "	70	Contents of Grainery		
30	1 " Cart	25	Bags &c		10
	Contents of Wagon		Contents tool house		10
	Shed	10			
	1 Stalk Cart and ropes	20			\$2627.50
	1 Hay rope	2.50			

Recd. April 13, 1876 of Mrs. Hannah L Waln wife
of William W Waln the sum of two thousand six hundred

of William Waln, the husband of the defendant, Mrs. Waln, and that after the death of William Hance these administrators inventoried this property, but separately from the other property of William Hance, which inventory was not filed with the Surrogate. They entered into an agreement with Mrs. Waln that she was to take possession of this property at its appraised value, and was to pay and satisfy the administrators therefor out of her share in the estate upon a final settlement thereof. This was expressed
 10 in writing and signed by her. In this paper she is spoken of with respect to such settlement as one of the heirs-at-law of William Hance, deceased. The paper is in the following words :

“ Received April 13th, 1876, of the administrators of William Hance, deceased, two thousand six hundred and twenty-seven 50/100 dollars on account of my distributive share of said estate as one of the heirs at law of said William Hance, deceased, and which I hereby direct, authorize and empower said administrators to take out of
 20 and deduct from my share on a final settlement of his said estate.

\$2627.50.

(Signed) HANNAH L. WALN.

Witness present.

W. W. WALN,
 C. S. CANNON.”

They gave to her a paper writing with all of the articles so inventoried and their values annexed thereto, showing that she was entitled to the possession and ownership of such property, which is in the following words:

30 “ Rec'd April 13th, 1876, of Mrs. Hannah L. Waln, wife of William W. Waln, the sum of two thousand six hundred and twenty-seven 50/100 dollars in full of the appraised value of the goods and chattels, stock, &c., enumerated and specified in the foregoing list or inventory, which goods and stock are now on the farm occupied by

the said William W. Waln, in Chesterfield Township, & which belonged to the estate of William Hance, deceased, and which goods, stock, &c., are taken by and delivered to the said Hannah L. Hance by the administrators of said William Hance at their said appraised value & as her property by and with the consent of said administrators, for which sum as above they hold the said Hannah L. Hances receipt as one of the heirs of said estate.

2627.50.

LEWIS P. THOMPSON,
For himself and in behalf of the administrators of Wm. Hance,
dec." 10

At the time of the death of Mr. Hance his children entered into an arrangement with their mother, Mrs. Hance by which the homestead farm was leased to her during her life. She died on the twenty-eighth day of March, 1891. Since then proceedings were instituted in partition for the division of said lands amongst the heirs-at-law, which resulted in a sale. The interest of Mrs. Waln in these moneys is the interest which the complainants claim by virtue of their attachment. 20

The resistance to the claim of the complainants may be said to be three-fold: First, that the property never was the property of William Hance, that his administrators never had any right, title or interest therein; second, if it was the property of William Hance, then it became his unlawfully and by virtue of a participation on his part with his son-in-law, William Waln, in an effort to defraud his creditors; third, that the claim was barred by the statute of limitations at the time of the institution of proceedings in attachment. 30

First.—Was William Hance the owner of this property at the time of his death? The only persons who could have made resistance to this claim, as the case stands, were William Waln, the defendant, his wife, and the creditors of the said William Waln. William Waln and

William Hance are both dead. Mrs. Waln, the defendant, by her answer makes claim to this property in her own right independently of the arrangement entered into between her and the administrators. But in her testimony she says that it belonged to her husband, and that she never claimed to have owned it. This testimony from her own lips must forever settle this branch of the case against her.

Now as to any claim of the defendant, Mrs. Waln, through her husband. The administrators of Mr. Hance took an appraisement of the personal property upon the homestead farm on the 11th of April, 1876. On the thirteenth day of the same month the administrators, with the appraisers, went to the farm occupied by the defendant and her husband, William Waln, and took an appraisement of all the personal property on said farm in the presence of William. Mrs. Waln herself saw them there and says she supposed they were engaged in making an inventory. There is no evidence that William Waln did anything else
 20 but consent to the making of this inventory. When the arrangement was entered into between Mrs. Waln and the administrators he was one of the witnesses to the paper which Mrs. Waln signed. He lived for several years thereafter without raising any objections whatsoever to the claim of the administrators which they made to this property by the act of making an inventory thereof. Therefore, as between him and the administrators it would seem quite impossible for him or any one through him to make any successful claim to the property so inventoried. It would
 30 be useless to cite authorities showing that he is estopped.

But does it appear that the conduct of William Hance was such as to deprive these administrators of the benefit which they claim? Supposing the aid which it is said William Hance gave to William Waln in order to conceal his property from his creditors to be true, can the defendant, under the circumstances of this case, protect herself against these administrators? It is not a contest between

the administrators of William Hance and William Waln nor between such administrators upon the one hand and any one who claims through William Waln on the other. *I found above, according to the testimony of Mrs. Waln herself that this personal property was the property of William Waln, her husband.* I have also found, as a matter of law, resulting from the testimony in the cause that by the conduct of William Waln in permitting the administrators to make the inventory and appraisement of this property and thereby to claim it that he was estopped forever thereafter 10 from making any claim to such property. This, therefore, places the title of the property in William Hance at the time of his death. And it, therefore, follows that this controversy is directly between these administrators, representing William Hance on the one hand, and Mrs. Waln, the daughter of Mr. Hance, on the other. So far as she is concerned it is manifestly-impossible for her in any legal sense to raise this question as against her father's administrators. This will be seen to be very clear when it is considered that she can have no title if her father's 20 administrators had none. She cannot proclaim fraud upon her father's part to prevent his administrators showing title, but insist that as to herself the charge is not applicable.

Second.—But would it be safe under the circumstances of this case to hold that the ancestor of these children was guilty of participating with his son-in-law in a fraud, to conceal the property of the latter from his creditors? The testimony of one witness is to the effect that Mr. Hance spoke to him about purchasing two cows and 30 a wagon, and that he purchased one cow and a wagon of William Waln, the debtor, only paying for the cow, and afterwards returning the wagon. All of the other testimony, except that given by Mrs. Waln, is so meagre as to render it quite unsafe to be relied upon in a matter so important. Mrs. Waln only goes so far as to say that it was understood that her father was to turn the property

over to her husband, but beyond this, as I have stated, the testimony does not extend.

These transactions took place in 1872, and William Hance died in March, 1876. In 1872, William Waln was declared a bankrupt, and according to the Answer, an assignee was appointed. As I have stated above, his creditors and William Waln were the only persons that could raise the question that has been presented as against Mr. Hance of his administrators. William Hance survived the bankruptcy four years. At the time of his death, William Waln was unquestionably in the actual possession and control of these goods and chattels. If they were William Waln's in fact, it is fair to presume, so long a period having elapsed since he went into bankruptcy, that they were his lawfully. If they were William Hance's, there is nothing to show that they were not his lawfully, and this is the conclusion to which I must come from the circumstances of this case, more than twenty years having elapsed since the bankruptcy of William Waln, during which time his creditors have never asserted any claim to this property.

