

# In Chancery of New Jersey.

To the Honorable HENRY W. GREEN,

*Chancellor of the State of New Jersey:*

HUMBLY complaining showeth unto your Honor, your orators Richard M. Bent of New York, Jane Reid of New York, by her next friend, the said Richard M. Bent, Spencer Hall Brown, Acting-Assistant Surgeon of the United States Navy of New York, and Ellen A. Brown, his wife, that the said Richard M. Bent, the said Jane Reid, and the said Ellen A. Brown, are the only children or issue of one Richard Bent deceased, who survived him, and are the only heirs at law of the said Richard Bent, deceased; that the said Jane Reid, on or about the thirteenth day of October, A. D. eighteen hundred and forty-two, was married to David Reid, but from various causes they lived unhappily together, and were divorced from bed and board forever, by the decree of the Superior Court of the State of New York, in and for the City and County of New York, on or about the sixteenth day of September, A. D. eighteen hundred and fifty-four, and ever since have lived separate; that the said Richard Bent deceased, in his lifetime, and on or about the twenty-third day of February, eighteen hundred and forty-eight, made, under his hand and seal, an agreement in writing with one Peter Westervelt, Junior, of the township of Hackensack, in the County of Bergen, in the State of New Jersey, which agreement was also sealed with the seal of the said Peter Westervelt, Junior, and signed by him, and is in the words and figures following, to-wit:

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Articles of agreement made this twenty-third day of February, eighteen hundred and forty-eight, between Peter Westervelt, Jr., of the township of Hackensack, County of Bergen, and State of New Jersey, of the one part, and Richard Bent, of the City of New York, merchant, of the other part.

10 1st. The said Peter Westervelt, Jr., agrees to sell and convey to the said Richard Bent, or to his heirs, executors, administrators or assigns, the lot and messuage of the said Peter, situated in Tillietudlum, on the Hudson river, below Fort Lee, in the township aforesaid, now in occupation of John Buckley, for the sum of four thousand dollars, to be paid as hereinafter set forth.

20 2d. The deed for said property to be delivered to the said Richard Bent, or to his heirs, executors, administrators or assigns, at any time within seven years, upon his paying to said Peter, the sum of one thousand dollars in cash, and securing the residue of the consideration money to be paid in annual instalments, as shall be agreed upon at the time of the delivery of said deed, by bond and mortgage upon the premises, together with six per cent. interest, to be paid semi-annually.

30 3d. The said Peter hereby agrees to let to the said Bent, the said premises, for the term of seven years, from the date hereof, or until said deed shall be given, (subject to the lease of said John Buckley, until the first of April next,) for which said Richard Bent is to pay him the rent of one hundred and sixteen dollars and fifty cents every six months, in advance, from the date hereof, or until said deed is delivered.

40 4th. The said Richard Bent agrees to purchase said premises of said Peter, on said terms, and to pay him therefor as above set forth, said sum of four thousand dollars; and also that he will hire said premises for said term of seven years, or until he shall elect to purchase the same as aforesaid, upon the terms, and pay

able as aforesaid, and to keep said property in good repair, and insured in the name of the said Peter Westervelt, Jr., for the sum of seven hundred dollars, and at the expense of the said Bent.

5th. And it is agreed between said parties that if the said Richard Bent shall fail in any of the payments, for the space of ten days after any payment shall be due, or shall fail to keep said property insured as aforesaid, then the said covenants and agreements herein above set forth, shall be entirely null and void. 10

6th. And it is further agreed between the parties hereto, that in case the said Bent shall elect to purchase the said property at any time during said lease, he shall have the privilege of paying for the same by instalments, as hereinbefore set forth, although the time for paying the same should extend beyond the time of said lease.

A full description of the above property will be found in a deed of David Demarest, Sheriff, etc., to Peter Westervelt, Jr., dated July 20th, 1843. Recorded *Liber*, fol. 4 of deeds, pages 226, 227, 228, 229, 230, 231, in the Clerk's office of the County of Bergen, and State of New Jersey. 20

In witness whereof the parties above named have hereunto set their hands and seals, the day and year first above written.

PETER WESTERVELT, Jr., [L.S.]  
RICHARD BENT, [L.S.] 30

*Witnesses present,*

Albt. G. Doremus,  
Richard Van Winkle.

Which said lease and agreement is in the possession of John Calvin Smith, a defendant hereinafter mentioned, and your orators pray that they may inspect 40

the same, and that it may be produced in evidence; that by the said deed, lease and agreement last set forth, the said Richard Bent, deceased, became tenant for the term of seven years, of the lot and messuage in said lease and agreement mentioned, from the date thereof, or from the date thereof until the purchase of said lands in said lease and agreement mentioned, subject to the lease of one John Buckley, in said lease and agreement set forth, which expired the first day of April, eighteen hundred and forty-eight; and was entitled to a conveyance of said lot and messuage to him, in fee simple, at the time, in the manner, and on the conditions in said lease and agreement mentioned; that the said lot and messuage of the said Peter Westervelt, Jr., situated at Tillietudlum, on the Hudson river, in the township of Hackensack aforesaid, in said lease mentioned, and thereby demised and agreed to be sold to the said Richard Bent, deceased, in fee simple, are more particularly described as follows:

All that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the township of Hackensack, in the County of Bergen, and State of New Jersey; beginning at the west side of Hudson river, at the northeasterly corner of land, late of Leonard De Klyn, deceased; from thence running 1 north, forty-eight degrees, west fourteen chains and sixty-two links, to a stone set in the ground; thence 2 northerly, and at right angles along lands of John H. Cornell five chains and fifty links, to a stone set in the ground, striking in the last course a large rock, marked 1. P. H.; thence 3 south, forty-seven degrees, east fourteen chains and sixty-two links, to the west bank of the Hudson river aforesaid; thence 4 southerly, along the same, including the dock, to the place of beginning; being in breadth at right angles along said river five chains and fifty links; bounded southerly by land late of Leonard Le Klyn, deceased, westerly by land of John H. Cor-

nell, northerly by land of Mrs. Dempsey, and easterly by the said Hudson river, containing eight acres and four hundredths of an acre.

That the said Richard Bent, deceased, on or about the first day of April, eighteen hundred and forty-eight, entered into possession of the said lands and messuages so leased, and continued in possession for nearly three years, until his death, which happened on the twenty-eighth day of January, eighteen hundred and fifty-one, at the city of New York; that the said Richard Bent, deceased, was, at the time of his death, about eighty years of age; that on or about the eighteenth day of August, eighteen hundred and forty-nine, the said Richard Bent, deceased, made and executed, under his hand and seal, an assignment of the said lease and agreement, in the words and figures following, to-wit:

Know all men by these presents that I, Richard Bent, of the City of New York, merchant, for and in consideration of five dollars, lawful money of the United States of America, to me in hand paid by John Calvin Smith, of said city, map publisher, the receipt whereof I do hereby acknowledge, have bargained, sold, assigned, conveyed, transferred and set over, and by these presents do bargain, sell, assign, convey, transfer and set over unto the said John Calvin Smith, his heirs, executors, administrators and assigns, as well the within articles of agreement hereto annexed, as also all the term and interest in all and singular the lands, tenements, hereditaments and premises yet remaining, under and by virtue of the said articles of agreement; and likewise all my estate, right, title, interest, claim, property and demand, of, in and to the same lands, tenements, hereditaments and premises, which I now have, either by means of the within articles of agreement or otherwise howsoever, subject nevertheless to the rents and covenants in the said articles of agreement contained.

In witness whereof I have hereunto set my hand and seal, the eighteenth day of August, one thousand eight hundred and forty-nine.

RICHARD BENT, [L.S.]

10 Signed, sealed and delivered  
in the presence of  
—(the words within men-  
tioned erased)—  
JOHN H. SORTHARD. }

That said assignment was made at the solicitation and by the advice of John Calvin Smith.

20 And on or about the twenty-first day of August, eighteen hundred and forty-nine, the said assignment was in due form of law acknowledged by the said Richard Bent, deceased, to be his voluntary act and deed, before Richard Goodman, Esquire, one of the Commissioners, in the City of New York, to take acknowledgments of deeds for lands in New Jersey; and on or about the twenty-eighth day of May, eighteen hundred and fifty, was duly recorded in the Clerk's office of the County of Bergen;—which said assignment is in the possession of the said John Calvin Smith, and which your orators pray, may be inspected by their Counsel, and may be produced in evidence, that the said assignment and lease were in the possession of said Richard Bent, deceased, until about the month of May, eighteen hundred and fifty, when the said Smith took them, and had them recorded; that after they were recorded, the said Richard Bent, deceased, still held the same, until about the month of November, eighteen hundred and fifty, when the said Smith and his wife complained to the mother of your orators, that she and her husband were unwilling to trust the said John Calvin Smith therewith, and upon such complaint being made, the said lease and assignment were delivered to the said John Calvin Smith, 40 the said Richard Bent, deceased, expressing the inten-

tion, at that time, to have the assignment made to your orator, the said Richard M. Bent, his son, so soon as he arrived at twenty-one years of age; that the said assignment was made under the following circumstances: the said Richard Bent, deceased, being of great age, and his son, your orator, Richard M. Bent, then being about the age of nineteen years, and his other children both married, desired to provide, in case of his death, for the care and charge of said leased premises, and for carrying out the said purchase by said lease and agreement contemplated, for the benefit of his wife and children. And the said John Calvin Smith, being the son-in-law of the wife of the said Richard Bent, deceased, (having married the daughter, by a former husband, of the wife of the said Richard Bent, deceased,) and in whom the said Richard Bent, deceased, had great confidence—the said assignment was made to him, in trust for the said Richard Bent, deceased, and in case of his death, in trust for his widow and children, to-wit: Jane Bent, the widow, and your orators, the said Richard M. Bent, Jane Reid and Ellen Brown, his children; and to manifest the said trust, the said John Calvin Smith, on or about the eighteenth day of August, eighteen hundred and forty-nine, made and signed a declaration of trust as follows:

I, John Calvin Smith, hereby stipulate and agree to deliver up or assign to Richard Bent, or to his heirs or assigns, the assignment this day made to me by Richard Bent, in trust for the benefit of his family, whenever the same shall be demanded of me by the said Richard Bent or heirs, or assigns, or any one for him.

This agreement, it is understood, relates to the assignment of the lease of property in Tillietudlum, New Jersey, from Peter Westervelt, Jr., to Richard Bent.

Dated this 18th day of August, 1849.

(Signed),  
Witness, C. S. BRONSON.

JOHN CALVIN SMITH.

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—which said declaration of trust is now in the possession of the said John Calvin Smith, or his wife, or has been destroyed by them, with a view to deprive your orators of the benefit thereof; and your orators pray that they may be allowed to inspect the same, and that it may be produced in evidence, or in case it is destroyed that they may be allowed to prove its contents, they having in their possession a draft or copy thereof, made by the witness who drew the same.

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And your orators further show that they are advised by Counsel, and humbly insist that the said declaration of trust gives to the said widow of said Richard Bent, deceased, an estate for life in one-third of said premises, and to his children, an estate in fee in the whole, subject to such life estate in the one-third, or invests each child and said widow with the equitable title to one-fourth of said lands in fee.

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And your orators further show that notwithstanding the said assignment so made by the said Richard Bent, deceased, to the said John Calvin Smith, on the said eighteenth day of August, eighteen hundred and forty-nine—the said Richard Bent, deceased, and his family continued in possession of the leased premises nearly a year and a half thereafter, and until the death of the said Richard Bent, in the month of January, eighteen hundred and fifty-one, treating and using the said house and lands as his own—paying no rent to the said John Calvin Smith, and the said John Calvin Smith claim-

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ing none from the said Richard Bent, deceased; that the rent due to Westervelt, the lessor, was paid in advance by the said Richard Bent, deceased, up to the first day of April, following his death, and not by the said John Calvin Smith; that from the date of said assignment to said John Calvin Smith, until the death of said Richard Bent, deceased, and afterwards, until the month of April, eighteen hundred and fifty-one, the said John Calvin Smith resided in Bleecker street, in the City of New York; that in December, eighteen

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hundred and fifty, the said Richard Bent, deceased,



and his wife, took rooms in New York City, and locked up the house in Tillietudlum, and although the said John Calvin Smith had never been in possession of the leased premises during the life of the said Richard Bent, deceased, and had never claimed any interest in the same, yet during the last illness of the said Richard Bent, deceased, or immediately after the death of the said Richard Bent, deceased, and while the widow of said Richard Bent, deceased, was at his, the said Smith's house, where the funeral had taken place, the said John Calvin Smith, or his wife, or someone in his behalf, went to the rooms, in New York City, of the said deceased, and took possession of all his books of account and papers, including the said declaration of trust; that the said Smith was indebted to the said Richard Bent, deceased, at the time of his death, in above the sum of one hundred dollars, that in the latter part of February, in the year eighteen hundred and fifty-one, your orators, the said Richard and Spencer, with the knowledge of said Smith, they never suspecting any claim would be set up by said Smith, under said assignment, attempted to sell the said leased property to one Crosby, but the said Smith endeavored to persuade them that as there was no deed for the land they could not sell, but asserted no claim of title to said lease under said assignment or otherwise; that in the month of March, eighteen hundred and fifty-one, the said John Calvin Smith offered, through his wife, to pay to the widow of the said Richard Bent, deceased, who was then about sixty years of age, the sum of five hundred dollars for her right, title and interest in said leased premises, and to give to her a right to live in said house on said premises, during her life, and to support her there, which the said widow finally agreed to take, if said Smith would give to her one acre of said premises fronting on Hudson river, to which he agreed, but afterwards, instead thereof, agreed to pay said widow two hundred dollars more to relinquish said claim to said one acre; and afterwards, the

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said sums of five hundred dollars and two hundred dollars were paid to the said widow in one sum, for her said interest ; but her right to live in said house, and to a support there were never relinquished or paid for ; that in the latter part of March, eighteen hundred and fifty-one, the said widow, before said agreement to part with her interest in said one acre of land was made, went from the said Smith's house, in New York City, with her son, your orator, Richard M. Bent, to the said house at Tillietudlum, as had been her habit from year to year, about that time of the year, and there found the said John Calvin Smith, with one of his employees ; that the said Smith had gone there with the intention avowed by him to said employees to enter the said house clandestinely in the absence of your orator's mother, who had the key thereof, and was in the house of said Smith, in New York, on the same day, where she had been staying some time ; but finding the said widow, and your orator, the said Richard, had come to the said house at Tillietudlum, refrained from doing so ; and conversation took place in relation to said one acre of ground, part of said leased premises ; that in the month of April, eighteen hundred and fifty-one, said Smith caused a closet in the house on the leased premises to be taken down, and a window put in its place, while the said widow was in possession of the said house, and about the thirtieth day of April, eighteen hundred and fifty-one, sent his children out to said house ; and on the first day of May, eighteen hundred and fifty-one, while the said widow was absent in New York City (having gone to see said Smith, and procure an explanation of his intentions), the said Smith moved his family and furniture into the said house ; that after expostulating with the said Smith about his conduct, and insisting upon being paid for her interest in said premises, or being allowed to keep possession, the said widow left the said house at Tillietudlum, and went to her daughter Jane's

house, in New York City; but, as before stated, the said Smith arranged with the said widow for her interest in the said leased premises, except her right of home there, by paying her the said sum of seven hundred dollars; although your orators are informed the said widow signed the deed for her interest in said leasehold under protest that the said John Calvin Smith being in possession of the said land, and having an assignment of said lease, and agreement, from your orator's deceased father, and concealing the said declaration of trust, which he had obtained possession of, on or about the first day of April, eighteen hundred and fifty-two, complied with the terms of said lease and agreement, and procured from the said Peter Westervelt, Junior, and his wife a conveyance of said leased premises to him, the said John Calvin Smith, in fee simple, paying therefor a certain amount of money, in cash, unknown to your orators, and giving to the said Peter Westervelt, Junior, a mortgage on said premises for the sum of three thousand dollars; that the said lands and premises so leased and agreed to be sold by the said Peter Westervelt, Junior, to the said Richard Bent, deceased, are worth about twelve thousand dollars, and rightfully belong to your orators, subject to their mother's interest; and your orators further show, that although they had always understood the said assignment to said John Calvin Smith was made in trust as aforesaid, they did not know until within a few months of any written declaration of trust, and supposed they were remediless; and until the deed was given to said John Calvin Smith, they had confidence that said Smith would not deprive them of their rights; and after the deed was given they supposed there was no relief for them, that your orator, the said Richard, left New York in the summer of the year 1855, and went to Kentucky and resided there, and in Charleston, until the winter of the year 1861, when he returned to New York.

And your orators further show, that they are ad-

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vised by counsel, and humbly insist, that by the said assignment in trust, the said John Calvin Smith acquired no right, except as trustee for your orators and their said mother, and that, although he has expended money to procure the legal title to said lands, in fee simple, to be vested in himself, he still remains a trustee for your orators, who, as they are advised, are entitled to said land, and to have the same conveyed to them in fee simple, free from all incumbrances, except such part of any moneys due to the said Peter Westervelt, Junior, or paid to him for said conveyance, as shall, in the judgment of this Honorable Court, be esteemed equitable for them to pay, which they hereby offer to pay in case it shall be deemed equitable.

And your orators further show, that the said John Calvin Smith has been in possession of said house and lands from the month of May, eighteen hundred and fifty-one, until this time, which is over eleven years, and has taken all the rents, issues, and profits thereof; and your orators are entitled to an account of the annual value of said house and lands, and of the rents, issues, and profits thereof, and to a decree that the said John Calvin Smith shall pay the same to your orators.

And your orators further show, that they have frequently applied to the said John Calvin Smith and Christiania his wife to convey to them the said house and land, subject to said widow's right and title, and to account to them for the annual value thereof, and for the rents, issues, and profits thereof, and to pay the same to your orators; and your orators well hoped that the said John Calvin Smith and Christiania his wife would comply with such, your orators' reasonable request. But now so it is, may it please your Honor, that the said John Calvin Smith and Christiania his wife, combining and confederating with others, refuse to comply with such your orators' reasonable request, and threaten to sell and dispose of the said house and lands; all which actings and doings are contrary to

equity and good conscience, and tend to the manifest wrong and injury of your orators.

In consideration whereof, and forasmuch as your orators can have adequate relief in the premises only in this Honorable Court, where matters of this nature are properly cognizable and relievable.—To the end, therefore, that the said John Calvin Smith and Christiana his wife, and David Reid and their confederates, when discovered, may upon their several and respective corporal oaths, to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true and perfect answer make to all the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto; and that more particularly, they specially answer the following special interrogatories :

First—What is the value (supposing the same free from incumbrances) of the house and lands, containing about eight acres and four-one-hundredths of an acre, situate at Tillietudlum, conveyed to the said John Calvin Smith by Peter Westervelt, Junior, and wife, by deed bearing date the first day of April, eighteen hundred and fifty-two? 10

Second—What is the annual value of said house and lands?

Third—What has been the annual value of said house and lands from the time the said John Calvin Smith took possession thereof up to the time of filing this bill, and how much would they have rented for yearly during that time? 30

Fourth—What was the age of said Richard Bent, deceased, and of his wife, at the time of his death?

Fifth—What was the value of the said lease and the term thereby granted; and the agreement, with the privilege of purchasing the said house and lands, on the eighteenth day of August, eighteen hundred and forty-nine, which lease was made by and between the said Peter Westervelt, Junior, and the said Rich- 40

ard Bent, deceased, bearing date the twenty-third day of February, eighteen hundred and forty-eight?

Sixth—What was the value, supposing the same to be free from incumbrances, of the said house and land, on the first day of April, eighteen hundred and fifty-two?

10 Seventh—What was the reason of the mention in the assignment of said lease and agreement of the consideration of five dollars for the same?

Eighth—Was that five dollars paid at the time of such assignment?

Ninth—If it was paid, from whom did you, John Calvin Smith, receive it?

Tenth—To whom did you pay it?

Eleventh—To whom did the person to whom you, John Calvin Smith, paid it, give it; and was it to the same person from whom you received it?

20 Twelfth—Was not the main object and purpose of such assignment of said lease and agreement to preserve the said lease and agreement, and the house and lands leased, and the right to purchase, for the benefit of the said Richard Bent, deceased; and, in case of his decease, for the benefit of his widow and children?

Thirteenth—Where are the books of account and other the papers of Richard Bent, deceased?

30 Fourteenth—Did not you—John Calvin Smith, or you, Christiana Smith his wife—during the said sickness of said Richard Bent, deceased, or after the death of the said Richard Bent, deceased, have the books of account, or some of them, and said papers, or some of them, in your hands, possession, or control, and which of them, and where are they, and where did you get the same, and what have you done with them?

Fifteenth—State the truth of all the matters in this bill mentioned.

40 And that the said trust may be established, and the said John Calvin Smith may be decreed to account for and pay to your orators, all the rents and profits, by them or either of them received out of the said

house or lands since they have been in possession thereof, and the annual value of said house and lands during that time, or so much thereof as your orators shall be equitably entitled unto; and that they may convey to your orators, the said Jane Reid, Ellen Brown, and Richard M. Bent, the said house and land in fee simple, free from all encumbrances, except the claims of said widow, and such equitable allowance (if any is proper to be made) for moneys paid by the said Smith to purchase said legal title; and that the said John Calvin Smith, until the further order of this Court, may be restrained by the writ of injunction of this Court from conveying or encumbering said house and lands.

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And that your orators may have such further and other relief in the premises as the nature and circumstances of the case may require, and as shall be agreeable to equity and good conscience, and shall seem meet to your Honor.

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May it please your Honor, the premises considered, to grant unto your orators, not only the State's writ of injunction issuing out of and under the seal of this Honorable Court, directed to the said John Calvin Smith, enjoining and commanding him to refrain from conveying and encumbering the said house, and lot of land, containing eight acres and four-one-hundredths of an acre, situate at Tillietudlum, in the township of Hackensack, in the county of Bergen, in this State, which he purchased from Peter Westervelt, Junior, until the further order of this Court; but also the State's most gracious writ of subpœna, issuing out of and under the seal of this Honorable Court, to be directed to the said John Calvin Smith and the said David Reid, commanding them that on a certain day and under a certain penalty they personally be and appear before your Honor in this Honorable Court, then and there to answer the premises, and further to stand to, abide, and perform such further order, direction and decree therein as to your Honor shall seem

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meet; and your orators, as in duty bound, will ever pray for you.

ROBERT GILCHRIST, Jr.,

*Solicitor for and of Counsel with Complainants.*

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NEW JERSEY.

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*Hudson County, ss.:*

Richard M. Bent, being duly sworn according to law on his oath, deposes and saith that he is one of the complainants in the foregoing bill of complaint mentioned; that he has read the said bill, and the facts, matters, and things therein set forth, so far as they relate to the acts and deeds of this deponent, are true of his own knowledge; and, so far as they relate to the acts and deeds of others, he believes the

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same to be true.

RICHARD M. BENT.

Sworn and subscribed before  
me this 25th day of De-  
cember, A.D. 1862, at Jer-  
sey City.

RICHARD D. McCLELLAND,

*Master in Chancery, New Jersey.*

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NEW JERSEY.

*Hudson County, ss.:*

Charles S. Bronson, being duly sworn according to law on his oath, saith that he has read the foregoing bill; that he knew the said Richard Bent, deceased, in the said bill mentioned, and also the said John Calvin Smith; that deponent made the draft of the lease to the said Richard Bent, deceased, from the

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said Peter Westervelt, Jr., in the said bill mentioned; that about the time in said bill mentioned the said assignment of said lease was made in deponent's presence by the said Richard Bent, deceased, to the said John Calvin Smith; and at the time of said assignment it was understood by and between the said Richard Bent, deceased, and the said John Calvin Smith that the same was made in trust to and for the use of the said Richard Bent, deceased, during his life, and after his death to and for the use of his family; and that a paper writing was signed by the said John Calvin Smith of the tenor set forth in said bill, setting forth and showing such trust, a copy of which was retained by deponent until it was recently delivered to the complainants' counsel.

CHARLES S. BRONSON.

Sworn and subscribed before  
me this 22d day of Sep-  
tember, A.D. 1862, at Jer-  
sey City.

RICHARD D. McCLELLAND,

*Master in Chancery, New Jersey.*

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IN CHANCERY OF NEW JERSEY.

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The answer of John Calvin Smith, defendant to the Bill of Complaint of Richard M. Bent, Jane Reid, by her next friend, Richard M. Bent, Spencer Hall Brown, and Ellen A. Brown, his wife, complainants.

This defendant, now and at all times hereafter, saving and reserving to himself all, and all manner of benefit and advantage of exception to the many errors and uncertainties in the said Bill of Complaint contained for answer thereunto, or unto so much and such

parts thereof as this defendant is advised is, or are material or necessary for him to make answer unto, this defendant answering, saith :

That Richard M. Bent, Jane Reid, and Ellen A. Brown are the children and issue of Richard Bent, deceased ; but as this defendant is informed and believes not the only children and issue of the said Richard Bent, deceased, who survived him, and are not the  
 10 only heirs at law of the said Richard Bent, deceased, as this defendant is informed and believes, and from information and belief states the fact to be—That before the said Richard Bent married Jane Bent, he, the said Richard Bent, had been previously married in England, and his first wife died in England before the said Richard Bent married the said Jane Bent, and had issue by such first marriage, a son, as this defendant was always informed and believes to be true—That the  
 20 name of the said son is Henry Bent, and the said Henry Bent is believed to be still alive, and should, therefore, be made a party complainant to this bill. Whether there were any more children by such first marriage than the said son, this defendant cannot answer.

And this defendant admits that the said Jane Reid, on or about the thirteenth day of October, eighteen hundred and forty, married David Reid, and this defendant admits from information and belief that the  
 30 said Jane and David were divorced from bed and board, and have lived separate from each other since such divorce ; but this defendant cannot, on his own knowledge, state accurately the time when, nor the Court in which such decree of divorce was obtained.

And this defendant admits that the said Richard Bent in his life time, and on or about the twenty-third day of February, eighteen hundred and forty-eight, made an agreement in writing with Peter Westervelt, Junior, sealed with their respective seals, which this  
 40 defendant believes is correctly set forth in the said bill, which agreement is in the possession of this defendant,

and ready to be produced before this Honorable Court. This defendant admits that by the terms of the said agreement, the said Richard Bent became the tenant of the said Westervelt, until he should purchase; the said agreement being in writing, the effect of the same is submitted to the judgment of this Honorable Court.

And this defendant admits that the lease of the said John Buckley expired on the first day of April, eighteen hundred and forty-eight, and that by the said agreement the said Richard Bent had the right to purchase the said lands in fee simple. 10

And this defendant believes that the said lands are correctly described in the said bill. And this defendant admits that the said Richard Bent, on or about the first day of April, eighteen hundred and forty-eight, entered into the possession of the said lands and messuages, and continued in possession for nearly three years, until his death. And that he died on the thirtieth day of January, eighteen hundred and fifty-one, at the City of New York, and not on the twenty-eighth day of January in that year. But this defendant denies that the said Richard Bent, during all the time last aforesaid, held the said property under the said Peter Westervelt, Junior, but from the twentieth day of August, eighteen hundred and forty-nine, held the same as tenant under this defendant, as is hereinafter stated. 20

And this defendant says that the said Richard Bent, at the time of his death, was about seventy-eight years old. And this defendant admits that on or about the eighteenth day of August, eighteen hundred and forty-nine, the said Richard Bent made to this defendant an assignment of the said agreement, which assignment this defendant believes is correctly set forth in the said bill, but the same being in possession of this defendant, this defendant prays leave to refer to the same. 30

And this defendant denies that the said assignment was made at the solicitation and advice of this defen- 40

dant, but admits that the same was acknowledged and recorded at the time stated in the said bill.

10 And this defendant denies that the said assignment and lease were in the possession of the said Richard Bent until about the first of May, eighteen hundred and fifty, when this defendant took them. That this defendant, from his recollection, states that the said assignment and agreement were in his possession early in the winter of eighteen hundred and fifty, in January or February of that year. After the assignment was made, the same remained in the hands of Richard Bent to be acknowledged.

20 And this defendant denies that after the said agreement and assignment were recorded, the said Richard Bent held the same, and held the same until about the month of November or December, eighteen hundred and fifty, when this defendant and his wife complained to the mother of the complainants that she and her husband were unwilling to trust the said John Calvin Smith, this defendant therewith, and denies upon such complaint being made, the said lease and assignment were delivered to this defendant.

30 And this defendant denies that any such complaint was made as charged in the said bill, or as this defendant supposes was intended to be charged in the said bill. This defendant states, from his recollection and belief, that he received from the said Richard Bent the said agreement and assignment early in the winter of eighteen hundred and fifty, and retained the same till the spring of eighteen hundred and fifty, when this defendant in person took the same to be recorded at the office of the Clerk of the County of Bergen, at Hackensack, and this defendant in person received the said agreement and lease from the Clerk's Office of the County of Bergen, and has retained the same in his possession ever since.

40 And this defendant denies all knowledge of the said Richard Bent's expressing the intention, at the time, to have the assignment made to the said Richard M.

Bent, his son, as soon as he arrived at twenty-one years of age.

And this defendant has no knowledge and does not believe that the said Richard Bent, by the said assignment, desired to provide, in case of his death, for the care and charge of the said leased premises, and for carrying out the said purchase by the said lease and agreement, contemplated for the benefit of his wife and children.

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And this defendant denies that the said assignment was made to him in trust for the said Richard Bent, deceased, and in case of his death for his widow and children. This defendant admits that the said Richard Bent was of great age, and supposes that the said Richard M. Bent, his son, was aged about nineteen years, but cannot state certainly as to the age of the said Richard M. ; and that his other children, in this country, were both married ; but this defendant denies that he took the said assignment in trust, as charged in the said bill, or that it was so expressed by the said Richard Bent, or by this defendant, when the said assignment was made, or when this defendant received the same.

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And this defendant denies that he, on or about the eighteenth day of August, eighteen hundred and forty-nine, made and assigned a declaration of trust as stated in the said bill.

And this defendant denies that any such declaration of trust is now in his possession or the possession of his wife. And this defendant denies that he has ever destroyed any such declaration of trust.

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And this defendant denies that the complainants have in their possession a copy of any declaration of trust made and signed by this defendant as stated in the said bill.

And this defendant says that the said Richard Bent and his family did not continue in the actual possession of the said premises all the time for nearly a year and a half thereafter, and until the death of the said

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Richard Bent in the month of January, eighteen hundred and fifty-one, and for the time he was in possession did not use the said house and lands as his own, but did pay rent to this defendant, he being the tenant of this defendant, which rent was paid partly in cash to this defendant and partly in the board of this defendant's children on the premises; and this defendant paid, with his own money, the rent to the said Peter Westervelt, Junior.

And this defendant denies that the rent due to Westervelt, the lessor, was paid in advance by the said Richard Bent, deceased, up to the first day of April following his death, and not by this defendant.

And this defendant admits that from the date of the assignment to this defendant, until the death of the said Richard Bent, and afterwards, until the month of April, eighteen hundred and fifty-one, this defendant resided in Bleecker street, in New York City.

And this defendant denies that in the month of December, eighteen hundred and fifty, the said Richard Bent and his wife took rooms in New York City, as stated in the said bill, but admits that as near as he can recollect the said Richard Bent at that time had a room or place in New York where he slept. That the mode of life of the said Richard Bent was this: Jane, the wife of the said Richard Bent, during the summer season kept boarders on the premises in question, and her husband spent his time during the week in the city of New York, where he peddled tea and coffee, and would go to the premises in question Saturday and spend Sundays there on the premises, and Monday would again return to the city of New York, sometimes returning to the premises in question in the middle of the week. That in the winter of eighteen hundred and forty-eight and eighteen hundred and forty-nine, the said Jane, the wife of the said Bent, remained all winter on the premises in question. In the winter of eighteen hundred and forty-nine and eighteen hundred and fifty, the said Mrs. Bent staid in New York

with this defendant's family, and in the winter of eighteen hundred and fifty and eighteen hundred and fifty-one, until the death of the said Richard Bent, the said Richard and his wife occupied a room in Jersey street in New York City, and in the said winter of eighteen hundred and fifty and eighteen hundred and fifty-one, the house on the premises in question was locked up.

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And this defendant admits that during the life of the said Richard Bent, deceased, this defendant never had the actual possession of the premises in question, but he had the right of possession from the time of the assignment of the said agreement, and from the twentieth of August, eighteen hundred and forty-nine, the said Richard Bent was the tenant of this defendant under a lease bearing date the eighteenth day of August, eighteen hundred and forty-nine, for one year from the said twentieth of August.

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And this defendant denies the charge in the said bill that he never claimed any interest in the same, the said premises. And this defendant denies that during the last illness of the said Richard Bent, or immediately after the death of the said Richard Bent, and while the widow of the said Richard Bent was at this defendant's house, where the funeral took place, that this defendant, or his wife, or any one in his behalf, went to the rooms in New York city of the said deceased and took possession of all the books of account and papers, including the said declaration of trust, of the said deceased. On the contrary, at the time of the death and funeral of the said Richard Bent, which funeral took place at the residence of this defendant, in the city of New York, this defendant was confined to his residence by severe illness from rheumatism, and had been so confined for as much as two weeks previous to the death of the said Richard Bent, and for as much as ten days afterwards, and this defendant never went at all to the said room or place occupied by the

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said Bent, and where he died at all after his, said Bent's, decease.

And this defendant denies that he was indebted to the said Bent, at the time of his death, in above the sum of one hundred dollars, or in any other sum. And this defendant admits that in the latter part of February, eighteen hundred and fifty-one, or about that time, the said Richard M. and Spencer, or one of  
 10 them, or some other person, told this defendant that one or both of them *attempted* to sell the said leased property to one Crosby. Such information was brought to this defendant by the said *Richard M.* or Spencer, or some other person, after the proposal to sell had been made, but not before, or at the time the proposal to sell was made to said Crosby; but this defendant denies the charge as made in the said bill, that he endeavored to persuade them that as there was no deed for the land, they could not sell, but asserted no claim  
 20 of title to said lease under said assignment or otherwise. On the contrary, this defendant informed the said Spencer after such attempt had been made to sell, *as this defendant was told that he had nothing* to sell in the said property, except a lease for a year made by this defendant to the said Richard Bent. This defendant then, and at all times after he took the said assignment, asserted his claim to the said agreement under the said assignment.