Hence, as to both the first and second points made by the defendant, that is, as to the title of the property being in William at the time of Mr. Hance's death, and as to the illegality of the transaction by which William Hance may have acquired the apparent title thereto in his attempt to conceal it from the creditors of William, his son-in-law, I must conclude in favor of the complainants.

Third.—Is the claim of the complainants barred by the statute of limitations? This can be determined by ascertaining when the right of action first accrued. When the true spirit of the undertaking, as exhibited in the receipt given by Mrs. Waln to the administrators, is considered from the language used therein, it will be difficult to decide that such right of action had accrued at the time of the institution of the proceedings in attachment. The receipt acknowledges that she received so much money on

account, as one of the heirs-at-law of William Hance, deceased, and authorized the administrators to take out and retain that amount out of her share of his estate on final settlement. This, then, was so much on account, and that was to be considered in a final settlement. The claim is the administrators, having filed their account with the Surrogate, and it having been approved by the Orphans' Court, in the year 1884, that the right of action accrued to the administrators immediately upon the allowance of said account by the Court. The account shows that there was a balance in the hands of the administrators of over \$1900, over \$1200 of which was due to the administrators as commissions, leaving about \$600 to be distributed amongst the next of kin. No steps whatever were taken to obtain a decree of distribution of this balance, nor were any steps taken between the parties themselves to effect a settlement. My conclusion is that the period of time contemplated by the parties when they spoke of a settlement was an actual final settlement when the balance due from one to the other should be definitely ascertained. This being my judgment, had Mrs. Waln presented her plea in the attachment proceedings, resisting the complaint on the ground that his action was prematurely brought, she must have prevailed.

But this view is enforced by the highly inequitable character of the defence. These administrators, upon the thirteenth day of April, 1876, entered into this arrangement with Mrs. Waln, and in less than two months made application to the Orphans' Court for the sale of lands to pay debts. In that application they charged themselves not only with the amount of the inventory of personal property found at the homestead of the deceased, but with the \$2627.50, the amount of the inventory found in the possession of William Waln, the husband of the defendant, This was a matter of public record. All of the real estate of which William Hance died seized, except the homestead, was sold to pay debts. It is impossible to doubt

but that Mrs. Waln and her husband understood that the administrators had so charged themselves. William Waln survived at least ten years without questioning the validity of the transaction and Mrs. Waln herself has never warned the administrators that their right to claim the difference between the \$2627.50 with which they had so charged themselves, and whatever balance might be due to her on a final settlement would be resisted by her. Again, it would be most unjust to compel these administrators to suffer the loss of this large sum upon any mere technicality, if sound principles would sustain a contrary view. There being no reasonable ground for disputing the legality of the transaction between the administrators and Mrs. Waln, they became unquestionably liable for the amount of that inventory. Therefore, as between themselves and the next of kin it is impossible for them to alter their account. They must stand charged with that item.

But why was this delay upon the part of the administrators in taking proceedings to compel an adjustment of these differences? It was because of an arrangement entered into on the day that William Hance was buried between his heirs-at-law and his wife, who survived him. This arrangement was an agreement between the next of kin (his eight children) and Mrs. Hance, in and by which they leased to her the homestead farm during her lifetime. In this the sons-in-law, who were two of the administrators, joined. Mrs. Hance, the widow, survived until the 28th day of March, 1891. I think it is extremely reasonable to believe that at the time the arrangement was entered into between the administrators and Mrs. Waln, which was less than three weeks after the lease was made, they had in contemplation the fact that that lease was for the period of the lifetime of Mrs. Hance, and that a final settlement of the estate would not take place until after her death. As I review the exhibits showing the extent and character of the indebtedness of Mr. Hance, and bear in

mind the number of his children, it is quite clear to my mind that it was evident to all concerned that the interest of each one in the personal property after the discharge of all liabilities, would be far less than \$2627.50. This is put beyond all possible controversy when the fact is brought to light that two of his three farms were sold, one for \$9067.50, and one for \$11,406.30. Therefore it requires no reasoning to satisfy the mind that all parties knew that whatever balance might remain for distribution upon the final settlement of the account of the administrators, with the Court, whether that was at the expiration of one year or ten, the balance in hands of the administrators, if any, would only be such surplus as would result from the sale of real estate, than which nothing could be more uncertain. 10

I have said that the parties must have contemplated their settlement after the death of Mrs. Hance, and that even after that event, had Mrs. Waln filed her plea in abatement to the proceedings in attachment she must have prevailed. And with this view of the situation and relation of the parties, and the small interest that Mrs. Waln had in the balance in hand of the administrators, such balance being less than \$100, how inequitable and unjust it would have been deemed had the administrators attempted before the death of Mrs. Hance to have enforced their claim against Mrs. Waln for the balance due to them from her. Had such an attempt been made, there can be little doubt but they would have been defeated at law. But if her remedy at law was found to be inadequate, doubtless she could have obtained relief in this court upon the ground of fraud. For a court of equity undoubtedly would have said that under the circumstances of this case it is very manifest that the parties did not contemplate a settlement until the expiration of the lease given to Mrs. Hance, the widow, by her children and sons-in-law. 20 30

Any other view than that which I have expressed would be making use of the statute of limitations to accomplish

fraud. This certainly would not be allowed by a Court of Equity in such cases to any greater extent than is allowed when persons attempt to achieve a fraud by means of the statute of frauds and perjuries. In the latter case it is never tolerated by a Court of Equity. 1 *Beach*, Eq., Sec. 84; *Ryan vs. Dox*, 34 N. Y., 307.

The paper writing executed by Mrs. Waln and given to the executors was in effect an assignment by way of security of sufficient interest in her father's estate to satisfy the amount due to the administrators from her upon final settlement. This transaction established such mutual relations of trust and confidence as to bring into operation the doctrine laid down by Perry, 2 *Perry on Trusts*, Sec. 863, where he says, "A *cestui que trust* cannot set up the statute against his *co-cestui que trust*, nor against his trustee."

I think the complainants are entitled to relief and will so advise, with costs.

IN CHANCERY OF NEW JERSEY.