And this defendant denies that in the month of  
 30 March, eighteen hundred and fifty-one, this defendant offered through his wife to pay to the widow of the said Richard Bent, deceased, the sum of five hundred dollars for her right, title, and interest in the said leased premises, and to give to her a right to live in said house on said premises during her life, and to support her there.

And this defendant denies that the said widow agreed to take it, if this defendant would give her an acre of said premises fronting on the Hudson river.

40 And this defendant denies that he agreed to pay



said widow two hundred dollars more to relinquish said claim to said one acre.

And this defendant denies that afterwards the said sums of five hundred dollars and two hundred dollars were paid to the said widow in one sum for her said interest.

And this defendant says that the said Jane had no right to live in the said house and to a support there, and had no right to relinquish or be paid for as stated. 10

And this defendant answering says, that while the said Richard Bent was in possession of the said premises, *and in the spring of the year eighteen hundred and forty-eight*, Richard Bent had an addition built to the said house on the said premises, which addition made four new rooms on the said property, designed to accommodate boarders. That for the said addition and for repairs on the property, the said widow asserted that about seven hundred dollars had been expended. That after the death of the said Richard Bent the said Jane Bent thought this defendant, as he had obtained the assignment of the said lease and had acquired the right to a title to the said property, should make an allowance for the said addition to the said house. As the said Jane was the mother of the wife of this defendant, and as the said sum of seven hundred dollars was useful in her support, this defendant paid her seven hundred dollars. That the said seven hundred dollars was not paid by this defendant to the said Jane for any estate and interest she had in the property, or for any claim she had to the said acre of ground, but was simply given to her on account of the relationship between this defendant and the said Jane, and because improvements had been put on the property and repairs done thereon. This defendant, when he paid the said sum, did not admit any title in the said Jane, or any one else, other than this defendant, and would not have paid anything on account of the said improvements except that the money went for the benefit of his mother-in-law, to whom he was 20 30 40.

willing to pay money without being particular as to the ground of the claim. The said Jane, when this defendant paid her the said sum of seven hundred dollars, well knew that he, this defendant, had the title to this property, and never set up any claim of any estate or interest in the same; but inasmuch as her husband had put these improvements on the property she thought she should be allowed for such improvements wholly irrespective of the said title to the said property, which title was then in this defendant.

10 And this defendant denies any agreement on his part, directly or indirectly, with the said Jane, that she should part with her interest in an acre of ground as stated in the said bill.

20 And this defendant denies all recollection that in the latter part of March, eighteen hundred and fifty-one, the said widow went from this defendant's house in New York, with her son, Richard M. Bent, to the said house at Tillietudlum, and there found this defendant with one of his employees. This defendant says that in the month of March, eighteen hundred and fifty-one, or about that time, this defendant went to the said property in question with the said Jane, and one William Kelly, in the employment of this defendant, also went along, and this defendant then went and openly took full possession of the property in question, the said Jane then being with this defendant. The said Jane had previously given to this

30 defendant the key of the front door of the house. And this defendant expressly denies the charge that he had gone there with the intention avowed by him to his said employee, or to anybody else, to enter the said house clandestinely, in the absence of the said Jane, who had the key thereof and was in the house of this defendant in New York on the same day.

40 And this defendant denies the charge in the said bill that he, finding the said widow and the said Richard had come to the said horse, refrained to do so.

And this defendant denies all secret or clandestine entry into the possession of the said property, but the same was open and public and with full right to enter, and with no pretence whatever on the part of anybody that he, this defendant, had not the full right to enter upon and take possession of the said property.

And this defendant says that the said Richard M., the complainant, well knew of the open and public manner in which this defendant took possession of the said property at Tillietudlum. That the said Richard M. was present in the house of this defendant, in the city of New York, when the removal was talked of, and assisted the wife of this defendant to pack up articles to be moved to the premises in question. That while the said Jane was at the premises in question in April, eighteen hundred and fifty-one, the said Richard M., the complainant, went up Sundays to see his said mother, the said Jane then taking charge of the house for this defendant at Tillietudlum.

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And this defendant denies that conversation took place in relation to the said one acre of ground, part of the said leased premises, as stated in the said bill.

And this defendant admits that in the month of April, eighteen hundred and fifty-one, or about that time, this defendant caused a closet in the house on the leased premises to be taken down and a window put in its place, while the said widow was there, but not while she was in possession of the house under any claim of title or ownership. The said widow was there at that time, under this defendant, to keep the house for this defendant, and to see that the men who were in the employment of this defendant were fed and taken care of at the house. And for such service the said Jane charged this defendant and received compensation therefor. That the said defendant was not in any way in possession, as owner, in the spring of eighteen hundred and fifty-one, of the said premises, or there under any claim of ownership or right. That a day or two prior to the twenty-eighth day of April,

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eighteen hundred and fifty-one, this defendant sent his children to the said house, and this defendant sent his furniture to the said house as much as a week before the first of May, eighteen hundred and fifty-one. That on the thirtieth of April, eighteen hundred and fifty-one, the said widow left the premises in question and took away nearly all her furniture, and took the same to Morrissiana to Spencer H. Brown's, her son-in-law.

10 That the charge in the said bill is not true (the said Jane having gone to see said Smith and procure an explanation of his intentions).

This defendant denies the charge in the said bill, of expostulating with this defendant about his conduct, and insisting upon being paid for her interest in the said premises, or being allowed to keep possession.

And this defendant admits that the said widow left the house at Tillietudlum, and went to her daughter Jane's house, in New York, and spent her time there, and at Morrissiana, and also with this defendant's family from time to time, as suited her convenience or pleasure.

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And this defendant denies the arrangement with the said widow, as stated, and declares that the said widow never signed any deed for her interest in the said property at all.

And this defendant denies all concealment of the said trust, there being no trust to conceal.

30 And this defendant admits that he took a deed from the said Peter Westervelt, Junior, and his wife, which deed bears date the first day of April, eighteen hundred and fifty-two, and the same was acknowledged the second day of April, eighteen hundred and fifty-two, and recorded in the Clerk's Office of the County of Bergen, on the third day of April, eighteen hundred and fifty-two, in Book P. 4 of Deeds, page 596, &c. That this defendant paid the said Peter Westervelt, Junior, the sum of one thousand dollars in cash, and gave his mortgage to the said Peter Westervelt, Junior, for the sum of three thousand dollars, which

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mortgage was registered in the Clerk's Office of the  
 County of Bergen, on the \_\_\_\_\_ day of  
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 eighteen hundred and \_\_\_\_\_  
 in Book \_\_\_\_\_ of Mortgages for that County,  
 page \_\_\_\_\_

And this defendant, in further answering, says, that  
 at the time he took the said deed the said Richard M.  
 Bent was of the age of twenty-one years.

And this defendant, further answering, says, that he 10  
 has been in possession of the said premises since the  
 month of April, eighteen hundred and fifty-one, and  
 has been in possession as the true and lawful owner,  
 without being trustee by any trust, express or implied.  
 That he has occupied the said premises as a residence  
 for himself and his family, and has made no profit out  
 of the said premises beyond such use thereof. That  
 when this defendant took the said deed from the said  
 Peter Westervelt and wife, and paid, and secured to 20  
 be paid, the said sum of four thousand dollars, he paid  
 full value for the said property. That the said prop-  
 erty, when this defendant took the deed therefor, was  
 very much out of repair, and this defendant has im-  
 proved the same and put the same in order, and has  
 openly and notoriously occupied the same as a resi-  
 dence for himself and family, without the slightest  
 pretence of claim, or assertion of claim, thereto, until  
 the time when the said bill was exhibited, and this de-  
 fendant humbly insists that it is too late at this time to 30  
 come forward with any assertion of claim to the said  
 premises, in any way, and this defendant is entitled to  
 the same defense to the said bill for want of equity  
 as if he had demurred thereto.

And this defendant denies the application to convey  
 and to account, as in the said bill set forth.

And this defendant, in answer to the first interroga-  
 tory in said bill, says: That when this defendant pur-  
 chased the said property, the same was worth about  
 three thousand five hundred dollars, and the said Peter  
 Westervelt had, about the time he made the said lease 40

to the said Richard Bent, offered to sell the same for three thousand five hundred dollars, and could not procure that price therefor, and the said premises are now worth about seven thousand dollars.

10 And as to the second interrogatory, this defendant says: That he cannot accurately say what is the annual rent of the said house and lands, but supposes and believes that the same would rent for about two hundred and fifty dollars per year. That the house on the premises is old and old-fashioned, and not suited to modern taste; the house stands low beneath the hill, and within about one hundred feet of the road which passes along the river, and for farming purposes the property would not be worth more than one hundred and fifty dollars per annum.

20 And as to the third interrogatory, this defendant says: That he has no means of testing the annual value of the said house and lands from the time he took possession thereof up to the time of filing the bill. That the rent probably would have varied from one hundred and fifty to two hundred and fifty dollars per year.

As to the fourth interrogatory, this defendant says: That the age of the said Richard Bent, at the time of his death, was seventy-eight years, and his wife's age was about fifty-nine years.

30 And as to the said fifth interrogatory, this defendant says: That the said lease and the privilege of purchasing were of no value on the eighteenth of August, eighteen hundred and forty-nine; that the rent agreed to be paid by the said Bent to the said Westervelt, was larger than the said Westervelt could procure from any other person; that the rent paid by John Buckley, the previous tenant, was the sum of one hundred and twenty-five dollars per annum.

40 And as to the sixth interrogatory, this defendant says: That the value of the said house and land on the first day of April, eighteen hundred and fifty-two, was not rising the sum of four thousand dollars, paid there-

for by this defendant, but as this defendant, from information and belief states, was worth less than four thousand dollars.

And as to the seventh interrogatory, this defendant believes the reason of the mention of the sum of five dollars as the consideration of the said assignment, was to name a sum to make the assignment binding and valid.

In answer to the eighth interrogatory, this defendant says, that the sum of five dollars was paid at the time of the assignment. 10

As to the ninth interrogatory, this defendant says, that the said sum of five dollars was received by this defendant in the course of his business, and not from Richard Bent, or any of his family.

As to the tenth interrogatory, this defendant says he paid the said sum of five dollars to Richard Bent.

As to the eleventh interrogatory, this defendant says, he paid the said sum of five dollars to Richard Bent, and he, this defendant, received the said sum of five dollars in the course of his legitimate business as his own money, and did not directly nor indirectly receive the same from Richard Bent. 20

And as to the twelfth interrogatory, this defendant says, it was not the main object and purpose of the said assignment of the said lease and agreement to preserve the said lease and agreement and the house and lands leased, and the right to purchase for the benefit of the said Richard Bent, deceased, and in case of his decease, for the benefit of his widow and children. 30

And as to the thirteenth interrogatory, this defendant says, that he does not know where the books of account, and other papers of Richard Bent, deceased, are.

And as to the fourteenth interrogatory, this defendant says, that this defendant did not, and he is fully satisfied his wife Christiana did not, during the said sickness of the said Richard Bent, deceased, or after the death of the said Richard Bent, deceased, have the 40

books of account, or some of them, nor said papers, nor any of them, in their hands or control, and this defendant does not know where they are, nor what has become of them.

And this defendant, in further answering, says, that he was married to his wife on the seventeenth day of March, eighteen hundred and thirty-four, she then residing at Bloomingdale, in the upper part of the city of New York, and the said Richard Bent was then married to the said Jane, his now widow; the said Richard Bent then kept a small grocery store at Bloomingdale; that the wife of this defendant was a daughter of the said Jane, the widow, by a former husband, whose name was Rae; that the parties named in the said bill as the children of the said Richard Bent, deceased, are the half-brothers and half-sisters of this defendant's wife; that at the time of the marriage of this defendant, he was an engraver and publisher of maps, and has been in the same occupation since that time; that after the said marriage, and about one year thereafter, the said Richard Bent and wife hired a house at the corner of Walker and Mulberry streets, in the city of New York, and kept boarders there; this defendant became security for the rent of the house, and the house last aforesaid was occupied for about two years by the said Bent and wife; while the said Bent and wife were at the place last stated, this defendant and wife boarded with them for one year, and then kept house, and has kept house ever since. During the time the said Bent and wife lived at the corner of Mulberry and Walker streets, the said Bent went into the leather business in Grand street, New York, and continued in that business for about two months, and did not succeed in carrying on that business; the said Bent, deceased, afterwards went as manager or clerk for one Arthor, in the city of New York; subsequently he went into business of preparing or burning lime with one Dusenberry, and afterwards failed and lost all he had in the business, and what money his wife



made by keeping boarders. The said Bent and his wife moved from place to place in the city of New York before they went to live on the property in Bergen County, his wife keeping boarders at every place in which she lived. In eighteen hundred and forty-four this defendant gave employment to the said Richard Bent, deceased, for about six months, he having no occupation, and this defendant and his partner paid the said Richard Bent, deceased, for his services. After the said Richard Bent, deceased, left the employment of this defendant, he engaged in the business of peddling tea, selling articles by getting orders therefrom from customers, and filling them, and that continued his principal business down to the time of his death. That the said Bent and wife, through an acquaintance, heard of this place in question as being for sale, which led to the agreement with Westervelt in the said bill mentioned. Mrs. Bent went to the place in question, and kept boarders there, and her husband, the said Richard Bent, deceased, conducted his business of peddling in the city of New York, and would go to the place in question on Saturdays and return on the first of the week to New York city, and had lodgings in New York city, in Elm street, and afterwards removed to a basement in Jersey street, where he lived before and at the time of his death. That while the said Jane, the wife of the said Richard, deceased, kept boarders on the premises in question, they got behind hand, and could not pay the rent; the said Richard, deceased, when he first went to the premises in question, attempted to peddle goods about the country, in Bergen County, and could not succeed in that occupation. Under such circumstances, the said Richard, deceased, wanted to leave and abandon the said property in Bergen, but his wife, the said Jane, declined so to do, and there was a difference between them on that account. Under these circumstances the said Bent, deceased, being unable to pay the rent, and all of his children being

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poor and without means, and unable to assist him, the said Richard, deceased, applied to this defendant to take the assignment of said agreement, *his object being that this defendant might pay the rent, and Mrs. Bent, the mother-in-law of this defendant might have a place to live in and keep boarders.* This defendant at the solicitation of the said Richard, deceased, took the said assignment which was absolute and unqualified, and paid to the said Bent the consideration therefore, and thereupon this defendant, by lease in writing, let the said premises to the said Richard Bent for one year, from the twentieth day of August, eighteen hundred and forty-nine, at the yearly rent of two hundred and forty dollars, payable half yearly. After the assignment of the said agreement to this defendant, this defendant paid the rent to Westervelt in cash with his own money, and received rent from the said Richard Bent, which was paid in part by the board of the children of this defendant at the place in question, and the balance of the rent that was paid was paid in money, though this defendant did not receive the whole rent from the said Richard Bent, deceased, he never being able to pay the whole of the agreed rent from the said Bent. That at the time this defendant took the said assignment, the property in question was not considered worth any more than the sum of four thousand dollars, and this defendant believes that the agreement being out of the way a much better arrangement could have been made for the purchase of the property from Westervelt, by purchasing and paying for the property at once. This defendant was engaged in attending to his business in the city of New York, and took the absolute assignment, as aforesaid, of the said agreement, at the request of Bent. While Bent and his wife were in possession of the said premises, and before the assignment, an addition was put to the house called a leanto, which cost some money, but how much this defendant cannot state—the object being to enlarge the property to accommodate boarders. At and

before the time of the death of the said Richard, the said Richard had his lodgings in the basement of the house in Jersey street, and this defendant being at that time confined to his house from sickness did not and could not go to see the said Richard, and got no papers or books belonging to him. After the death of the said Richard, the talk about this defendant's going to the premises in question to live was open and public in the family and well known to the said Richard, M. Bent, Jane Reid, Spencer Hall Brown, and Ellen A., his wife. The said Spencer Hall Brown and wife at that time resided in Morrissiana, and the said Richard, M. Bent and Jane Reid lived in this defendant's family. The said complainants all had full knowledge of the said intended removal, and no objection was made thereto. That the wife of this defendant did not want to move to the premises in question, but consented thereto because this defendant thought his own health would be improved by being compelled daily to go and return from the city to the property, the occupation of this defendant confining him indoors, and his health not being very vigorous. That if the idea of improving his own health had not influenced him this defendant would have abandoned the agreement, and his rights under the same, after the death of the said Richard Bent, as this defendant did not then consider that there was any speculation in the property, and nothing to be made by the purchase. That the reason the said seven hundred dollars was paid to the said widow was because she thought that an allowance should be made for the addition put to the premises.

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And this defendant says that at no time did he consent or agree to give the said widow an acre of ground, part of the said premises.

And this defendant says that the payment of the said sum of seven hundred dollars by this defendant to the said Jane Bent, the widow of Richard Bent, was well known to the complainants, and the reason why it

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was so paid was well known, and it was so paid, not because of any legal right on the part of the said Jane Bent, widow, as aforesaid, but because of such addition put to the house as before stated.

10 And this defendant further says that he intended to do such acts of kindness toward the said widow as his relation to her would naturally prompt. That she was allowed a room in the said house in Bergen County, and was offered a home there. That she remained  
 20 there for a time, had some of her effects in one of the rooms of the said house, and came and went as she pleased. That the said Jane, widow, as aforesaid, was of a capricious temper—did not like to live in a family as a member thereof—she having had a house under her charge during her marriage, and having labored and kept boarders as the head of the house, wherever it might be, in which she lived. That if this  
 30 defendant had not taken the said assignment, the said property would have fallen back to the said Westervelt, none of the family being able to take the said assignment and hold the property. That in the Spring of eighteen hundred and fifty-one, Reid, the husband of Jane Reid, was insolvent. Richard M. Bent was then learning a trade, and had no means, and Spencer Hall Brown was then without means to purchase the property, and was then indebted to this defendant in rising seven hundred dollars which had been advanced  
 40 by this defendant towards setting him up in a drug store previously in New York city. That the said Jane Reid, owing to the insolvency of her husband, was compelled to earn her own livelihood by setting up a dress-making business, and in that way earned her livelihood, and after the year eighteen hundred and fifty-five accumulated some money. The said Jane Reid, on or about the first of July, eighteen hundred and fifty-seven, lent this defendant seven hundred dollars, for which this defendant secured her by a mortgage on the premises in question, which was paid by  
 this defendant to the said Jane Reid in May, eighteen

hundred and sixty-one, said mortgage never was recorded—said mortgage being considered valueless after the same was paid was destroyed. This defendant had himself since the death of the said Richard, befriended the said Jane Reid by going security for her for rent of property, which she hired to carry on her business—and though there have been such mutual relations of friendship, no claim as set up in the said bill was ever before asserted by her prior to the time when this defendant was informed thereof by the said bill.

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And this defendant insists as he is advised by his counsel that there is no equity in the complainant's bill. That there can be no such insistent as set forth in the complainant's bill, after the said assignment by Richard Bent to this defendant, and the acceptance of the said lease by the said Richard Bent from this defendant. That the complainants cannot stand by and see this defendant purchase the property, pay for it, and take an absolute deed and then wait till after Westervelt, the grantor, has departed this life, and after the lapse of rising eleven years, come forward and seek to charge this defendant as trustee. That the said deed of the said Westervelt to this defendant is absolute with no trust therein, with full covenants of warranty, and no trust under the circumstances could be grafted thereon. That the said trust as set forth, even if true, and if the same had been given would not warrant any such construction as asserted in the said bill, and could not fasten any trust on the estate conveyed by the said Westervelt to this defendant. That the said trust at best related only to the said lease, and the estate as tenant, and cannot effect the fee in the premises conveyed to this defendant.

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And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is charged, without that, that any other matter or thing material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered,

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confessed or avoided, traversed or denied is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to maintain and prove as this honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

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I. W. SCUDDER,  
*Solicitor for and of Counsel with the  
defendant, John Calvin Smith.*

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STATE OF NEW JERSEY.

*Hudson County, ss. :*

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Before me, personally, appeared John Calvin Smith, who by me being duly sworn, according to law, deposes and says—that this deponent is the defendant named in the foregoing answer—that the matters, facts and things in the foregoing answer contained, so far as they relate to the acts and deeds of this deponent are true of his knowledge, and so far as the same relate to the acts and deeds of any other person or persons this deponent believes them to be true.

JOHN CALVIN SMITH.

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Sworn and subscribed before }  
me, at Jersey City, this 2d }  
day of July, 1863. }

EDGAR B. WAKEMAN,  
*Supreme Court Com.*

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CANCELED.

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## IN CHANCERY OF NEW JERSEY.

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Between

RICHARD M. BENT and ALS,

*Complainants,*

and

JOHN CALVIN SMITH and ALS,

*Defendants.*

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Examinations, etc., of witnesses taken in the above cause, on the part of the complainants, before Washington B. Williams, Esq., Examiner, at his office in Jersey City, on the            day of            A. D. 1863, at 10 A.M., in presence of Robert Gilchrist, Jr., Esq., for complainants, and of Isaac W. Scudder, Esq., for defendants, upon due notice which is admitted.

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By consent of parties, the examination was adjourned unto

By consent of parties, further adjourned unto December 16th, 1863, at 10 A.M., at which time the parties, by their aforesaid counsel, appeared.

Jane Bent, a witness for complainants, being duly sworn, deposes and says:

I live at No. 311 Fourth Street, New York, with my daughter, Mrs. Reid.

Richard Bent, my husband, has been dead 12 years last January.

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Q. 1. Do you know the premises in question in this suit, and where are they situated, and did you ever live upon them, and when?

A. I do know them. They are situated between Bull's Ferry and Fort Lee, on the banks of the river, in New Jersey. I lived upon them. I entered upon them in 1848 and lived there till 1851.

Q. 2. Did you live there the whole of each year while you were there, or what part of each year, and what did you do for a living on the premises?

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A. I did not. The first year I lived there altogether. The other two years I was down in the city of New York in the winter. We raised something on the premises and kept some boarders in the summer, and my husband was alive and working, and we did well enough for a living.

Q. 3. What did your husband do when he was alive?

10 A. He sold tea, coffee, and dry-goods.

Q. 4. How did he carry on business, and where, from 1848 to 1851?

A. In Elm Street, New York City, the first two years, and in Jersey Street the rest of the time until he died. He peddled the tea and coffee and carried it about with a horse and wagon.

Q. 5. Do you know whether he served John Calvin Smith, the defendant, with tea and coffee and dry-goods?

20 A. He served him with furniture and carpets, and tea and coffee.

Q. 6. How long?

A. For years.

Q. 7. Did Smith owe your husband any money at the time of his decease?

A. Yes, Sir.

Q. 8. About how much?

30 A. He (my husband) told me it was above a hundred dollars, the night before he took sick; a good bit above a hundred, he said, and likewise that he couldn't get any money from him—that, of all men, he was the worst to get money from—that he hadn't had any for four years.

(Answer objected to.)

Q. 9. Who did Smith marry?

A. Christiana Rae, my daughter—not my husband's daughter.

Q. 10. Who did your husband go into possession of this property under?

40 A. Peter Westervelt.



Q. 11. Where did your husband die, and on what date?

A. He died in Jersey Street, New York, on the 30th January, 1851.

Q. 12. In his own apartments or elsewhere?

A. In his own.

Q. 13. Where did Smith live then?

A. In Bleecker Street, N. Y.

Q. 14. Where was the funeral, and when?

A. At Mr. Smith's house, February 1st. 10

Q. 15. What was the last day or month, as near as you can state, on which, before your husband's death, you were in possession of the premises in question?

A. In October previous.

Q. 16. When you left there, where did you go to live?

A. To my husband's apartments in Jersey Street.

Q. 17. Did you stay there till his death?

A. Yes, sir.

Q. 18. Where were you staying at and after the funeral? 20

A. I was in Mr. Smith's house. Mrs. Reid boarded there, and I was in her room there for some time, and then I was for a time at Morrissiana, at my daughter's who married Spencer H. Brown, a surgeon in the navy.

Q. 19. When you were not living at the premises in question, where did you generally stay?

A. I spent some time at Mrs. Smith's house sewing, and I always stayed at my own house with my husband when my daughters would let me, but they often kept me with them—Mrs. Smith and Mrs. Reid. 30

Q. 20. After your husband's death, when did you first go on the premises at Tillietudlum?

A. It was the latter part of March, I think, in 1851.

Q. 21. Did you go alone?

A. My old servant girl went with me. When I first went up to see the place after his death I went 49

with my son Richard, and when I went to live there the servant girl went with me.

Q. 22. How old was Richard then?

A. In his 21st year, I believe.

Q. 23. How did you go with Richard?

A. In the Fort Lee boat.

Q. 24. State what happened on that journey to the place by you and Richard, and what happened until you got back to New York?

A. It was on a Sunday that I went, in March, 1851. I did not expect to see Mr. Smith there, but he did come there that day, and brought a man with him by the name of Wilson. I was sitting in the kitchen in the house on the place, my son and me, and I saw Mr. Smith and Mr. Wilson, through the window, looking at the house and viewing the place all over. I was afraid Mr. Smith was going to take my place from me without any concession to me, and I ran out and asked him if he was coming up here, that I wanted an acre of the land. He said, Yes, and I walked down with him and showed him the place I wanted—50 feet fronting the water on the south side. No more passed. I don't recollect whether I went home that night or stayed in the house.

Q. 25. From whose house did you go, and where were you staying at this time?

A. I was staying at Mr. Smith's, and went from his house.

Q. 26. When did you next go to the place?

A. I don't recollect the date of going, but it was near the end of March, 1851, to the best of my recollection.

Q. 27. From where did you go, with whom, and what happened?

A. I went from Mr. Smith's house and took the old servant who had lived with me, and was then living at Mr. Smith's. I don't recollect anything particular happening, except that I was not very well and she took care of me.

Q. 28. What did you go for, how did you go, and how long did you stay at the place?

A. I went to take possession of my house and keep it if I could. I went in the Fort Lee boat. I stayed there until the 3d day of May, 1851. The 1st of May I came down to the city, but went back at night.

Q. 29. Do you recollect what you came down to the city for?

A. I came down to see Mr. Smith, and see if I could get some satisfaction from him what he meant to do. He seemed to intend to move up there. I didn't know what he meant to do. He never spoke to me at all about anything, except the day he granted the acre, but sent word through his wife. 10

Q. 30. Before the 1st of May, when you went down to see Smith, what word had he sent to you through his wife?

(Objected to.)

A. She spoke to me in March, before I spoke to Mr. Smith about the acre. She called me in her room and told me that her husband had desired her to tell me that he would give me \$500 for the place at Tillietudlum. I answered and said that was nonsense, we had paid a thousand on it, and had three years' hard labor making it what it was, and with the rise of property it was worth double what it was when we took it. She said her husband had said he would give me a right of home besides that, and dwelt considerably on the right of home; that I would have no care and no trouble, and it would be better for me, and that she knew I loved to live there. But I didn't grant it. I was very full, and couldn't answer. 20 30

Q. 31. Is that all you recollect that was said prior to your conversation with Smith about the acre?

A. It is all that was said to me. There were some rumors about the house that they were going to try it for a year.

Q. 32. Who?

A. Mr. Smith and family. 40

Q. 33. In your conversation with Smith in March, on the occasion when the acre was pointed out, was the right of home spoken of?

A. No, sir. His wife spoke of it.

Q. 34. On the 1st of May, when you came down, what happened?

A. I went to the house of Mr. Smith to see him, but he wasn't home. I stayed a little while and went out upon some business of my own. I came back again, and he was not home. I went up in the Fort Lee boat at night to my place, and Mr. Smith and his wife were on the boat. We walked up to the house together, but I had no opportunity to speak to him on the boat or on the way, because neighbors were present. When I went there his furniture and his servant girl were there; they had moved that day. I never saw the furniture go into the house, for I wasn't there; I was in New York. The children came the night before, on the 30th April. There were five children, and I left them in the house in the morning.

Q. 35. Had the children said anything to you?

(Objected to).

A. They told me that their father and mother were coming up there to-morrow, and that was what took me down to New York to see Mr. Smith.

Q. 36. What took place when you all three got to the house?

A. I don't recollect of anything taking place, except I was very tired and went right to bed.

Q. 37. Did they stay all night?

A. Yes, sir, all night and every night since.

Q. 38. Did you have any conversation with Smith before or on the 3d of May?

A. No, sir; it was impossible to get anything from him. He avoided me in every way.

Q. 39. By what means did he avoid you?

A. Why, not giving me an opportunity to speak to him, leaving the room and always busy, and a forbid-

ding manner; I was so forlorn then I was glad to get away on the 3d.

Q. 40. Where did you go on the 3d of May?

A. To my daughter, Mrs. Reid, in Bleecker street.

Q. 41. Did you have any conversation with Smith's wife before you left on the 3d?

(Objected to).

A. Not much concerning the place, only repeating that he would make it good as to my right of home and my \$500. The acre of land she never admitted. 10

Q. 42. Where have you lived since May 3d, 1851?

A. Alternately with my two daughters, Mrs. Reid and Mrs. Brown; sometimes visiting Mr. Smith, or staying with him when his family was sick, and taking care of his wife.

Q. 43. How much of the year, how many months did you reside on the place during the years 1848, 1849 and 1850? 20

A. In 1848 I resided all the year; in 1849 I left in November and came back in March; the first that I left the place at all was in 1849 in November. I was persuaded to leave it by my children and my husband, for he would stay in the city and did not want to stay there alone.

Q. 44. What time of year would your boarders leave you?

A. Some would leave in September and some would stay till October. 30

Q. 45. What time in 1850 did you return to the place?

A. In March.

Q. 46. How long did you stay?

A. Till October, 1850; that was the time I met Mr. Westervelt in the boat.

Q. 47. How long did the boarders stay that year?

A. They left in September that year.

Q. 48. What happened between you and Mr. Westervelt?

(Objected to). 40

A. We talked together, and I told him I was going down to the city for the winter. He wanted to know where he would see Mr. Bent to get his interest-money. I told him I did not know where he would see him, but I asked him if he knew where Mr. Smith's office or place of business was; he said no, and I gave him the direction, and told him that either Mr. Bent or myself would call and meet him that day, and asked  
 10 him at what time. He told me 3 o'clock; I went myself, Mr. Bent was not very well that day; Mr. Westervelt came in just as I came in; I introduced him to Mr. Smith, and told Mr. Smith what business I had come for, to pay the interest; I paid Mr. Westervelt the money, and he sat down and wrote a receipt to me in my receipt-book.

Q. 49. Up to what time did that pay Mr. Westervelt's rent?

(Objected to).

20 A. Up to the 1st of April, 1851.

Q. 50. Where is that receipt-book?

A. That was lost with the rest of the books and papers; all were lost.

Q. 51. Do you recollect the amount you paid him?

A. I think it was \$116 and some cents; I often paid it; I paid it in 1850 in my own house; Mr. Westervelt called there for it; when Mr. Bent was in he paid it, and when I was in I paid it; this was the first time  
 30 he ever called any where else.

Q. 52. In what part of 1850 was it that you paid it at your own house?

A. Well, I can't recollect exactly the date, but it was about the first of April; we always paid it then; the first of April and the first of October; from the first to the tenth.

Q. 53. Did Mr. Smith ever give you the acre he promised?

40 A. No, sir; he wouldn't give me the acre, but he would give me the value he said.

Q. 54. How much did he give you as the value?

A. I don't know; he paid my son Robert Rac, \$700; that is all I ever got.

Q. 55. Did he ever give you anything in lieu of your right of home?

A. No, sir.

Q. 56. Are you the widow of Richard Bent, deceased; were you married to him?

A. Yes, sir. 10

Q. 57. Name his children?

A. Jane Reid, Ellen Brown, wife of Spencer H. Brown, and Richard.

Q. 58. They are living?

A. All living.

Q. 59. Did you ever see the lease from Westervelt to Richard Bent, and the assignment of it to Smith, and when did you see it, and how often, and in whose hands, and where?

A. I saw it once, I had it in my hand, I did not read it; it was I think the last of November or first of December, 1850; I brought it from Mr. Bent, my husband, to Mr. Smith. 20

Q. 60. How came you to take it to Smith, and what was the object of doing so?

(Objected to, as the papers speak for themselves).

A. Mrs. Smith kept worrying and telling me that her husband was surprised at father's keeping the papers; he thought, she said, it was very strange that father would mistrust them and not let him keep the papers himself; I said I knew nothing about it, but I would ask father, and I did; father seemed surprised that he should want the papers, but still he said he had every confidence in Mr. Smith and everything would be right, and he would take care of me if anything happened to him, and to take the papers to him; I carried them to Mr. Smith's house; he was just going out, and put them into his over coat pocket and smiled, rather a strange smile; I thought, or 30 40

rather father thought, he was glad we were willing to trust him; it was rather a strange smile.

Q. 61. Do you recollect in the month of May, 1850, or about that time, of seeing Smith after he had come from Hackensack, and if so, what happened?

10 A. Yes; he told me he had been up to Hackensack to record them papers; I asked what papers; he said the papers in relation to this property, and that father had taken a notion to assign it over to him for the benefit of the family, to keep it for the benefit of the family.

(Answer objected to, as the papers speak for themselves).

That was all; he went down in the boat again to New York; this was at Tillietudlum; he called as he was going back from recording the papers, and said he had come up in the morning, and was going back again in the 12 o'clock boat.

20 Q. 62. After this conversation in May, 1850, it was, or was it, that you delivered the lease and assignment to Smith when he put it in his coat pocket?

A. Yes, sir; the same year, in November or the beginning of December.

Q. 63. The conversation with Mrs. Smith about father's keeping the papers, must have been after the conversation with Smith when he came from Hackensack?

30 (Objected to as leading, and withdrawn).

Q. 64. Was the conversation with Mrs. Smith, complaining that father wouldn't trust Calvin with the papers, after or before the conversation with Smith when he came from Hackensack?

A. After; either in November or December of the same year.

Q. 65. Who gave you the papers to give to Calvin?

A. Mr. Bent; he took them out of his desk and gave them to me.

40 Q. 66. How and when and under what circum-



stances, and where were the papers when your husband's papers were lost?