20	Between	}	
	WILLIAM HANCE'S ADMINISTRATORS,		On Bill, etc.
	<i>Complainants,</i>		
	and		Final Decree.
	HANNAH WALN, <i>et al.</i> ,	}	
	<i>Defendants.</i>		

This cause, coming on to be heard in the presence of William M. Lanning, of counsel with the complainants, and Joseph H. Gaskill, of counsel with the defendant, Hannah Waln, upon Bill of Complaint, answer thereto by the said defendant, Hannah Waln, replication and proofs, a decree *pro confesso*, having heretofore been entered in said cause against the defendant, Philip S. Scovel, and the Court having read the said pleadings and proofs and heard the

arguments of the said counsel for the complainants and for the defendant, Hannah Waln, respectively, and having duly considered the same, and it appearing that the defendant, Hannah Waln, is entitled to an equal undivided eighth part of the proceeds of the sale of certain lands situate in the County of Burlington, in the State of New Jersey, sold by Philip S. Scovel, one of the special masters of this Court, and a defendant herein, under and pursuant to an order of this Court, made in a certain cause pending in this Court, wherein Henry L. Hance is complainant and the said Hannah Waln and others are defendants; that, after the sale of said lands by said special master, the complainants in this cause on or about the twenty-third day of March, eighteen hundred and ninety-four, issued a writ of attachment out of the Supreme Court of this state against the said defendant, Hannah Waln, directed to the sheriff of the County of Burlington aforesaid; that the said sheriff, under and pursuant to the command contained in said writ of attachment did, in the presence of one Mahlon Hutchinson, a credible person, on the twenty-fourth day of March, in said year eighteen hundred and ninety-four, execute the said writ of attachment by going to the house of the said Philip S. Scovel, special master as aforesaid, and then and there, in the presence of the said Mahlon Hutchinson, did attach the rights and credits, moneys and effects, goods and chattels, lands and tenements of the said defendant, Hannah Waln, then in the hands of the said Philip S. Scovel belonging to the said defendant, Hannah Waln; and it further appearing that the said defendant, Philip S. Scovel, special master as aforesaid, since the attachment of the said moneys as aforesaid has paid the same unto the Clerk of this Court to the credit of said defendant, Hannah Waln, in the aforesaid cause, wherein Henry L. Hance is complainant, and the said Hannah Waln and others are defendants; and it further appearing that the matters in dispute in said action commenced as afore-

said in the said Supreme Court by agreement between the parties to this cause, as appears by the answer of the defendant filed in this cause, have remained undetermined in said Supreme Court, and have been submitted to the determination of this Court upon the Bill filed in this cause; and the Court being of opinion that the complainants have established a just claim against the defendant for the sum of two thousand six hundred and twenty-seven dollars and fifty cents, and it appearing that the

10 amount paid by Philip S. Scovel, special master, as aforesaid, to the said Clerk of this Court to the credit of the said defendant, Hannah Waln, in the cause wherein said Henry L. Hance is complainant, and the said Hannah Waln and others are defendants, is the sum of one thousand seven hundred and eighty-three dollars and ninety cents; and the Court being further of the opinion that the complainants in this cause are entitled to the relief in and by their Bill prayed for.

It is thereupon, on this thirteenth day of July, in the

20 year of our Lord one thousand eight hundred and ninety-five, by Alexander T. McGill, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor by virtue of the power and authority of this Court doth hereby order, adjudge and decree that the complainants, Craig Ridgway and Lewis P. Thompson, surviving Administrators of the estate of William Hance, deceased, have a just and legal claim against, and are entitled to recover from, the said defendant, Hannah Waln, the aforesaid sum of two thousand six hundred and

30 twenty-seven dollars and fifty cents, and that they, the said complainants, are entitled to have paid unto them, as the surviving administrators of the estate of William Hance, deceased, by the Clerk of this Court the aforesaid sum of one thousand seven hundred and eighty-three dollars and ninety cents, paid to the said Clerk by said Philip S. Scovel, special master as aforesaid, in the cause wherein said Henry L. Hance is complainant and said

Hannah Waln and others are defendants, for and account of the moneys due from the said defendant, Hannah Waln, to said complainants as aforesaid.

ALEX. T. MCGILL,

C.

Respectfully advised,

JOHN T. BIRD,

V. C.

In the
COURT OF ERRORS AND APPEALS 10
IN THE LAST RESORT IN ALL CAUSES.

Between

HANNAH WALN,

Appellant,

and

WILLIAM HANCE'S ADMINIS-
TORS,

Respondents.

} Petition of Appeal.

The humble petition of Hannah Waln, the appellant in the above-stated cause, respectfully shows that your 20 petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor, Alexander T. McGill, Chancellor of New Jersey, bearing date the _____ day of _____ in the year eighteen hundred and ninety-five, wherein William Hance's administrators were complainants, and the said Hannah Waln and Philip S. Scovel were defendants, in this respect, to wit, that the said decree adjudges that the

complainants are entitled to have paid into them as surviving administrators of the estate of William Hance, deceased, by the Clerk of said Court, all moneys deposited with said Clerk by said Philip S. Scovel, special master, to the credit of said defendant, Hannah Waln, in a cause wherein Henry L. Hance was complainant, and the said Hannah Waln and others were defendants, to the end that the complainants, administrators of William Hance, deceased, may administer the same according to law.

10 And your petitioner humbly appeals from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, for that the transaction out of which an indebtedness of the defendant, Hannah Waln, to complainants, is claimed to arise, was a scheme of fraud participated in by said complainants, and therefore they can have no standing to ask the aid of a court of equity in the premises.

20 And for that in the said transaction between the said complainants and the said defendant, Hannah Waln, out of which complainants allege that said defendant became indebted to them, nothing belonging to the complainants as part of the estate of William Hance, deceased, was parted with by complainants, or was by them set over and transferred to said defendant whereby any indebtedness could arise.

30 And for that the paper writing executed by the defendant, Hannah Waln, and on which the complainants base their right to demand and have the defendant's share of the proceeds of sale of lands in partition proceedings, now on deposit in the Court of Chancery, does not authorize, empower or entitle said complainants to take out of and deduct the sum of money therein mentioned from defendant's real estate or the proceeds of the sale thereof, and said paper writing is not, and cannot lawfully be adjudged to be, an evidence of indebtedness of said defendant.

And for that the cause of action of complainants

against the said defendant, if any they had, did not accrue within six years next preceding the institution of complainants' action thereof against said defendant, and was barred by the statute of limitations.

And for that complainants are estopped by their neglect and delay in bringing their action and in making any claim on said defendant in the premises.

And for that no general promise to pay can legally be construed out of the paper writing executed by said defendant and on which complainants base their action 10 thereof against her; but only an appropriation and setting over to them, to the extent named, of defendants' distributive share of the estate being administered to them; and which assignment and setting over of said distributive share was accepted by said complainants as full consideration of all demands by them against said defendant arising in said transaction.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and 20 that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

J. H. GASKILL,

Solicitor and of Counsel with Appellant.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between HANNAH WALN, <i>Appellant,</i> and WILLIAM HANCE'S ADMIN- ISTRATORS, <i>Respondents.</i>	}	On Appeal. Answer to Petition of Appeal.
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- 10 **The Answer of Craig Ridgway and Lewis P. Thompson, Surviving Administrators of the estate of William Hance, deceased, Respondents, to the Petition of Appeal of the above-named Appellant.**

20 These respondents, not acknowledging any or all of the matters which in the said Petition of Appeal are contained to be true, for answer thereto, nevertheless, say and admit that a decree was, on the thirteenth day of July last past, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said Decree is agreeable to equity, and they pray that the same may be affirmed with costs to be adjudged to these respondents.