A. His papers and books were all in his room where he died; I saw them there when he was sick, and when he died I was taken away to Mr. Smith's house on Thursday morning, and he was buried on Saturday, and I didn't go to the house to his apartments till the Monday following; when I went there on Monday the day books and ledger and every single paper were gone; he had a good deal of money in his books, and I was very much alarmed and distressed when I saw they were gone, for I could not collect a single debt then; I didn't know anything about them. 10

Q. 67. What day did he die?

A. Thursday morning.

Q. 68. How long was he sick?

A. Ten days; he did business on the second Monday previous, and came home very tired, and never rose again; he spoke to me a good deal that evening; I think he had a presentiment he was going to die for some time before he took sick; he couldn't speak much after he was sick. 20

Q. 69. Were you with him every day during his illness?

A. Every day and every night. I never left him.

Q. 70. Were the books in his apartments, and did you see them there while he was sick?

A. Yes, sir.

Q. 71. Who could have gone into the apartments after his death? 30

A. I don't know. I left the house very soon after my husband died. The undertakers came, and took him to Mr. Smith's, and I was not in the house again till Monday. But whether the books were there then when he was taken away I cannot say. I was too much taken up with sickness to notice.

Q. 72. Who were in and out of the apartments during his illness?

A. No one but the family; no strangers. Mrs. Smith 40

and her family, but not Mr. Smith, for he was sick. Mrs. Reid and her husband, and Mrs. Brown and her husband, were there, and Richard and Robert Rae; but none of his family. That's all that I know with the exception of one or two strangers that came once to see him—that was Mr. and Mrs. Laurie. I am Scotch. My husband was an Englishman.

10 Q. 73. Do you believe the books and papers were in the apartments of your husband when he died?

(Question objected to.)

A. I am not sure at all. I thought they were. I took no notice when I left the house. He was just dead, and I was in great trouble.

Q. 74. Question repeated.

A. I thought they were. When I found they were gone, I was in great trouble; for he told me but little of his business, but he always told me that when any thing happened to him, I would find it all straight in his books, for he was a great man for writing.

20 Q. 75. Did you make any and what efforts to find your husband's books and papers, or any inquiries about them of any members of the family, and of which members?

A. I made a great deal of inquiry, and talked very distressedly about them to all my family.

Q. 76. Had your husband's children or Mr. and Mrs. Laurie any interest that the books and papers should be lost?

30 (Objected to.)

A. No, sir. It was to their loss; because I lost my money when I lost my books.

Q. 77. Had Smith any interest?

(Objected to.)

A. No farther than I could'nt get the money from him. I had nothing to show. And, from my husband's conversation, I knew he did owe him, often and often repeated.

(Answer objected to.)

40 Q. 78. During the years 1849, 1850, and to Feb-

ruary, 1851, did John Calvin Smith, the defendant, ever pretend to any right, title or interest in the property which your husband leased from Westervelt, or his wife either?

(Objected to.)

A. Never; nor after his death till 1852, when he got the deed from Westervelt.

Q. 79. Did you or your husband, or any one on his behalf, ever pay any rent to Smith? 10

A. Rent to Mr. Smith? No; we never paid no rent.

Q. 80. Did he or his wife ever claim any from you or your husband?

A. No.

Q. 81. Was he, John Calvin Smith, ever in possession of the premises during your husband's life?

A. No.

Q. 82. Do you recollect on the Monday following your husband's death any conversation about the key of your husband's apartments being mislaid, and where was that conversation? 20

A. Yes. There was conversation in Mrs. Reed's room, in Mrs. Smith's house. I was there, and heard the conversation, and then I heard again that they had found it on the back parlor mantelpiece.

(Answer objected to.)

Q. 83. Where has Richard been since your husband's death? 30

A. He has been South. He left New York in 1855, I think.

Q. 84. Where was he in the South?

A. First he was in Kentucky, then in Charleston; and he came home before the war in January, 1861.

Q. 85. What was put on the premises by you and your husband?

A. My husband built an addition of four rooms; and it was in bad order, and we had the fences and walls and the ploughing of the land to do, and the 40

gates in bad order, and a great deal of repairing to do. We papered and painted the house.

Q. 86. What personal property was on the place at your husband's death?

10 A. We had hay and straw, and manure and fuel, and farming utensils. We sold the cow in 1850 in the fall, so as not to be obliged to keep a man on the place. Before that we had to keep a man, through the winter of 1849. In the fall of 1850 we locked up the house, and sold the cattle.

Q. 87. Do you recollect any conversation between you, Calvin, and his wife, in which Calvin said he would give the value of the acre, for he had promised Robert, your son, and what was that conversation?

20 A. Previous to that conversation there was a cause. When I first went down to Mrs. Reid's, when I left on the 3d of May, and went to Mrs. Reid's, I wasn't very well for some time, and I sent for Mr. Smith to come and speak to me several times. He came between five and six o'clock one evening in June, 1851. I am not sure of the month, but I am very sure of the year. That was the first conversation I had with Mr. Smith about it. Then I told him how his wife had proposed to me to give \$500 and a right of home, but I had not accepted it.

(Objected to.)

30 It was all my dependence that place, now that I had lost the books, and I was put out of position and possession, and it would not do me any good that trifle. He said he could not afford to give me any more. I insisted upon keeping the place then myself. I spoke as if I had a right to keep the place, and I demanded it, and wished it. I didn't know nothing to the contrary. Mr. Smith said, and who shall stand for my responsibility? I said, I didn't know you had any responsibility. I didn't hear exactly what he said, but heard the word responsibility, and was surprised, for  
40 I didn't know he had any responsibility about it. I

said he had paid Mr. Westervelt with the money that he owed my husband; but if there was anything else, I would pay him, or find security. Likewise I would satisfy him for what he had put in the house for his own pleasure. The house suited me very well, but he had it fixed up for his own convenience, and I even offered to pay that. He did not answer me, and I got angry, and told him that it was cruelty and a robbery to take my place from me in this manner, when I had nothing else to live on. He got up, and said he would be too late for the boat, and left, and said he would come again; but he did not come again, and I got my son Robert Rae to go to his place of business, and see what he meant to do. 10

(Objected to.)

Robert went, and came and told me that Mr. Smith would do this and nothing else. He would give me \$500 and my right of home, which was worth \$500 more, but he would not give me an acre of land—he would not lop off an acre and spoil the sale of the place, by building a piano-factory and a hut on it. That was what Robert told me Mr. Smith said. 20

This was so harsh a message that I went up myself the next day, thinking that Mr. Smith and Mrs. Smith together would give me more satisfaction.

Mr. Smith didn't say much. I saw him, but he didn't say much to me. Mrs. Smith said a great deal. She asked me who would pay their expenses that they had been at to repair the house to make it fit for them to live in. I answered, it suited me; but I would pay them, or find security for the payment. She said I was very well off, and they would give no acre of land, nor the price of it neither. 30

Mr. Smith said, yes; I will give the value of it, for I promised it to Robert.

There was a good deal of conversation at the time, but it amounted to nothing.

(Answer objected to as hearsay and incompetent.) 40

Q. 88. Was anything said which of them it was that was to blame for going on the place?

(Objected to.)

A. Mrs. Smith said she didn't want to go on the place, and was very sorry she had come to it, and wished she had not. I said that she did ~~not~~ want to come to the place, and had played the game to get them there, or helped. Mr. Smith stopped me then, and said, no, she did not want to come to the place; it was me that wanted to come.

Q. 89. Did you consult a lawyer some time in 1852?

A. I did; both in 1851 and 1852. The one in 1851 told me not to be the least uneasy; that Mr. Smith could not keep my place. The one in 1852 told me I must go up and take possession of my right of home. They were both New York lawyers. He told me to go up and take possession, as I did not want any rigor with my children; and if they did not grant it with kindness, I should come back, and he would make them give it up to me. This was in the month of June, 1852, and I went up. I was there about a week or two, when Mrs. Smith told me that Mr. Smith had paid a thousand dollars, and gotten the deed. That settled it. I got sick after that, and left the house as soon as I got able to walk.

Q. 90. Did she say anything to you as to what Calvin had said about your not being able to keep the place?

(Objected to.)

A. I was very much distressed about their having done this. And she says, what are you worrying about, mother? Calvin says you can't keep the place.

Q. 101. What was your husband's age when he died, and what is your age?

A. He was 79 years old in October before he died, and I am in my 73d year; I was 72 the last day of September.

Adjoined to December 17, 1863, 10 A. M.

Being cross-examined, she says :

x 1. What is the name of the old servant girl who went with you in March, 1851, to Tillietudlum ?

A. Mary ; but I don't recollect her last name.

x 2. How long did she remain with you ?

A. I do not recollect, but it was not long—a day or two ; she was living with Mrs. Smith, and went back there ; she had lived with me all the previous summer in the country, and came down with me to the city to Mrs. Smith's, who took her. 10

x 3. From what place did you go when you went to Tillietudlum ?

A. From the city of New York, from Mr. Smith's house.

x 4. At what time ?

A. To the best of my recollection, I think it was the end of March ; but I am not sure whether it was the end of March or the beginning of April. 20

x 5. Where did Richard live at that time ?

A. He boarded with Mrs. Smith.

x 6. How long previous to that time had Richard boarded with Mrs. Smith ?

A. I believe 3 years or more.

x 7. Was all Smith's furniture moved up to Tillietudlum in one day ?

A. I do not know ; I never saw any furniture moved up there of Mr. Smith's ; I was in the city when it was moved. 30

x 8. What was the first day in 1851 when you saw this furniture at Tillietudlum ?

A. The first of May, on Thursday.

x 9. At what time did you go to Tillietudlum next before the day you saw the furniture there ?

A. That was the time I went up with the girl.

x 10. What time was that ?

A. The last of March or first of April, or thereabouts.

x 11. How long did you remain at that time at Tillietudlum ? 40

A. Until the 3d of May, going down to the city on the 1st.

x 12. How long did Richard remain with you?

A. He didn't remain with me at all; he was an apprentice, and couldn't stay with me.

x 13. When you went to Tillietudlum on the last of March or first of April, 1851, was Smith there, or did he come there while you were there?

10

A. He came there when I was there, but not to see me; he came to see the men he sent to work there.

x 14. How long before Smith came had he sent the man to work there?

A. I don't recollect exactly the time, but there was more than one man; there was 3 or 4 men; a day or two.

x 15. What work did the men do, and how long were they engaged in work after you first reached Tillietudlum in 1851?

20

A. The work that they did was taking out a closet in one side of the room, and putting it at the other side of the fire-place, and putting a window in the place where the closet came out; I had no notice of their coming, and they took the closet down on my carpets and furniture without giving me time to remove them, and told me they were to stay there and sleep there. Well, I had plenty of beds, and they did. I don't recollect exactly the time they were engaged, but I think it must have been two weeks; one week or two weeks, or thereabouts. One of them was there all the time—Mr. Wilson.

30

x 16. When the men did that work were you aware that Smith intended to move up there?

A. Well, I had a surmise of it, but I had no perfect knowledge; actions seemed like it.

x 17. Had not Smith or his wife, previous to your seeing the men there, told you of the intention to move up there?

40

A. Mr. Smith never spoke to me on the subject; Mrs. Smith offered me \$500 and my right of home,



but I did not grant it; that is all there was about it; I heard it rumored that they were going up there to try it for a year; Mrs. Smith did not like the country, but that they would try it a year; it was very unsatisfactory to me.

x 18. How long before your seeing the men there had Mrs. Smith made you this offer?

A. In March she made me the offer, and they were there in April; I think between the beginning and middle of March, and the men came there early in April, I think. 10

x 19. Where were you when the offer was made and the talk took place about Smith and his family trying it for a year?

A. I was in Mr. Smith's house; Mrs. Smith called me into her bedroom and made me the offer alone; I was alone with her; and I was up in my daughter, Mrs. Reid's room—she boarded with Mrs. Smith—and I was up in her room when I heard the rumor of Mr. Smith's going and trying it for a year, amongst the family. 20

x 20. Were you then, when you heard of the intention of Smith and his family to move to Tillietudlum, aware of the assignment of the lease?

A. I was aware that he had the assignment, but I had no thought that it had any weight upon his going to Tillietudlum; a trust assignment is nothing to be weighed upon; I looked upon it as a protection to me; I looked upon Mr. Smith as my protector, to take care of me through that assignment, and take care of the property for me; I had such true faith and confidence in Mr. Smith that I did not think there was anything in what he could do that would be the least harm to me. 30

(Answer objected to as irresponsible, &c.)

x 21. When did you first see the assignment?

A. I saw them rolled up in a piece of yellow paper like this, and had them in my hand when I gave them to Mr. Smith; carried them to him at the request of 40

his wife; she was angry because he wasn't trusted with them, and I got them from father and carried them to Mr. Smith, and that is all I ever saw of them.

x 22. When was it you carried them to Mr. Smith?

A. In November or December, 1850.

x 23. When did you next see the assignment?

A. I never saw it.

x 24. Was it before or after the last date spoken of, when you handed the assignment to Smith, that Smith went to have it recorded?

10

A. It was after; it was in May, 1850, that he went to have it recorded, and it was in November or December, 1850, that I carried it to him.

x 25. From whom did Smith get the assignment when he carried it to be recorded?

A. I don't know; he came to my house that day and informed me that he had been to get it recorded, for the first time that I knew anything about the assignment.

20

x 26. Your husband had not then, previously to the May last spoken of, 1850, told you he had made the assignment?

A. No, sir; and when I asked him why—

(*Defendant's Counsel.*—Never mind that.)

x 27. Did you pay a thousand dollars to Westervelt?

A. No.

x 28. Did you pay a thousand dollars for the place to any one?

30

A. No; my husband purchased the place according to the contract; there was no money; Smith paid that; Smith paid the thousand dollars when he got the deed, in 1852; there was no money required to be paid to Westervelt till 1855; that was the contract.

x 29. When did you receive the \$700 from Smith?

A. He paid my son, Robert Rae, that money, that \$700, either in 1853 or 1854, I am not sure which, but Robert has the note of it; he gave a receipt for it;

40

he told me so.

x 30. Was the money applied for your benefit?

A. My son, Robert Rae, kept it, and gave me good interest for it.

x 31. Where were your children living at the time the \$700 were paid?

A. Mr. Smith and family were living at Tillietudlum, on my place, as I considered it always; Mrs. Reid was living in Wooster street; Mrs. Brown was in Morrissiana, I think, and my son Richard was boarding with Mrs. Reid, and my son Robert Rae had his dwelling house in Spring street. 10

x 32. Did you give any part of this money to Richard?

A. Yes.

x 33. Who paid the rent to Westervelt in 1848, and where was it paid?

A. I think my husband paid that in Elm street, where his place of business was, and where I lived; I was not present.

x 34. How many payments were made in 1848? 20

A. Two.

x 35. Were you present at either of these payments?

A. The last one I was present.

x 36. State the time of payment, the amount, and who present?

A. From the 1st to the 10th of October was always the time of Mr. Westervelt's coming for his payment in the fall, and from the 1st to the 10th of April in the spring; that was the time; I don't recollect who was present correctly, but I think my daughter, Mrs. Brown, was present; the amount is \$116 and some cents, I think, the payment; it was at my house, our own house, at Tillietudlum. 30

x 37. Where, when, and who were present when the payment was made for rent in the spring of 1849?

A. I don't recollect who was present or whether anybody was present. I know I paid Mr. Westervelt myself that year, I think.

x 38. The same for the fall of 1849? 40

A. As near as I can recollect it was in the same way and in the same room. It was at Tillietudlum.

x 39. Where, when and who present when rent was paid in the spring of 1850?

A. That was in the same place. I forget whether it was myself or husband.

x 40. Where, when, and who present, and by whom was rent paid in the fall of 1850?

10 A. At Mr. Smith's office, paid by myself. Mr. Smith and some other men in the office were present. I don't know who.

x 41. Where was Smith's office at that time?

A. In Broadway near Pine, I think; I am not sure.

x 42. Did you pay any rent after the fall of 1850?

A. No, sir; Mr. Westervelt never called on me. I waited, thinking every day he would come, but he never called.

x 43. How much did you pay in the fall of 1850?

A. Every time it was the same interest.

20 x 44. Is Mr. Westervelt alive now?

A. No, sir.

x 45. Were receipts given you for the rent?

A. Yes, sir, in my receipt book.

x 46. How did the lease get back from Hackensack after it was recorded?

A. It was carried back by Mr. Smith.

x 47. Did you see Mr. Smith when he brought the lease back?

A. Yes, sir.

30 x 48. When he brought the lease and assignment back from Hackensack, what did he do with it?

A. He carried it away to New York, and I suppose gave it to father, from his wanting of it back again in November.

x 49. What month was it Smith brought the lease and assignment back from Hackensack after it was recorded?

40 A. I think it was the month of May, in the year 1850.

x 50. He took it there in the month of May, 1850, to be recorded, and brought it back the same month, did he?

A. I don't know when he took it. He told me when he called in the month of May in my house that he had been up to record it that morning.

x 51. Did he bring it back the same morning?

A. Yes, sir, he told me so. I don't know when he took it.

x 52. Where had Smith come from when you saw him and he told you he took it? 10

A. He came and told me that he had been up to Hackensack to get this recorded; that he had gone with the early boat and had come back to go to New York that day at 12 o'clock.

x 53. Was it then Smith brought the assignment back with him?

A. He said so; he had papers in his hands; I did not read them; I never had them in my hands. I gave them him back again. 20

x 54. When after that did you first see the assignment?

A. I carried it to Mr. Smith in November or December of the same year from my husband by request of Mrs. Smith, saying that her husband wished for it.

x 55. From what place did you carry the assignment, and to what place to give it to Mr. Smith?

A. My husband took the papers out of his desk in his own apartment in Jersey street, New York, and gave them to me to carry them to Mr. Smith, residing in Bleecker street; I took them there and gave them to Mr. Smith. 30

x 56. When your husband was sick of his last illness, where did Richard reside?

A. He was boarding with Mr. Smith.

x 57. How long before the death of your husband was Mr. Smith ill in his house?

A. I don't know.

x 58. How long after? 40

A. I don't know.

x 59. Did Richard visit you in Jersey street during the last illness of your husband ?

A. Yes, sir, as often as he could.

x 60. Did he continue so to visit until the death of your husband and until the body was taken around to Smith's house ?

A. He came to see his father as often as he could, always at all times.

10 x 61. How many families occupied the house in Jersey street ?

A. I don't know ; we had an exclusive floor, and had nothing to do with the neighbors ; we went in at one door and they went in at another. There was a front door in Jersey street and another in Marion street. I never saw any of the neighbors, only the lady that rented the rooms.

x 62. Which floor did you occupy ?

A. The basement floor.

20 x 63. How many rooms ?

A. Three.

x 64. Did you not sell to Smith the loose property at Tillietudlum after he went there ?

30 A. He used my property when he first went, and I made a bill out when I saw it used, for my utensils, hay, straw and manure, fuel, farming and milk utensils, as far as I could recollect ; I scraped up a bill, presented it to Mr. Smith through my son, Robert Rae ; it was some time before Robert could get an acceptance of the bill ; he told me that Mr. Smith cavilled with him about the prices ; but I did not get the payment till 1852 ; some time in the year 1852, Mrs. Smith came and paid me herself ; I don't recollect the time in the year, but it was after Smith got the deed that she paid me.

x 65. Did your husband leave any will ?

A. No, sir.

40 x 66. Did anybody get from the Surrogate letters of administration ?

A. I don't know ; I didn't.

x 67. Did you ever hand to Smith the key of the front door of the house at Tillietudlum ?

A. When and where ? not that I recollect of.

x 68. At any time ?

A. No, sir ; not that I recollect of ; something might bring it to my memory if I did it, but I don't recollect anything of the kind.

x 69. Did you see Smith's goods packed up in his house before they moved to Tillietudlum ? 10

A. I saw on the 1st of May when I went there they were busy packing. But I didn't stay long ; Mr. Smith was out.

x 70. Was Richard there at that time ?

A. I didn't see him, but I heard that he was busy helping Mrs. Reid move ; she was moving next door from where Smith's house was.

x 71. She moved her articles from Smith's house to the next door ?

A. Yes, sir. 20

x 72. Was not that because Smith was breaking up housekeeping in Bleecker street ?

A. I don't know what the cause was.

x 73. What was the name of the lawyer you went to in 1851 for advice ?

A. Mr. Bronson.

x 74. What was the name of the lawyer you went to for advice in 1852 ?

A. I don't know ; I went looking for Mr. Bronson again and he had moved, and I went into some office in the building and happened to speak of my affair, and he gave me the advice I mentioned ; I couldn't find Mr. Bronson then. 30

x 75. Before your husband died, did he want to move away from and not live at Tillietudlum ?

A. No, sir ; he was always fond of living at Tillietudlum ; he loved the place ; the night previous to his last sickness he begged of me never to leave my home, but to live at Tillietudlum even in the winter. 40

(Answer objected to by defendant as irresponsible.)

x 76. Is Spencer H. Brown now a surgeon in the navy ?

A. Yes, sir, as far as I know, he is away in the navy.

x 77. What books did your husband have ?

10 A. He had a book for every day in the week that he carried with him when he went out, and he had a book of ordinary account-book size, like a ledger, where he entered his accounts in when he came home ; he had  
 20 a good many papers in the drawers and desk—loose papers ; he had some few papers in his hat that night, too, of memoranda. They were all gone too ; he wrote in his account book that night ; he told me what debts he had due him, and how recently they would be got ; he had \$400 due him in March, he said, that he was sure of, and more in the summer ; I gave him the money we sold the cattle for that fall to go in the business ; he did a great deal of business that year, but it was mostly cash ; he paid cash and trusted ; he told me I would have money enough to do anything I wanted that summer.

(Answer objected to as irresponsible.)

x 78. After the death of your husband, did not you examine some of his papers in Mrs. Reid's room ?

A. No, sir, I never saw any papers ; there were none in the apartment when I went there ; some of my own papers I might, but there was none of my husband's.

30 x 79. Did you not examine and have in your possession at Smith's house some of your husband's papers after his death ?

A. No, sir.

x 80. Was not your husband indebted to Ann Lax ?

A. No, sir ; I know her, but he was not indebted to her. He paid her all he owed her years before that.



*Re-examined in chief:*

Q. 92. You stated in answer to the 30th direct question, that you told Mrs. Smith you had paid a thousand dollars on the place, and in reply to a cross-question, you said that you had not paid a thousand dollars to Westervelt or any one else for the place. What did you mean by saying you had paid a thousand dollars on it?

A. I had expended a thousand dollars by building and repairing; that is what I said to her, and she knew it very well. 10

Q. 93. Has Richard paid you interest on the money you let him have out of that which you got of Smith by Robert Rea, and how much did he pay and does he pay yearly?

A. I gave Richard that money to pay me a certain sum yearly, and he paid me \$120 yearly for that trifle, \$10 a month; the reason I took it from Robert was that Richard was able to pay me more money; Robert had a family. 20

\* Q. 94. Were the moneys you paid to Westervelt from time to time in advance or for back rent, and how much in advance?

A. The money was paid six months in advance, from the first, according to contract, and was always paid so.

Q. 95. Did Mrs. Smith say why her husband wished the lease and assignment?

(Question objected to, on the ground that Mrs. Smith is not a competent witness, and that the papers should speak for themselves.) 30

A. Yes; she said Mr. Smith was very angry and worried at being not trusted with the papers, and if he didn't get trusted he didn't care anything about it; she said a good deal; I said I didn't understand it and would ask father.

Q. 96. Did she say anything that Calvin had said about his feelings?

(Objected to, as before.)

A. Yes; she said it hurt his feelings not to be trusted with the papers.

Q. 97. Did you speak to your husband about it, and how soon after the conversation you had with Calvin when he came from Hackensack, and what was the conversation between you and your husband?

10 (Question objected to, that the conversation is incompetent, and that the papers must speak for themselves.)

A. The first time he came up there, whether it was that night or the next I don't know, I spoke to him and told him that Mr. Smith had been there to see me, and had told me that he had got an assignment from him, and that he had been up recording it, and I asked my husband why he did so; his answer was, that he was getting very old and failing, and that Calvin was just and would take care of me until Richard was of age if anything should happen; for if  
20 he lived till Richard was of age, he would transfer that lease and assignment to him; I didn't like it, and he said — he checked me for being worried, and said Mr. Smith would be a good friend to me if anything happened him, and would do right by me; the subject dropped then I believe.

Q. 98. Did he say anything about the assignments being in trust, and in trust for whom?

(Objected to, as before.)

A. Oh, yes, he always said it was a trust. He said  
30 it was an assignment in trust to Mr. Smith for the benefit of me and the children—that's what he said, for the benefit of you and the children.

Q. 99. Before your husband's death, did Calvin ever let you have a hundred dollars, and when, and what for, and what became of it, and how did he come to let you have it?

A. I happened to be in Mr. Smith's house before I  
went up in the country in the year 1850 in the spring,

and I was speaking about this and that, and I happened to say that I hoped father would be ready with my interest money this year, because Mr. Westervelt always called up there for it. I was in Mr. Smith's house that night, and in the morning, when I was going up to Tillietudlum, Mr. Smith met me in the hall and gave me a hundred dollars. I refused it and told him I would not want it, for I knew father would send me up the money before I wanted it. He insisted on my taking it, and I was surprised, because he was not in the habit of doing such things. I took it, and told him I would use it if I needed it, but if not I would return it. I did not use it, and returned it. When my husband came up I told him of the generous act of Mr. Smith, and he said, Why did you send it back? He was very angry. I said, Why shouldn't I? He said, ~~James~~<sup>me</sup> Calvin owes me more than that, and I cannot get no money from him.

10

(Objected to.)

Q. 100. It is stated in the answer that your husband had a child in England by the name of Henry Bent. Did you ever hear your husband say anything about his children in England—whether they were dead or alive, who he heard from, and when and how old they were, when they died if they did die, and whether they left issue or were unmarried at the time of their deaths?

20

(Question objected to, as calling for hearsay and leading.)

A. When I was married to Mr. Bent he had two children living in England: one, a daughter, living in Liverpool, and one, a son, living in London, as he told me, and I saw letters from them. They had each sixty pounds a year settled on them. The daughter lived with Mr. Lee, who was a brother of her mother's, Mary Ann was her name. The son lived in London with his father's sister, Mrs. Watson.

30

The daughter, when about 18, took a sickness (con-

sumption), and was sent to London for change of air, to her aunt's, and died there. The son graduated for a surveyor, and got a commission to go to the East Indies, under the Queen, to survey there. That situation was got him through his father's brother, who was a paymaster to Her Majesty's troops in the East Indies. I read all the letters stating those things. The son's passage was paid, and he took a hasty cold, a hasty consumption, and died in six weeks, and never sailed—so they wrote us. It was a great grief to his father. Mrs. Smith knew well about it. Mrs. Smith was not married when the daughter died. I am not sure whether she was married or not when the son died. It was a great many years ago.

I don't know where these letters are; they are lost, I suppose. They were from Mr. Bent's sister, Mrs. Watson, and from his wife's brother, Mr. George Lee.

Q. 101. Did your husband state and talk of as true, in your presence, the facts you have stated in your last answer?

(Question objected to as hearsay, incompetent, and irrelevant.)

A. Yes, sir. I read the letters that brought the news of their death.

Q. 102. Did you understand from him that these children died unmarried?

(Question objected to as above.)

A. Yes, sir; and the girl was 18 and the boy 21.

Q. 103. Are Jane Reid, Ellen Brown, and Richard Bent the only children or issue of any deceased child that survived your husband, as far as you know and believe?

A. Yes, sir.

*Re-cross-examined:*

x 81. Did you, when you left Tillietndlum in the spring of 1851, leave any of your own furniture there, which was not sold, in a room of which you had the charge?

A. I had never sold any of my furniture at that time.

x 82. Did you have a room at Tillietudlum in which you locked up your furniture?

A. Not when I left there on the 3d of May. My furniture was all helter-skelter from the garret to the cellar. My carpets were, some of them, rolled up in the fall, and some of them were put up in that room that you speak of, and some of my mattresses, but not at that time. They were put in there in July, when I went up to have the interview with Mr. and Mrs. Smith, and then I took away a pier-table, a mahogany French bedstead, and a side-saddle of my daughter's, which her father gave her. I sold the pier-table and French bedstead, and they were the first things I sold. 10

x 83. How long did you keep charge of that room I referred to?

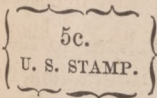
A. Not long. I locked it, and Mrs. Smith was offended at me shutting the door, and said if a fire came they might burn, for she would not take care of them. She thought it was horrid, my locking them up. It might have been a month or two months, I cannot say. 20

JANE BENT.

Subscribed and sworn to before me, at Jersey City, December 17th, 1863. }

WASHINGTON B. WILLIAMS,

*Master in Chancery.* 30



Adjourned to December 23d, 1863, at 10 A. M.

CHARLES S. BRONSON, a witness for complainants, being duly sworn, deposes and says :

I reside in the city of New York, in Canal street ; my office is in 25 West 10th street ; I am an attorney at law, and am about 54 years old.

Ques. 1. Did you know Richard Bent, deceased, in his lifetime ?

A. I did, well.

10 Q. 2. Do you know of his negotiating for a piece of land at Tillietudlum, and with whom and when, and were you in any way connected with it ?

A. I did know something about it ; he told me all about his negotiation ; I did not hear it, but he told me about it, and advised with me in regard to it ; it was with Peter Westervelt ; I think in 1849 ; it is so long since, I can't be positive about dates ; I remember this being the rough draft of the lease from Westervelt with the alterations—this which I hold.

(It is marked Exhibit C 1.)

20 Copy of Agreement written on <sup>the 3d page</sup> ~~the 1st~~ of Exhibit C.

I, JOHN CALVIN SMITH, hereby stipulate and agree to deliver up or reassign to Richard Bent, or to his heirs or assigns, the assignment this day made to me by Richard Bent, in trust, for the benefit of his family, whenever the same shall be demanded of me by the said Richard Bent or his heirs or assigns, or any for him.

30 This agreement, it is understood, relates to the assignment of the lease of property in Tillietudlum, New Jersey, from Peter Westervelt, Jr., to Richard Bent.

Dated this 18th day of August, 1849.

(Signed)

JOHN CALVIN SMITH.

Witness,

C. S. BRONSON.

3. Do you know John Calvin Smith ?

A. Yes.

4. Did you have anything to do with the preparation of the assignment of the lease and agreement between Westervelt and Bent from Bent to Smith, and when and where ?

A. I did at my office, at that time, 79 Nassau street, New York city ; that date now I can't remember distinctly ; I think it was 1849, though, that that assignment was drawn.

10

5. The draft of the lease above mentioned with a copy of a declaration of trust thereon written, being shown to witness, he is asked :

What is that copy of an agreement or stipulation on said draft, Exhibit C 1, in whose handwriting is the copy, was there any original thereof, by whom was the original signed and witnessed, and where ?

(Complainant's counsel here call upon defendants to produce said original pursuant to notice, which the defendant's counsel admits to have received to-day.)

20

A. This is a copy of an agreement of Smith to reassign or reconvey to Bent whenever it should be demanded ; the copy is in my handwriting, and the original was in my handwriting, too, and was drawn in my office, 79 Nassau street ; that part of it I remember well, as it was done under my advice. I advised Bent to have Smith sign something of the kind for his protection in case he should die or anything ; the original was signed by J. Calvin Smith in my office, at the same time, with the execution of the other papers ; it was all done at one time ; it was witnessed by me ; I was particular about it because I wanted Mr. Bent protected ; I didn't have as much confidence in Mr. Smith as he did ; he said he would trust him ; I told him he had better not.

30

6. When was this copy made ?

A. I think, sir, the same day or the same time ; I ain't sure whether it was made before Mr. Smith went out. I think, though, upon recollection, that it was

made before he went out or before the papers left the office.

7. Was the original delivered, and to whom, or left with you, or how?

A. My impression is Mr. Bent left it with me for a day or two; I know I held a good many of his papers; I can't remember distinct enough to say.

*Being cross-examined:*

10 x 1. In whose handwriting is this paper Exhibit C 1 on the 1st and 2d pages thereof?

A. The alterations, sir, and the interlineations are in my handwriting; this was a draft he handed me and I corrected.

x 2. In whose handwriting are the 1st and 2d pages of Exhibit C. 1, the part not altered and corrected?

A. I don't know.

x 3. Did you witness the signatures to the paper on the 1st and 2d pages of the original?

A. I did not.

20 x 4. Who did?

A. I can't say.

x 5. Do you know who wrote the body of the paper C 1, 1st and 2d pages?

A. I don't know; it was not written in my office; Mr. Bent, I think, brought it to my office.

x 6. In whose handwriting is the paper on the 3d page of C 1?

A. That's mine, sir.

x 7. When was it made?

30 A. About that time; whether it was the same day—I think it was the same time the original was made and the other papers were made.

x 8. Was there any witness to the execution of the paper on the 1st and 2d pages of C 1?

A. Not that I know of.

x 9. Were there any other papers executed about that time connected with this paper C 1?



*Complainant's counsel.*—There are two papers in C 1.

*Defendant's counsel.*—Well, these papers in C 1?

*Complainant's counsel.*—These papers—one paper may have been executed one year and one another.

A. I'll tell, as near as I can recollect, what was executed: There was the assignment by Mr. Bent to Mr. Smith, and his agreement or covenants back. I don't remember anything else; I can't remember very distinctly; it was 12 or 15 years ago; but still I remember the main heads that were executed.

10

x 10. Did you witness the assignment?

A. Mr. Smith's or Mr. Bent's? Do you mean the original assignment?

x 11. Yes.

A. I did not.

x 12. Who did witness the original assignment?

A. I think it was a man by the name of John H. Southard; he had an office next to mine; I think I called him in to witness it; I am not sure, but that is my impression.

20

x 13. Who drew the original assignment of the lease and agreement?

A. I think I drew the original assignment from Bent to Smith; I think it's all in my handwriting. I hate to swear about such things without seeing the papers.

x 14. When you drew the original assignment of the lease and agreement to John Calvin Smith, what other papers did you draw?

A. I think those that I have related; I can't remember any others.

30

x 15. Were all the papers connected with the assignment drawn at the same time and the same day?

A. I think they were, as far as my memory serves me.

x 16. When was this copy of the stipulation and agreement to deliver up and reassign, made by you?

A. I think on the same day; I couldn't be sure, but

immediately after; I think it was the same time, or about the same time.

x 17. Where has this paper, C. 1, been since 1849?

A. Among old papers in my desk.

x 18. In whose possession since 1849?

A. In mine; I didn't know as I had it till I looked for it.

x 19. Has anybody else had it in possession since that time?