W. M. LANNING,
Solicitor and of Counsel with Respondents.

In the
Court of Errors and Appeal,
OF NEW JERSEY.

—
ON APPEAL FROM CHANCERY.

—
HANNAH WALN,

Appellant.

AND

WILLIAM HANCE'S ADMINISTRATORS,

Respondents.

—
APPELLANT'S BRIEF.

—
History of the Case.

In January, 1872, William W. Waln, owned and occupied a farm in Chesterfield Township, Burlington County, N. J.; he also owned the personal property thereon. The following spring he was adjudged a bankrupt, and an assignee was appointed. He had previously placed all his stock implements, etc., on the farm among his friends and neighbors, to keep them from his creditors, his father-in-law, William Hance, assisting therein. Said farm was sold about March, 1873, and purchased by said Hance, who let Waln remain thereon until sold by his administrators in 1876. In the spring of 1873 the stock, etc., which had been removed from said farm, was returned thereto to Waln, who resided thereon all the time; he kept the same, used and dealt with

them as his own ever after. March 23, 1876, said Hance died intestate, leaving a widow and eight children, one of whom, Hannah, was the wife of said Waln. Letters of administration on the estate of William Hance were granted by the Surrogate of Burlington County, to Craig Ridgway, Lewis P. Thompson, and George Hance; the first two were sons-in-law of the decedent. About April 9, 1876, the administrators were in doubt about the ownership of the personalty on the Waln farm. April 11, 1876, two of said administrators, with the appraisers, went to the Waln farm, and made a list and appraisal of said personalty, and immediately thereafter all of said administrators filed with the Surrogate the inventory of the estate of William Hance, purposely omitting therefrom the personalty on the Waln farm, and they each there and then swore that said inventory included "all the goods, chattels and credits of said decedent, so far as the same had come to their knowledge or possession, or to the possession of any other person or persons for their use."

The personalty on the Waln farm was not taken possession of by the administrators, nor does it appear they made any claim of ownership thereto. April 13, 1876, Hannah Waln, wife of said William Waln, gave to said administrators a receipt for \$2627.50, on account of her distributive share of her father's estate, and authorized them to deduct that amount from her share on final settlement of the estate. This was witnessed by her husband and G. S. Cannon, the administrators' counsel; they both died prior to February 1, 1892.

June 3, 1876, said administrators petitioned the Orphans' Court for power to sell real estate for payment of debts, showing assets \$18,369, and liabilities \$30,249. September 1884, said administrators filed their account, showing a balance in their hands of \$1986.31 for distribution, and the credits show an allowance to the administrators for commission of \$1294. This is the only account they have filed. March 25, 1876, the heirs of said Hance leased his homestead to his widow for life. She died April 28, 1891. About two years thereafter proceedings in partition were had to

divide said farm, which ended in it being sold by order of the Court of Chancery and the proceeds awarded by said Court to the said heirs, Mrs. Waln's amount being \$1783.90. Before the same were paid to her, said administrators attached the same by attachment proceedings, and subsequently filed the Bill in this cause to aid them therein, claiming Mrs. Waln was indebted to them in the sum of \$2627.50 for the goods on the Waln farm by reason of her receipt of April 13, 1876; from the date of said receipt to the year 1893, no one ever made any claim or demand on her for the same or did anything indicating there was any claim against her by reason of said receipt.

Argument.

The transaction of April 13, 1876, between appellant and respondents, relating to the personalty of the Waln farm, was evidently for the purpose of assisting Waln to keep his property from his creditors. The administrators nowhere attempt to show that Hance was the owner. They did not try to show he either purchased or inherited, nor produced any receipts or vouchers therefor. They did not show he ever had possession of or any right to it. Two weeks after Hance's death, while inventorying the property on the homestead, the administrators had doubts as to the ownership of the personalty on the Waln farm. Craig Ridgway, one of the respondents, testified (see testimony, p. 30): "About the time we made the appraisement we were not certain whether the property on the Waln farm belonged to William Hance, and in order to find out we saw William Waln. George Hance and myself saw him on his place—on his own farm. This was before the inventory of the stock on that farm was made." * * * "We first satisfied ourselves as to ownership before making either appraisements." (Testimony, p. 38). B. Rogers, an appraiser, testified (testimony, p. 50). While taking an inventory at homestead farm the appraisers were

requested to go to the Waln farm on the next or second day following. The testimony of these two witnesses agree that the time when the administrators were in doubt as to the ownership of the personalty on Waln farm was before filing the inventory. The administrators did nothing to show they claimed ownership. They left the property in Waln's possession, as they found it. They, immediately after ascertaining ownership of that property, filed the inventory in the Hance's estate, purposely omitting that property therefrom, and each of them then, by swearing to the inventory, swore in the most positive manner that the property on the Waln farm did not belong to the estate of Wm. Hance, and they put this oath on record, thereby making it notice to the whole world that they disclaimed any right to said property. Any one desirous of purchasing said property of Waln, could not possibly have thought the administrators had any claim to it. Their conclusion was not arrived at hastily; they had one or two days to consider it, and they acted under advice of counsel. Ridgway said (testimony p. 39): "I cannot tell the reason that property was omitted from the inventory. Mr. Cannon told the reason after the homestead property was appraised, before the other was appraised, but what reason he gave I can't remember." It was necessary for them then to decide the question of ownership before proceeding further, and they then decided it against themselves; they are thereby concluded by their own act. Their oath, made at the time when everything was fresh in their mind, must have much greater weight than the present failing recollection, especially as they are now so interested in finding they are liable for the amount they have charged themselves with. It is very singular he could not remember the reason Cannon gave. The reason probably was that the property belonged to Waln, for they possessed no evidence of ownership; and the list and appraisement was made to give color of title to carry out an arrangement made between Waln and George Hance and Ridgway at that time, for Waln to transfer that property to his wife

through them. This appears probable, for Ridgway said "they had come to *transfer* this property over to Hannah Waln" (testimony p. 36). "They signed the receipt on account of our *putting the property* over to her" (p. 36); "and the property was not sold" (p. 37); they would have suffered if we had sold the stock (p. 37). It plainly appears they did not look upon the signing the receipt of April 13, 1876, anything more than as a transfer from the husband to his wife, as the administrators had arranged with the husband. On no other theory can you account for his permitting his crops, etc., to be placed on this list and signed over to her. There is no pretense Waln was farming on shares for Hance, or was hired by him; not a scintilla of evidence that the crops belonged to Hance. Yet the list contains crops to the value of \$435, and sheep, hogs and poultry, such stock as changes every year, and were the growth in or purchase for the farm within a year next preceding, are in the list to the value of \$653.50 more, or in all, \$1088.50. What is there to show this belonged to Hance? Her recollection as to what occurred with Thompson, and getting the papers from Ridgway, are clear and distinct. She gives particulars which show she was not mistaken. She showed the property was her husband's, and her father never owned or claimed it. In this she was confirmed by Mr. Stillwell, Robert Waln and her son William. The Court below has found as a fact the property belonged to William Waln, and not to William Hance (conclusion, p. 85), there can be no doubt it did not belong to the Hance estate.