10 A. Not that I know of.

x 20. How comes it that you witnessed the agreement and stipulation, and Southard witnessed the assignment?

A. I don't know as I can answer that distinctly, but my impression is that Mr. Southard had an office next to mine, and he was out and in, and my impression is that he was not in when the stipulation was made; that is the only way I can account for it; I know he was out and in constantly.

20 x 21. Was any lease made by Smith to Bent, at or about the time of the assignment?

A. I don't know of any; don't remember any.

x 22. Were the assignment and the stipulation on the same piece of paper, or on different pieces of paper?

A. Different, I think, sir.

x 23. What has been your occupation since 1849?

A. Most of the time practising law.

x 24. Where?

A. In New York City.

30 x 25. In what Courts?

A. Any of the Courts that business called me into; I attended all the Courts of the State.

x 26. In what Courts principally?

A. Well, sir, I can hardly tell, without my books to look over; I have brought suits in all the Courts—Supreme, Common Pleas, Superior—but can hardly tell which most without my books.

x 27. How long had you known John Calvin Smith when the assignment was executed?

A. Not a great while; I couldn't tell how long; not long.

x 28. Where and how had you known John Calvin Smith before the assignment was executed?

A. I had known him principally through Mr. Bent's operations; I had been at Smith's house, I think, once or twice, when he lived in Bleecker street; I don't think I ever went unless when Mr. Bent was with me; I can't remember very well about it.

*Re-examined in chief:*

10

Q. 8. You have stated, I think, that you have had the copy of the declaration of trust, Exhibit C. 1, since you made it. How long have I had it in my possession?

A. I think it was last summer I handed it to you; I can't tell what time.

*Re-cross-examined:*

x 29. Who spoke to you first about this business touching this suit?

A. I think young Mr. Bent did; I mean Richard, 20 one of the complainants.

x 30. When?

A. I could not really tell you; I think last summer or spring; Mrs. Bent called upon me in 1851; she then expressed great anxiety as to the course Mr. Smith was taking.

(Answer objected to.)

x 31. What has young Mr. Bent paid you?

A. My usual counsel fee; he first paid me ten dollars, and he has paid me ten since; that's all, sir. 30

x 32. When was the first \$10 paid by young Mr. Bent?

A. I couldn't really tell you the date, but it was pretty early in the suit.

x 33. You advised with him then as to the course he should pursue?

A. I did, and told him Mr. Smith couldn't hold the property: he had no right to it—no possible title; I never so considered it one moment, except in trust.

x 34. When was the second \$10 paid?

A. Well, I don't remember; I think it was \$5 at one time and \$5 at another, within the last two or three months.

x 35. Do you call that a small fee?

10 A. Well, it is generally so considered in chancery practice—has been by chancery lawyers.

x 36. Was it all the fee you could get?

A. Yes.

x 37. Did you find the paper, C. 1, before or after you received your first fee?

A. I think it was before, sir.

x 38. How long before?

A. Some months, I think.

x 39. In what place was it when you found it?

20 A. Up among some old pigeon holes, among some papers I had not overhauled for years; it was among some papers of Mr. Bent's; I thought I had something touching on the point, but didn't know what it was till I found it.

x 40. At what place was your office when you found the papers?

A. In Pine street, New York City; I think No. 35; I was there a year and a half or near two years.

x 41. When did you leave Pine street with your office?

30 A. I left, sir, a year ago this spring coming.

x 42. Where then did you move your office to?

A. First to No. 6 West 10th street, and then to No. 25; No. 6 was not fit to live in.

*Re-examined in chief:*

Q. 9. What is the state of your health?

A. Bad; I have been confined to my house by pa-

ralysis for about seven weeks, and have not been out till within a week or two.

C. S. BRONSON.

Subscribed and sworn to before }  
me, at Jersey City, January }  
15, 1864. }

WASHINGTON B. WILLIAMS,  
*Master in Chancery.*

5 CENT  
STAMP.

IN CHANCERY OF NEW JERSEY.

10

Between  
RICHARD M. BENT *et als.*,  
*Complainants*,  
and  
JOHN CALVIN SMITH,  
*Defendants.*

On Bill, etc.

Examination of witnesses taken before me, J. Fleming, a Master and Examiner of the Court of Chancery, at my office, Darcy Buildings, Jersey City, this 14th day of September, 1864, at 10 o'clock A. M., in the presence of the parties and R. Gilchrist, Jr., Esq., solicitor and counsel for complainant, and I. W. Scudder, Esq., solicitor and counsel for defendant. 20

Examination taken before me by consent. Henry B. Melville, a witness produced on the part of the complainants, being by me duly sworn according to law on his oath, doth depose and say : 30

I reside at No. 129 Amity Street, in the City of New York. I know the defendant, John Calvin Smith, and have known him for 20 years—pretty near that. I knew Richard Bent, deceased, in his lifetime. I took a house in Elm Street, No. 164, next door to where he lived, in 1846, I think. That is when I first became

acquainted with him. When I first knew him his business was that of a dealer in teas and coffee and spices. His place of business was next door to where I lived. There was an alley between us. He sold goods out of his store and carried out goods about the city. He was doing business in his own name. I saw his name there, and I did not know anything to the contrary.

Q. What was his pecuniary condition?

10 A. It would be difficult for me to say. I was not intimate enough with him to say what his real condition was, only by appearances.

Q. By appearances, what was his pecuniary conditions?

A. I should consider they were fair. He was an old gentleman, and seemed to take the world pretty easy; he appeared to be in easy circumstances; had his horse and wagon.

20 Q. During the time that you have known Calvin Smith, and from about the year 1848 to 1852 particularly, what have been his pecuniary circumstances?

A. Up to that date, I could not tell you; I knew nothing of them after that date. Since 1852, I should judge he has been in crippled circumstances.

H. B. MELVILLE.

Subscribed and sworn before  
me, this 14th day of Sep-  
tember, 1864.

J. FLEMMING,

*Master in Chancery.*

30 Witness desires to make a correction in his testimony, and say that it was since 1850; put the date 1850 instead of 1852, and it will be all right.

H. B. MELVILLE.

Subscribed and sworn before  
me this 14th day of Sep-  
tember, 1864.

J. FLEMMING,

*Master in Chancery.*

Margaret McLaughlin, a witness produced on the part of the complainant, being by me duly sworn on her oath, doth depose and say :

I reside at Fordham, in the State of New York, a few miles from the City of New York. I knew Mr. Richard Bent in his lifetime. I have known John Calvin Smith since 1843. I became acquainted with Mr. Bent about the same year. I saw all the family about the same time. I lived in Mr. Smith's family. I have lived altogether in his family, off and on, inside of six years. 10

Q. Do you know of old Mr. Bent furnishing Mr. Smith with tea and coffee?

A. Yes, sir.

Q. Where at?

A. The first I knew was in Greenwich Street, in New York.

Q. From what time how long did that continue—furnishing him with tea and coffee?

A. I cannot tell how long, for I had left there some time, and the next serving was in Bleecker Street. I knew he served him there. 20

Q. How long were you at Bleecker Street with Mr. Smith's family?

A. I think it was inside of three years, but I had left in that time and was away about three months or four during the three years.

Q. During all the time that you were there, did Mr. Bent serve the family with the tea and coffee?

A. Yes, sir, to the best of my knowledge. 30

Q. Who received the tea and coffee from Mr. Bent that was left for the family?

A. I can't say who took it.

Q. How did you know Mr. Bent served it, then?

A. I knew it to be from him it came; it always came in packages from him, and I heard it said from him it came, and I saw him serve it—deliver it—with his own hands.

Q. Who did you hear say the coffee and tea came from him?

A. From Mrs. Smith; she said the coffee was not so good. Sometimes it was from her I heard it.

Q. When that three years expired, where did the family go?

A. To Tillietudlum.

Q. Did they go to Tillietudlum before or after Mr. Bent's death?

10 A. After they moved, on the first of May after.

Q. Of how many did the family of Mr. Smith consist while they lived in Bleecker Street?

A. Well, there were seven in the family of their own, I think. There was five children, and Mr. and Mrs. Smith. There were Mr. and Mrs. Reid, Mr. and Mrs. Brown, young Mr. Bent, and a young man by the name of Caldwell, besides.

20 Q. How much tea and coffee was used by Mr. Smith and family during the three years in Bleecker Street a day or week?

A. That I cannot say. Well, to the best of my knowledge, it would take for that family three pounds of coffee a week.

Q. How much tea?

A. Well, to the best of my knowledge, it would take a pound of tea for a family like that for a week.

Q. How were they used in the family, bountifully or otherwise?

A. Oh, bountifully.

30 Q. How often did they have tea a day?

A. Sometimes once a day; sometimes at dinner.

Q. Did the boarders pay their board?

A. That I can't tell. I should think they did.

Q. Did you go with Mr. Smith's family to Tillietudlum?

A. Yes, sir.

Q. How long did you stay there?

A. From the 1st of May to the 18th of July.

Q. While you were in Bleecker Street did you hear



the place of Tillietudlum mentioned in the family of Smith?

A. Yes, sir.

Q. How was it spoken of?

(Objected to by defendant's solicitor.)

A. At certain times I'd hear Mrs. Smith and the children say. The children would say we are going up to grandfather's, and Mrs. Smith would say we are going up to father's to stay a week or so. They always called it father's, or the children grandfather's. 10

Q. Was it so styled all the time you were in Bleecker Street?

A. Yes, sir.

Q. Did you ever hear, while the family were in Bleecker Street, Mr. Smith or any of the family speak of the place at Tillietudlum as belonging to Smith?

(Objected to.)

A. No, sir.

Q. When did you first get any information that Smith claimed the place, and where were you then? 20

A. It will be three years this fall since I was told that Mr. Smith claimed the place.

Q. Before that, did you hear any conversation between Smith and Mrs. Bent, and where which showed that there was a dispute about it? State the circumstances.

A. Before that was during that three months I was in with them. I understood Mrs. Smith and Mr. Smith and Mr. Bent to talk about the place. Mrs. Smith told me to leave the place, and take the child in the garden. That it was not a fit place for me to be in, so I heard nothing of the conversation. They talked loudly. I could hear them in the garden by the sound of their voice. 30

Q. Did you know the price of coffee or tea at that time? Was it ground coffee he furnished?

A. It was ground coffee furnished. Well, I think about that time it was 10c. to 12c. a pound. The tea,

I should think, at them times, was from a dollar to ten shillings a pound. It might be less.

Witness, being cross-examined by Mr. Scudder, says:

Q. Where did Smith move from when he went to Tillietudlum?

A. Bleecker Street.

Q. How long did it take to get through with all the moving?

10 A. That I can't say.

Q. A week?

A. I can't say; it may be inside of a week.

Q. Can you say what day of the week they commenced to move?

A. The first day of May that year commenced, I believe, on Thursday.

Q. Who told you so?

A. Mrs. Bent.

Q. When?

20 A. This last week.

Q. Where did she tell you so?

A. Well, it was walking along the street talking.

Q. Where walking?

A. I disremember presently.

Q. Can you tell how many days it took them to move?

A. No, sir.

Q. Where was Mrs. Bent when they moved?

30 A. She was up at Tillietudlum, to the best of my knowledge.

Q. How long did she remain there after they moved?

A. I think it was about three days; I don't know that it was so much; it was a very short time.

Q. Did Mrs. Bent help with the things up there that were moved?

A. No, sir; not to my knowledge.

Q. Who moved the things?

A. I don't know.

Q. Mrs. Bent was up there when you went up?

A. Yes, sir; you must excuse me, I forgot. She wasn't up there when we went up. Mrs. Smith's children were up there when we went up.

Q. When was Mrs. Bent up there?

A. I think it was the next day she came up.

Q. How long did she remain?

A. A very short time.

Q. Did Mrs. Bent come there before the things were all arranged in the house?

10

A. Yes.

Q. Did Mrs. Bent help arrange the things in the house?

A. No, sir.

Q. How often have you seen Mrs. Bent during the last six months?

A. I have only seen her twice by the way of; we will call it twice.

Q. Where?

A. At Fordham once, and at New York the second time.

20

Q. How long did you see her at Fordham?

A. Not long; it may have been inside of an hour.

Q. Talked this matter over with her?

A. Yes, sir.

Q. Where did you see her in New York?

A. At 125 Ninth Street; her daughter's.

Q. How long a time did you spend there?

A. Well, I spent the night; it was too late for me to go back again.

30

Q. With whom are you living at Fordham?

A: Mr. George Campbell:

Q. In what way?

A. I live there as doing fine washing and ironing.

Q. Have you seen Mr. Bent or Mrs. Bent at any other time within the last three years than what you have stated?

A. Yes, sir.

Q. When, and where?

A. I saw Mr. Bent going on three years at Mrs. Bogert's, corner of Hudson and Houston.

Q. What took you there?

A. I staid there as a home when I was out of a situation.

Q. How long was your interview with Mr. Bent at that time?

10 A. It might have been an hour that he staid in the house; it might be more; and in that time he did not converse with me—the lady of the house—he was acquainted with her. I only conversed with him a few words.

Q. When did you see Mr. Bent next?

A. On Monday evening a week ago; no, this last week, in this week.

Q. Where did you last see Mr. Bent?

A. At No. 125 Ninth Street, at his sister's, Mrs. Reid.

Q. Did you talk with him then?

20 A. A little.

Q. About what you were to come here for?

A. Well, it was some; not altogether about it.

Q. Did Mrs. Bent tell you about the dates and times of the transactions?

A. No, sir; I don't know as she did.

Q. What year was it when they moved to Tillietudlum?

A. It was 1851, to the best of my knowledge.

30 Q. After Mrs. Bent went away from Tillietudlum in 1851, when Smith moved, how long was it before she came back?

A. I should think it was a short period after; I should think it was in the latter part of June.

Q. How long did she then remain?

A. I don't know that she staid more than one night. I don't remember.

Q. Did you live with Mr. Smith when Mr. Bent died?

A. Yes, sir.

Q. Was Mr. Smith well or ill at that time?

A. I believe he wasn't very well at the time.

Q. What was his illness?

A. I can't say.

Q. How long was he ill at that time?

A. I can't say how long he was.

Q. What have you received from Mr. and Mrs.

Bent within the last six months?

A. Nothing.

Q. Were your expenses paid coming down from 10 Fordham?

A. Mrs. Bent asked me to take my expenses coming down.

Q. Who paid going back?

A. Myself.

Q. What was promised you?

A. Nothing.

MARGARET McLAUGHLIN.

Subscribed and sworn before  
me this 14th day of Sep-  
tember, 1864, at Jersey. } 20

JAMES FLEMMING,

*Master in Chancery, N. J.*

NAMES OF WITNESSES.

1. Henry B. Melville, page 1.
2. Margaret McLaughlin, page 3.

December 8, 1864. 30

Counsel for both parties appeared and proceeded.

ROBERT RAE, being duly sworn on behalf of complainant, deposes and says:

I reside at West Farms, N. Y. I am a son of Mrs. Richard Bent by a former husband, and am an own brother of Mrs. ~~Richard~~ *John Baldwin* Smith.

Q. 1. Do you know the property at Tillietudlum which was occupied by Mr. Richard Bent and his family, prior to his death in 1851, and how long have you known it, and how long did he live on it?

A. I do know it, and have known it since 1851. Mr. Bent lived there till his death; I knew it previous to his death, from 1847 or 1848, I think; and I think he lived on it from that time until his death.

10 Q. 2. How were the premises occupied and used by his family, and for what purpose?

A. For his dwelling and to keep boarders. He built an addition to the house as soon as he moved on—a wing or an L, consisting of four or five rooms.

Q. 3. Do you recollect a man named Mansauado and family, who boarded there?

A. Yes.

Q. 4. Was there any deal between him and Mr. Bent for the purchase of that property?

(Objected to).

20 A. He offered Mr. Bent \$5,000 for the property—Mr. Bent asked \$6,000 at that time.

Q. 5. After this, what disposition did Mr. Bent make of it?

A. He refused to sell it to Mansauado, and that matter ceased, I suppose; I heard of no purchase of it at any future time since.

Q. 6. What was the state of his health about that time?

30 A. He was in a declining state of health, and pretty old.

Q. 7. Was the property placed shortly after that in any one's hands, and whose, and how, and for what purpose?

A. It might have been a year or so after; I don't recollect exactly the time it was placed in Mr. Smith's hands—John Calvin Smith. It was placed, I believe, for the benefit of his family; I don't know how—a deed of trust, or something of that kind.

Q. 8. Whose family?

A. Richard Bent's own family.

Q. 9. About this time did he tell you anything about his state of health, and what?

(Objected to.)

A. He told me that we wouldn't (speaking of the family) have him long with us; that he felt himself rapidly declining in health. He spoke about having the property placed in Mr. Smith's hands—that it would do the family some good in the future. The family were united at that time, and he spoke of them as one whole body. 10

Q. 10. How long after Mr. Bent's death did Mr. Smith move upon the premises?

A. In the spring following.

Q. 11. State if any misunderstanding occurred about that time between Mrs. Bent and John Calvin Smith, and what it was, and how it was adjusted, and when?