Estoppel.

The Court found (conclusions, p. 85,) "that this personal property was the property of William Waln. And found, as a matter of law resulting from the testimony in the cause, that by the conduct of William Waln, in permitting the administrators to make the inventory and appraise-

ment of this property, and thereby claim it, he was estopped forever thereafter from making any claim to such property. This, therefore, placed the title to the property in William Hance at the time of his death."

While the evidence shows that William Waln was present at the appraisement, there is not a particle of evidence in the case that in any way shows he knew, or was informed, or should have been suspicious, that it was intended to be made a part of the Hance estate. The burden of proof is on the administrators, to show that Waln deceived them as to this property, and thereby did them an injury; they do not say they were misled by him; there is not a particle of evidence on that subject; that is an inference of the Court; it could much more reasonably have drawn the opposite inference. Immediately after making this appraisement the administrators made oath, by swearing to the inventory, that this property did not belong to William Hance's estate. Can it be supposed that Waln, after keeping his property from his creditors, would stand quietly by and see the administrators, without any claim of title, claim the same; to suppose it is to accuse him of lacking common sense. The administrators' oath to the inventory filed was practically a complete disclaimer of any right to this property; does this look as if Waln deceived them? It has all the appearance he told them the goods were his, and they believed him.

The taking of the list and appraisement of this property did the administrators no harm, they were not bound by it, they were not required to account for it; even if Waln had misrepresented it, it would not have estopped him.

Turner vs. Valdo, 40 Vt. 51.

The injury arose to the administrators, not by the acts of Waln (for they then decided the property was his), but by their own mistake, eight years after, when they probably had forgotten much about the facts and foolishly included that amount in their account, when it should have been omitted.

To work an estoppel they must have acted differently by reason of Waln's presence than they would otherwise have done, and it must have caused them an injury.

Bigelow on Estoppel, 5 Ed., 638 ; *Beach's Eq.*, sec. 1092.

Estoppel will never be applied to a fraudulent purpose.

Ibid, sec. 1093.

That they acted differently than they would otherwise have done by reason of Waln's presence, the burden of proof is on them, and they have given no evidence such is the case, nor that they were injured thereby.

The administrators are the ones who are estopped by their oath to the inventory. The Court below said Waln must have known all about what was in their account; for the same reason he must have known of the contents of the inventory and oath thereto, whereby they disclaimed all right to the property.

The whole arrangement was a fraud and a blind to cheat creditors.

Receipts.

The exchange of receipts of April 13, 1876, lack all the elements of good faith; the one given by the administrators starts with a falsehood in stating they received \$2627.50, when they had not gotten a cent, for the goods that did not belong to them, and they could not sell them. Read the receipt given her as you will, it makes nothing against her (see Exhibit D 1, p 80), "which belonged to the estate of William Hance, deceased," refers to the farm and not to the goods, but if otherwise, it is simply a case where the wife has been dragged in by her husband to help him and the administrators to carry out the fraud begun by the intestate. The language of the whole paper shows it to be a mere blind. It starts by acknowledging the receipt of money, then, instead

of saying "in full for goods, chattels," etc., it says, "in full of appraised value of the goods and chattels;" then, how carefully it identifies the location of the goods, although a list of the goods, etc., is annexed. Then it says the "goods are taken by and delivered to her, etc., as her property, by and with the consent of the administrators," for which they hold her receipt, etc. Long, complicated and obscure. They had no right or title to the goods, and therefore had nothing to sell. Their testimony fails to show any sale; they entirely fail to explain how that exchange of receipts came to be made. They show no arrangement of sale, or any agreement to buy, or any bargaining for the goods. Ridgway (testimony, p. 36) said, "I know when the receipt was signed. I do not know anything about the arrangement, but I knew there was an arrangement for them to sign. I do not remember any time set."

Q. "When did you know that?"

A. "We knew at——, we did not know the exact time. "We were informed that what claims—they had come to "transfer this property over to Hannah Eliza Waln, and then "we informed her and her husband of our decision" (p. 36). "I can't remember anything was said about the matter except "to inform them of our decision."

What that decision was, does not appear. Is it probable if this was Hance's property they would be unable to remember anything about disposing of \$2625 worth of property and know nothing about how they came to dispose of it? Who made the arrangement? If this had belonged to the Hance estate would they let her have it without security? They knew her financial condition—that she was without means. Would there not have been a bargaining for the goods prior to the signing? Would Mr. Cannon have permitted his clients to assume such risk in disposing of so large amount? He would have been derelict of duty. Would he not have taken for them an obligation to pay with a mortgage upon her interest in the estate? They were acting under his advice, and it is to be presumed he advised them properly

that they were parting with nothing and there was nothing to secure. They nowhere show any sale but what may be inferred from the receipt to Mrs. Waln, which is in the following words :

“Received April 13, 1876 of the administrators of Wm Hance dec two thousand six hundred and twenty seven 50/100 dollars on account of my distributive share of said estate as one of the heirs at law of William Hance deceased, and which I hereby direct, authorize and empower said administrators to take out and deduct from my share on final settlement of his said estate.

\$2627.50

Signed HANNAH L WALN

Witness present

W W WALN. G. S. CANNON.

The only proof of title the respondents could claim was from inference to be drawn from these receipts, which they will claim was an admission of their title and constituted a purchase from them. But when this is taken in connection with the fact, they had no title and the evidence shows nothing resembling a sale, and they are unable to account for the signing of the receipts. They were given without any consideration whatever, and solely for the fraudulent purpose of concealment of these goods and their conduct, their probative force is lost.

The respondents' case rests entirely upon the receipt to them from the appellant. That is simply a receipt with a power embraced therein to do a certain thing on a particular occasion. It, like all other powers, is to be construed strictly, and therefore limited to the things therein expressed, and unless coupled with an interest in the thing to be operated on is revocable at the pleasure of the maker.

First.—Is it coupled with an interest? The administrators testified they paid no money for it, but claim that by reason of the receipt from them it appears they gave stock, etc., therefor, but that did not belong to them, and it was so

found by the Court. And Ridgway (one of them), as late as 1852, in a letter to appellant's son (see testimony, p. 43) says, "In regard to the claim of William Hance against your mother, I have no idea what it is," they have entirely failed to show a particle of interest in the power, and the same was therefore revocable by the maker.

Second.—The power by its own terms limits the authority "to take out and deduct from my share." It cannot be extended beyond the terms therein expressed. It can be applied only to the property passing into the hands of the administrators.

Third.—They cannot claim to receive any sum from another person, because there is no authority therein to ask, demand, receive or recover any sum from another. They must have something on hand to "take out or deduct from," and thereby to withhold from appellant something which otherwise they were to pay her, that is to say, take out of the personal estate, for they had nothing to do with the real estate, for it did not pass into their hands.

Fourth.—The time when this power was to be exercised was upon the final settlement of decedent's estate; that was September, 1884. A settlement is an accounting, adjustment or liquidation of mutual accounts and agreements upon the balance.

Am. & Eng. Encyclopedia of Law, Vol. 22,
pp. 488-9, Bowvier Dictionary.

The account as filed and passed by the Court was a final account. It was unnecessary for the word final to appear in its caption; that is only done when there has been a prior partial account.

Stevens' Adm. vs. Phillips' Ex., 21 N. J. L., 70.

Final settlement as used in said receipt meant the liquidation of claims due to and owing by the decedent, and ascer-

taining the amount of the estate remaining after so doing, and accounting for the same in the Orphans' Court.

Fifth.—It was limited to her share of the personal estate, because that was all the estate that would pass into their hands; the real estate would in no way come into their hands or control; they could not take out or deduct from the real estate anything. Besides the paper lacks the necessary elements for a married woman to bind her real estate; it is made without the jointure of her husband, and there is no acknowledgment thereto by her; therefore, as to her real estate, it could have no effect. Again, this paper was drawn by a learned and skillful attorney, G. S. Cannon. If it was intended to apply to real estate, would he not have put it in the form of a mortgage or deed? Would he have permitted his clients to assume the risk of the appellant selling or disposing of her interest in her father's real estate? Would he have permitting them to part with \$2627 to a person without means, and wait sixteen years until the death of the widow Hance, for payment without interest, and with the best of chances of losing the principal? Again, this receipt speaks of a distribution and not a division. One refers to personalty, and the other to realty.

Sixth. If these receipts amounted to a sale, a debt was created at once, payable immediately, and the statute of limitation is a complete bar. And if the respondents paid the appellant in 1876 more than her share of the estate, they had a remedy at law against the respondent to recover such excess, and the right of action arose as soon as the payment was made; and that remedy was barred by the statute of limitation six years thereafter.

Ely v. Norton, 1 Halsted, 187.

There is nothing in writing to extend the time. In fact, there is no direct promise to pay, no acknowledgment of any indebtedness.

Laches.

The respondents have let eighteen years pass without making any claim against the appellant; they made no claim in the partition proceedings; they waited until they had forgotten what had occurred; they were unable to make any explanation as to why or how the exchange of receipts of April 13, 1876, came to be made. They waited until after the death of the husband of the appellant who was a witness to the receipt, and could have made the appellant case so plain that even the administrators would have never made any claim. They also waited until after the death of Mr. Cannon, another witness to the receipt. These delays have deprived the appellant of important testimony, and the respondents are therefore guilty of laches.

Bispham Eq., 5th Ed., sec. 203, 260.

Speidel vs. Henrici, 120 U. S., 387.

Lawrence vs. Rokes, 61 Maine, 42.

Wister vs. Craig, 80 Va., 22.

Harrison vs. Gibson, 23 Grattan, 212.

McKnight vs. Taylor, 1 Howard, 161.

McCartin vs. Trapenberger, 43 N. J. Eq., 324.

Norfolk and N. B. Hosiery Co. vs. Arnold, 49 N. J. Eq., 390.

Partition.

If the respondents had any right to this fund they should have presented their claim in partition proceedings. It is too late now for them to do so. They could only claim now by having those proceedings opened. Their Bill does not request it; it must therefore be dismissed.

Green vs. Hathway, 36 N. J. Eq., 474.

As the case now stands, there is one decree directing the fund paid to appellant, and without revoking that there is a

subsequent one directing it paid to respondents; these two decrees are at variance and inconsistent.

The fund in Court is to be taken and considered as land, the sale being solely for the purpose of a division; the money has all the attributes of land, and as to the parties concerned it must be so treated.

Green vs. Hathway, 36 N. J. Eq., 471.

Warfield vs. Crane, 4 Abb. App. (N. Y.), 525.

If the partition proceedings had resulted in setting off to the appellant a certain portion of the farm, would that have given the respondent that land for their claim? How would they have taken it? If not, neither can they take the money, which is the land.

The Court below seemed to have based its decision upon the idea it would be hard for the administrators to pay the \$2627 they improperly charged themselves with, without considering what great injustice it was doing in robbing a poor widow of her all to reward the administrators for the wrong they had done, and thereby enable them to put a goodly portion of this poor widow's money into the pockets of their wives. They did not charge themselves for more than eight years after the exchange of receipts.

The Court starts off with finding as a matter of fact the property belonged to William Waln at the death of Hance, and then finds as a matter of law that three weeks after Hance's death what was not previously his became his at the time of his death, by reason of William Waln being present when the administrators made a list and appraisement of Waln's property, without any evidence that Waln knew for what purpose they made it, or that he in any way made any representation to them, or that they claimed any right to the property, or that he did not object to their making the list, etc., or that they did not do it under misrepresentations, or that it was not agreed between them that it belonged to him and they were doing it to assist him in keeping it from his creditors. There was no claim it belonged to Hance, and

the same or following day each of said administrators, by swearing to the inventory, swore that none of those goods belonged to William Hance, and without their claiming they believed anything Waln said to them, or that they were by his conduct induced to do differently than if he had been absent, or that by reason of anything he did or said they were in any way injured; the Court found this made Waln's property the property of William Hance at the time of his death. The Court's conclusions have a retroactive effect as to the ownership, and is directly at variance with every principle of law, equity and common sense.

The Court having found that the property was William Waln's, it must have remained his until he disposed of it, and the burden of proof was on the administrators to show he had done so, and show their right to it; there is not a scintilla of evidence that they thought they were entitled to it; it then follows as a matter of course, the exchange of receipts was a mere blind to deceive creditors, they were without consideration and did no harm to either; each gave nothing and took nothing in return; that is what they intended.

The Court, in its conclusions, on p. 87, stated, the account shows a balance in hands of administrators of over \$1900; \$1200 of which was due them as commissions, that is wrong; after deducting \$1294.28 for commissions, the balance was \$1986.31 (see testimony, p. 20); they state the commissions have not been divided, so they now have in hand \$3280, and they have not paid any of the heirs; they have as yet lost nothing.

The Court seemed swayed by its impression that when the administrators filed their account, Mr. and Mrs. Waln must have understood they had so charged themselves, and that they did not warn the administrators she would resist any charge against her on final settlement. The answer is there is no evidence that either knew anything about the filing of the account or the contents thereof; they were not consulted about making it; and a farmer and his wife are

not apt to be familiar with the records of the court, nor to examine them; it is a rare thing for them to do it; the personalty being insufficient to pay debts, they had no reason to suppose there would be any balance to interest themselves in. The administrators having made no claim against her, why should she have done anything? She knew the receipt she gave was without consideration and of no force, and they dared not have claimed anything during the life of her husband.

As to the time of final settlement, the Court found it to be the division of the real estate. This must have been upon the reason that the administrators were willing to give the appellant (a person they knew to be without means) credit for \$2627 for seventeen years without any security, when they could have had it secured on her remainder if they desired. And they would advance that amount for her and wait for payment until the real estate should be divided after her mother's death, which was sixteen years. And they would advance this money for her without asking any interest in the meantime, and that their able counsel advised his clients to do it (for they state they acted under his advice) and risk losing it all when they could have easily secured it on the homestead. To hold such was the case is to accuse the administrators and their counsel of a great want of common sense, and doing what no intelligent man would have for a moment thought of doing; it is so contrary to all reason, it is hard to believe any one could have thought an enlightened person would have done such a thing.

The only reasonable and consistent view of the whole case, as gathered from the evidence and facts as presented, is that the administrators became a party to the scheme of the husband to transfer his property through them to his wife; the papers given were a mere blind and a fraud to deceive creditors.

The appellant was a married woman and living with her husband. The only part she took in the transaction was to suffer her name to be used as the owner of the goods from the time of the appraisement. She was subject to undue

influence of her husband and is entitled to due consideration on that account. She was dragged into the situation she occupies by her husband, her father and her brothers in law, together with their counsel, learned in the law.

While the respondents have shown themselves to be connected with this fraud as to be entitled to no relief in a court of equity, the Court will leave them where it found them.

Renton vs. Chaplan, 1 Stockton, 62.

Bank vs. Durant, 7 C. E. Green, 35.

Yet the Court will so far protect this poor widow as to direct the money paid to her, which is now in the custody of the Clerk of Chancery, and which was decreed to her in another cause in said Court. The attachment proceedings having been superseded by the bill in this cause, the matters in dispute were to be settled by the Court of Chancery by agreement of counsel.

It is respectfully submitted that the decree below should be reversed and the complainant's Bill dismissed with costs.

JOSEPH H. GASKILL,

of Counsel with the Appellant.

NAAR, DAY & NAAR, Printers and Stationers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals.

Between

HANNAH WALN,

Appellant,

and

WILLIAM HANCE'S ADMINISTRATORS,

Respondents.

On
Appeal.

POINTS BY W. M. LANNING FOR
COMPLAINANTS.

The pleadings present a simple issue. The question is—are the respondents, the complainants below, entitled to recover from the appellant, Hannah Waln, \$2,627.50, the value of the farm stock on the farm occupied in 1876 by her and her husband, William W. Waln?

Some time prior to the spring of 1872, William W. Waln became financially embarrassed. He owned the farm on which he and his wife lived and the farm stock. A mortgage on the farm was subsequently foreclosed and William Hance purchased it. The farm stock within a year prior to April 1st, 1872, had been distributed by William W. Waln amongst his neighbors to evade his creditors and the levy of the sheriff whom he was expecting to seize his property. Robert Waln, a lawyer from Philadelphia, and a brother to William W. Waln, testi-

fies that about April 1st, 1872, he visited William at the farm, and that on that date the farm stock was gone. It was returned (so defendant Hannah Waln says), in about a year after it was taken away. The stock must therefore have been returned before April 1st, 1873.

William Hance (Mrs. Waln's father), died March 22d, 1876. His funeral was on March 25th, 1876. He owned at the date of his death, besides the homestead farm, the Waln farm, purchased as above stated at the foreclosure
10 sale, and other lands. On the day of the funeral, March 26th, 1876, all the children and heirs at law of William Hance, including the defendant Hannah Waln, with their husbands and wives, including Hannah Waln's husband William W. Waln, executed to William Hance's widow, Margaret, a lease of all of William Hance's real estate, wherever situated, for the period of her widowhood. (*See Exhibit C1*, referred to in Paper Book, page 18, but not printed.)

On April 11th, 1876, the complainants, as administrators
20 of William Hance, filed in the office of the surrogate of Burlington county, an inventory of William Hance's personal estate. This inventory (see pages 77 to 79) did not include the farm stock on the Waln farm. It appears by the testimony (page 30) that some discussion had taken place as to whether it belonged to the estate of William Hance. It was finally decided that it did. So says Mr. Ridgway, one of the administrators, and no one contradicts him. (Pages 38, 39.) Mr. Ridgway says that such decision was reached before the inventory was
30 filed in the surrogate's office, and some attempt was made on his cross-examination to discredit him as a witness because his affirmation is appended to the inventory that it was full. But Ridgway says that the administrators followed the advice of their attorney, G. S. Cannon, an honorable lawyer of Bordentown, New Jersey, who is now dead. This is a reasonable explanation. But it seems to me quite probable that Mr. Ridgway may be mistaken as to the decision having been reached before the inventory was filed. In any event, there is nothing in the case
40 to show that William Hance did not, between April 1st,

1872, and March 22d, 1876, become the owner of this stock, and the subsequent conduct of Hannah Waln, hereafter alluded to, estops her from denying her father's ownership at the time of his death.

On April 13th, 1876, Ridgway and Hance, two of the administrators, and Reeve and Rogers as appraisers, being the same appraisers who had appraised the goods described in the inventory filed on April 11th, went to the Waln farm and appraised the farm stock there at \$2,627.50. Mrs. Waln admits that she saw them drive¹⁰ in to the farm buildings, and that she knew their errand. (Pages 60, 61.) Her husband showed the goods to the appraisers, but neither she nor her husband even suggested that the goods did not belong to her father's estate. (Pages 31, 51.) Ridgway, one of the administrators and her brother-in-law, and George Hance, another of the administrators, and her uncle, were particularly solicitous as to what would become of Mrs. Waln and her small children if the farm stock should be sold. (Page 37.) Under the advice of Mr. Cannon, the admin-²⁰istrators permitted her to take the farm stock at its appraised value, and, that she might not be embarrassed by an immediate payment, arranged with her that the appraised value should be deducted from her share of the estate as one of William Hance's *heirs at law*. On the same day, April 13, 1876, she and her husband met Thompson, the third administrator, at Mr. Cannon's office, and signed the receipt for the goods, being *Exhibit C5*, (set forth in opinion, page 82), which Thompson took, and received from the administrators a paper³⁰ signed by Thompson for the administrators, showing the sale to her. (Also set forth in opinion, page 82 and on page 80.) The paper which she signed was witnessed by her husband, William W. Waln, and Mr. Cannon, and is in Mr. Cannon's handwriting. The paper she received is likewise in Mr. Cannon's handwriting, and shows that she, on that date, in consideration of \$2,627.50, received the stock, an inventory of which is annexed to the paper, as her property, by and with the consent of the administrators. These papers, and the facts attending the ap-⁴⁰

praisement, taken together, clearly show a sale by the administrators to her, and she is now estopped from saying there was no sale.

To speak as charitably as possible of her, her memory is not to be relied on. She says, as a witness, that she does not remember signing the receipt in question, or being at Mr. Cannon's office (pages 56, 62, 63, 64, 65) and yet in her answer she declares she signed it because Mr. Cannon advised her to do so. (Pages 12, 13.) On the
10 witness stand she insisted that the stock belonged to her husband (page 67), but by her answer she declares that an arrangement was made by which it was transferred by her husband to her father, and was by her father to have been transferred to her. (Page 10.)

No fraud is to be imputed to these administrators unless the facts lead to no other reasonable conclusion. The facts show, by the admissions of Mrs. Waln as a witness, and by her declarations in her answer, that she joined
20 her husband in attempting to defraud her husband's creditors. The facts do not show that William Hance was a party to that fraud. And they fail utterly to show any fraud on the part of the administrators. There is not a fact or circumstance connected with the administrators calling for explanation, unless it be their failure to include the farm stock in the inventory filed on April 11th, 1876. But this fact is explained by Mr. Ridgway, who says that the administrators followed the advice of their counsel, and it is certain that in all their future
30 actions the conduct of the administrators was based on the supposition that the farm stock constituted a part of William Hance's estate. On June 23, 1876, the administrators filed in the Orphans' Court a petition for an order to sell lands to pay debts. To this petition was annexed a statement showing the debts to be \$30,170. (This appears in *Exhibit C 3*, not printed, but offered in evidence, as seen on page 19.) The personal assets were stated to be the sum of \$18,369.83. (See page 19) This sum was made up as follows:

Amount of inventory as filed,	\$15,747.33
Amount of farm stock,	2,627.50
	<hr/>
	\$18,374.83

It is evident that this statement included the amount of the inventory as filed, and the appraised value of the farm stock, the difference of \$5 being doubtless a clerical error.

We also find that in the account of the administrators, allowed at the September term of the Orphans' Court in 1884 (see page 19), they charged themselves, first, with the amount of the inventory, \$15,747.33, and, second, with the amount of the farm stock, \$2,627.50.

It appears, then, that within a little over two months after the inventory was filed, the administrators charged themselves with the farm stock, and showed, notwithstanding such charge, a deficiency of personal assets to pay debts, and that they again charged themselves with that stock in 1884, when their account was presented and allowed. Had they not regarded this stock as²⁰ belonging to William Hance's estate, they would not have charged themselves with it. Had they entered into any such scheme as Hannah Waln declares they did in her answer, they would not, two months afterwards, have charged themselves with it, and thereby have reduced the amount of real estate necessary to be sold for the payment of debts. The fact that they thus twice charged themselves with this sum in the public records of the court and never prayed allowance for it, thereby making themselves liable for it, completely re-³⁰futes the suggestion that they are guilty of any fraud, or that they did not consider the farm stock as a part of William Hance's estate.

It must, therefore, be regarded as a part of William Hance's estate. It never belonged to Hannah Waln prior to her purchase from the administrators. She does not claim that it did. She acquired title from the administrators. She has never paid for it. We now seek to collect the debt which she owes us. Are we entitled, under the law, to recover?⁴⁰

It is urged that we are barred by the statute of limitations. The instrument signed by her is as follows:

“Received April 13th, 1876, of the administrators of William Hance, deceased, two thousand six hundred and twenty-seven 50-100 dollars on account of my distributive share of said estate as one of the heirs at law of said William Hance, deceased, and which I hereby direct, authorize and empower said administrators to take out of and deduct from my said share on a final settlement of
10 his said estate.”

It must be remembered that two days before this paper was signed by Mrs. Waln an inventory had been filed aggregating only \$15,747.33. There were debts, as appears by the statement, filed June, 23d, 1876, amounting to \$30,170.00. Certainly she could not expect to get anything out of the personal estate, nor could she expect the administrators to deduct her debt from the proceeds of the personalty. It should be remembered, further, that a little less than three weeks before she signed this paper
20 (on March 25th, 1876,) she had executed to her mother a lease of all the lands of which her father died seized for the period of her mother's widowhood. It is clear, then, that the “final settlement,” spoken of in the paper signed by her refers to the final settlement to be made at the termination of her mother's widowhood. The debt could not be deducted before then. It was not to become due until then. Consequently the statute would not commence to run until then. Notice, further, that Mrs. Waln, in the paper signed by her, does not say that she has received
30 \$2,627.50 on account of her distributive share as one of the *next of kin* of William Hance, but as one of the *heirs at law*:

The paper thus shows on its own face that it pre-supposed an insufficiency of personal assets to pay debts, that she could get nothing as one of the next of kin, and consequently it declares that what she received was on account as an *heir at law*; it is plain that what she thus received was intended to be deducted from what should come to her as the proceeds of the sale of the real estate;
40 that is, as an *heir at law*. We have seen that nothing was

to come to her as an heir at law until the termination of her mother's widowhood. Her mother's widowhood terminated by death on April 28th, 1891. We are consequently not barred by the statute.

During the widow's lifetime two farms were sold under the order of the Orphans' Court to pay debts. The widow had remaining under her lease the homestead farm only. After her death that farm was sold under an order of this court in partition proceedings by Philip S. Scovel, special master. The special master was made 10 a defendant to the bill in this cause for the purpose of securing the retention of Mrs. Waln's share. Attachment proceedings had been commenced in the Supreme Court by the complainants against Mrs. Waln as a non-resident debtor, and her share was garnished in the hands of Mr. Scovel. He has paid the share, amounting to \$1,783.90, to the clerk of this Court. We insist we are entitled to a decree directing it to be paid to us under the rule stated in the following cases:

Crane v. Freese, 1 Harr., 305; 20

Conover v. Ruckman, 6 Stew., 303;

Conover v. Ruckman, 9 Stew., 494;

Trotter v. Lehigh, &c., Zinc Co., 14 Stew., 229;

Trotter v. Lehigh, &c., Zinc Co., 15 Stew., 456;

Davis v. Mahaney, 9 Vr., 107.

It is submitted that the decree should be affirmed with costs.

W. M. LANNING,
Of Counsel with Respondents.

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