A. The arrangements were entered into between Mrs. Bent and Mr. Smith about his going on the place, with an understanding of his remaining a year, if it suited his health and business purposes. The misunderstanding arose from the terms between them. She had claimed an acre of the land in reserve, and she was to have received from him \$500, and the right of a home as long as she lived. These constituted the terms between them—at least on her part they did. He objected to having the property cut up, or to having an acre cut off on any consideration whatever. Mr. Smith intimated to me that Richard Bent, the son, might put up a workshop on the place, which would be a great detriment to it if he ever offered it for sale. I was requested by Mrs. Bent to call upon him and get a definite understanding of what he intended to do in reference to this acre; and as there had been some previous conversation between them as to the value of that acre, he said he would grant her the \$200 that had been spoken of in lieu of it. And that her right 20 30

of home was worth \$500, and the \$500 he had promised her, and the \$200 for this acre, were the best terms he would grant. I came away after that interview, and represented to Mrs. Bent the matter. She supposed that was the best terms she could make with him, and the matter ended. Some time after that, on the fourteenth of May, 1853, Mr. Smith called and deposited with me \$700 for her, and he took a receipt from me in her name.

10 (Complts. Counsel called for the production of the receipt.)

(Defdts. Counsel says he has it not, and don't know whether his client has it or not, and admits notice to produce it.)

Q. 12. State, as near as you can recollect, the tenor of that receipt?

A. I don't know that I can word it in my memory: Received seven hundred dollars for Mrs. Bent, in reference to this claim between them.

20 Q. 13. State what the receipt said; it couldn't have said "in reference to this claim"?

A. In reference to this understanding: what he had granted to give her—at least I suppose that.

Q. 14. Did the receipt state what the money was paid for?

A. As I said before, I can't recollect particularly in regard to that.

Q. 15. What was the money paid for?

(Objected to.)

30 A. It was paid for this consideration of her interest in the place—buying her interest out, I suppose.

Q. 16. Did the receipt make a statement to that effect?

A. I don't know that it did.

Q. 17. What is your impression?

A. Well, I don't know that I can word it in any other way, than for this understanding that they had



between them. I supposed they had made the arrangement, and I was receiving the money for her benefit.

Q. 18. What is your impression as to whether the receipt stated that this money was paid, as you have stated it was paid, for the consideration of her interest in the place?

A. The money was paid for that, but whether the receipt was worded in that way, I couldn't tell; it was not a long receipt; my impression is it was worded to cover that ground. 10

Q. 19. Was this \$700 paid as a matter of charity to Mrs. Bent?

A. Not at all, sir.

*Being Cross-examined:*

x 1. Was it intended to cover the whole interest of all the family?

A. I can't say; the interest between her and Mr. Smith was the whole issue; the family didn't seem, at that time, to have any claim. 20

x 2. Were you present when Mansauado made the offer?

A. I was at the house at the time—not present at the interview.

x 3. You heard it from whom—Mansauado?

A. No, sir; I was not intimately acquainted with him; the family generally had it as a standing offer. Mr. Bent told me particularly; and as it was acquiesced in by all, I took it for truth.

x 4. At the time of this receipt, where did you reside? 30

A. In 313 Hudson Street, N. Y.

x 5. Was this matter of the money, for which the receipt was given, known to other members of the family?

A. Yes, sir; it was.

x 6. Was it generally known in the family?

A. Yes, sir ; I think it was.

x 7. Did you ever see any trust deed from Smith for this property ?

A. No, sir.

x 8. At the time of Richard Bent's death, where was Smith, and was he well then ?

A. He was living in Bleecker Street ; I don't know whether he was well or not.

*Re-examined in chief :*

10 Q. How came you to say that this property was put in Smith's hands by a deed of trust if you never saw the deed, and where did you get the information, and how often, and when ?

(Objected to.)

A. I got it from Mr. Bent himself, acquiesced in, I think, by Mr. Smith, and Mrs. Bent, and the family generally, I think.

(Compls. Counsel asks for the production of the deed of trust.)

20 (Defdts. Counsel says—We say that no such paper was ever in existence.)

ROBERT RAE.

Subscribed and sworn to be }  
fore me at Jersey City, }  
this 8th day of December, }  
A.D. 1864. }

W. B. WILLIAMS,

*Master in Chancery, New Jersey.*

30

*May 8th, 1865.*

The parties appeared by their Counsel, and examination proceeded by consent.

JOHN CHATTERTON, a witness on part of complainant, being duly sworn on oath, says :

I am forty-nine years of age ; I reside in Baltimore Co., Maryland, and am a farmer. I knew Richard Bent, deceased, in his life-time ; I knew him, probably, about a year ; I have known the family from eighteen to twenty years, the rest of them. I know John Calvin Smith ; I do not remember how long I have known him ; I used to see him eighteen or twenty years ago, but have been acquainted and intimate with him since 1852 or 1853.

Q. Did you ever have any conversation with John Calvin Smith in relation to a purchase by him of the land and house of Richard Bent, deceased, at Tillietudlum, and where was that conversation, and what was it ? 10

(Question objected to, because it assumes it was the land and house of Richard Bent.)

A. It was in Broadway, New York City, No. 625 ; I think it was in 1855 or 1856 ; it was in a parlor, up stairs, in Mrs. Reid's house ; Mrs. Bent and I were in conversation at the time ; she was telling me how she had been robbed of her home at Tillietudlum. While she was talking, Mr. Smith came in ; I think that he heard the conversation as he came in ; he remarked to me that the old lady was going over the old story, and then Mr. Smith told me that he had bought the property and paid for it, giving her five hundred dollars and an acre of the ground. He afterwards ascertained that Richard was going to put on a piano factory on it, and he had given her two hundred dollars for the acre, which he considered a big price ; that he would not consent to have a factory put up on it, as it would spoil the sale of the property. I was then a printer ; Mrs. Reid carried on millinery and dress-making, and I boarded in the family. I knew David Reid, the former husband of Mrs. Reid. 20 30

Q. How long have you known him, and what has been his manner of life since you have known him ?

A. I have known him from 1852 up till 1859 ; that

was the last I saw of him. I have known him as a drunken, dissipated man ; he was habitually a drunkard all the time I ever knew him ; he lived by begging about the streets, sleeping in station houses ; spent part of his time on Blackwell's Island, I believe, as a vagrant.

Q. Was he a man of any means during the time you knew him ?

A. Not that I ever knew of.

10 Q. Did you ever assist him yourself ?

A. I have given him clothing and money ; used to pay for his dinners a while, till he got so bad ; I wouldn't have him come to the office.

Q. Could you trust to his veracity ?

A. Well, no more than what I have heard the family always call him a notorious liar.

(Last answer objected to as hearsay and incompetent testimony.)

*Cross-examined :*

20 Q. Where was Reid when you last saw him ?

A. I think it was in Maiden Lane, coming from my office ; I think in the spring of 1859. By report, I have understood that recently he has been in the Union army.

Q. Was Richard M. Bent, the present complainant, ever in the Rebel service, as militia man or otherwise ?

A. Not that I know of ; I have never heard so.

*Re-examined in chief :*

Q. Do you know when Bent left Charleston ?

30 A. It was just about the outset of the war.

JOHN CHATTERTON.

Subscribed and sworn to be }  
 fore me at Jersey City, }  
 this 8th day of May, A.D. }  
 1865.

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

## IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">Between</p> <p>RICHARD M. BENT and others, <i>Complainants,</i> and JOHN CALVIN SMITH and wife, et al.</p> <p style="text-align: center;"><i>Defendants.</i></p>	}
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Examination of witnesses, &c., in the above entitled 10  
cause, on the part of the complainant, taken before  
me, Isaac Romaine, a Master and Examiner in said  
Court, at my office, No. 7 Exchange Place, Jersey City,  
N. J., on Saturday, June 12th, 1869, at ten o'clock in  
the forenoon, in the presence of Alexander T. McGill,  
for Robert Gilchrist, solicitor for complainant, and  
Isaac W. Scudder, solicitor for defendants.

Counsel for defendants objects to the taking of this  
testimony, because it has once been closed.

Also, because notice has been given to dismiss the 20  
bill for want of prosecution, and also to dismiss in-  
junction.

RICHARD M. BENT, a witness, produced on the part  
of the complainants, being duly sworn, on his oath  
saith:

I reside in New York City, No. 57 9th street; I am  
one of the complainants to this suit; I am a son of  
Richard Bent.

My father has spoken to me about this property at  
Tillietudlum. 30

In the fall of the year 1850, on Sunday, he took me  
in the parlor of the house on the place at Tillietudlum,  
where he was then living; he instructed me to write  
my name in every book in the library; he gave me  
the library, at the same time adding that "next sum-

mer you will be of age, and I will fix this property for you to hold for the family.”

(Objected to by defendants.)

I know of meetings between Mr. Bronson, Mr. Smith, and my father, in the basement of the house No. 24 Bleecker street.

10 I was going one night down the basement staircase, when Mrs. Smith came out of the back parlor and asked me where I was going; I said I was going down in the basement for a book; she tried to prevent my going, saying that my father and Calvin were there, and I better not go; I went, contrary to her wish, and there saw my father, Mr. Bronson, and Mr. Smith; got my book and came right out of the room.

As near as I can recollect, this was about the year 1849; I won't be positive; they were sitting there, as if they had been engaged in earnest conversation prior to the interruption of my coming into the room.

20 I recollect of calling on Mr. Crosby with Dr. Brown; we called on Mr. Crosby relative to the purchase of the place in question; after my father's death, the end of February, 1851, the subject was introduced at the tea table; Mr. and Mrs. Smith, Dr. Brown, and myself were present; Dr. Brown proposed going to Mr. Crosby to offer the place for sale, in Mr. Smith's presence; Mr. Smith said: "You can't sell—you have no deed; it is only leased property;" Doctor said we could try; "Oh, yes," said Mr. Smith, "you can try."

30 After tea, we went and called on Mr. Crosby and stated her errand there; on our return to Mr. Smith's house, at 24 Bleecker street, Mr. Smith met us; he was on the upper landing, and we were coming up stairs, Dr. Brown and myself; Mr. Smith looked over the bannisters and said: "Well, did you sell?" I replied, **No**; then he said, about the same as he said at the tea table: "Oh, no; you can't sell; it's only leased property."

Q. Did he intimate that the lease had been assigned to him, or elaim any ownership?

(Objected to as leading.)

A. No, sir.

Nothing more was said by Mr. Smith, at that time, about the property, that I remember; I think the matter dropped then.

At the time of my father's death, I was an apprentice in the piano-forte manufactory.

I was the most of the time at the factory, and it will be remembered that the World's Fair opened in the spring of 1851, and I was engaged on work that was going on exhibition there, and we were working on short time, and I had to work day and night and a great many Sundays; during that time I saw very little of the family; I left in the morning, generally, before any members of the family were up, and worked late at night; I generally took my dinner along; and on Sundays I was at work on account of the shortness of the time to get the articles ready for the exhibition. 10

I was in the habit of visiting the place at Tillietudlum while my father and mother resided there; I went up Saturday evening and came down Monday morning; after my father's death, I visited there only once, with my mother; that was in the month of March, 1851; I never was there in the month of April, 1851; this visit in March was on Sunday; we left Mr. Smith's house after breakfast to take the ten o'clock boat. 20

Mr. and Mrs. Smith, myself and mother all took breakfast together at Mr. Smith's house; on the boat, coming to the landing, my mother pointed out Mr. Smith to me; we were both surprised to see him on the boat. 30

I saw him after I saw him at the landing; I saw him on the place; mother and I went up to the place; she had the key and opened the house door; Mr. Smith came in.

I don't remember distinctly whether Mr. Smith walked up in company with us, or walked directly in the rear; I think mother had something to say to him on the road; he had a gentleman with him.

At the breakfast table that morning nothing was said by Mr. Smith about going, or by us about our going up; after breakfast, mother took a notion that she would go up, and asked me to accompany her.

I did not assist the Smiths in packing up to go to Tillietudlum; I assisted Mrs. Reid in going from No. 24 to No. 20 Bleecker street.

Q. Do you know anything about your father's account books, and the way he kept them?

- 10 A. I know he was very systematic with his books and papers; he kept them in a desk; in his business he used a book for every day in the week, and those that were not on his person were generally in his desk; I have seen them in his hat, in his room, of an evening.

He kept his papers in his desk, tied up in lawyer style, in pigeon holes.

My father died in his own rooms, in a house in Jersey street, New York.

- 20 This desk was in the room he died in; after he died the undertakers laid him out and took him to Mr. Smith's house, and the funeral took place there.

I last saw the books and papers during his last illness, which was of about ten days duration, in the room in Jersey street; there were quite a number of papers and account books; I was in the room after his death; I did not take any of his books or papers; I never thought of them at that time.

Q. When did you think of them?

- 30 A. The Monday after the funeral, mother, and Dr. Brown, and I went around to get his effects; the funeral took place on Saturday, February 1st; we were surprised to find all his books and papers gone.

There was some commotion about the key; mother had the key; the key had been mislaid; it was found on the back parlor mantelpiece.

Q. Who looked for the key?

A. The different members of the family; I don't know who found it; it was handed to mother, I think, when it was found, and we went around together.



Q. Who shut up the rooms after your father's death?

A. I am under the impression it was the undertaker.

Q. After Mr. Smith took possession of the house at Tillietudlum, what terms were you on?

A. On fair terms; mother was at loggerheads with him, and always has been, on account of the treatment she received from him, and all of us received from him, regarding this place.

Q. Do you mean to say she was at loggerheads with him before he took possession of this place?

10

A. It commenced from the first of May, when he underhandedly moved his things on the place and ousted her.

Q. Before that time, on what terms, apparently, were your mother and Mr. Smith?

A. I saw very little of my mother and Mr. Smith before that time, because of my business engagements, between the time of my father's death and the 1st of May, were of such a nature as to occupy nearly my whole time; I was engaged on work days, nights, and Sundays, for the World's Fair; about that time, Mrs. Smith—Mr. Smith never said anything—Mrs. Smith (statements of Mrs. Smith objected to) stated that it would be dreadful to allow mother to live on the place at Tillietudlum all alone—that they thought of going out there to try it for a season.

20

After they took possession of the place, I went to board with Mrs. Reid, No. 20 Bleecker street, New York.

Q. Why did you continue on fair terms with them?

30

A. Mr. Smith and Mrs. Smith always had an influence in the family, had a strong hold on our affections, and we could not believe at that time that he would take the advantage of us that he has.

(Objected to, as not evidence.)

Q. Why didn't you commence the prosecution of this suit before you did?

A. The first year of Mr. Smith's residence on the place I was averse to family quarrels, and about the

month of April or May, 1852, Mr. Smith got the deed under the contract of my father's, I then thought opposition was remediless; I went South (I was ignorant of the case) in 1855, and returned to New York in 1861, during all which time my mother was wrangling with him about it—quarreling with him; I then investigated it and commenced suit.

Q. During the time you were South did you keep up a friendly intercourse with the Smiths?

10 A. I wrote to them during the five years I was South perhaps as many letters, about five letters, Mrs. Reid whom I corresponded regularly with every week; my other sister often stated that Christina, Mrs. Smith, often complained of my not writing; that is the way these letters came to be wrote.

Q. Did Mr. Smith frequently assist your family when in need?

20 A. Not that I am aware of; he was in no position to do that; he was probably poorer than any of the rest of us; on the contrary I know of members of the family that assisted him; I know my father supplied him with tea and coffee; I have seen him furnish it at the house 24 Bleecker street.

Q. Do you know whether he paid for this tea and coffee?

A. I know he had a running account with father; I have seen entries on father's book.

RICHARD M. BENT.

30 Taken, sworn to and subscribed }  
this 12th day of June, A. D., }  
1869, at Jersey City, before }  
me, }

ISAAC ROMAINE,

*Master in Chancery.*

SPENCER H. BROWN, a witness produced on the part of the complainants, being duly sworn on his oath, saith:

Q. Have you ever heard Mr. Richard Bent say what

his intentions were in respect to this property in dispute?

(Objected to).

A. Yes, sir; in the Fall of 1850 I breakfasted with him in Jersey street at his own rooms, and while there at the breakfast table I asked the old gentleman if he was going to stay up in the country that winter, and also asked him why he did not sell the place and come and live in the city; he told me that that place would be very valuable in time for the family although he might not live to see it, and that when Richard became of age he was going to give it to him for the benefit of his family, and that he had fixed it with Calvin until then; by Calvin he meant Mr. Smith.

10

Q. Did you ever make a visit to Mr. Crosby relative to this property?

A. I did, sir; about the latter part of February, 1851, at the tea-table in Mr. Smith's house, No. 24 Bleecker street, New York; the conversation came up in regard to the disposing of this property, and I suggested at the time that Richard and myself should go around and see a Mr. Crosby that evening, as Mr. Crosby had spoken to me about buying a place up there; Mr. Smith remarked that you can't sell for you have no deed to give, it is only leased property, but you can go on and try; this evening it rained, and Mrs. Smith lent us an umbrella to go with; when we returned from Mr. Crosby's to Mr. Smith's this same night, Mr. Smith met us on the upper platform of the stairs in his house and asked did you sell; we told him no; he said I know you couldn't sell, you can't give a deed, it is only leased property; that is all that was said that evening.

20

30

Q. Did he intimate in any way that he claimed any right to the property?

A. No, sir; I attended Mr. Bent in his last illness; I don't remember of seeing anything of his books and papers during my visits; I had to make flying visits as I was very busy at that time practicing in West-

chester County ; I have seen his books and papers ; I saw books and papers the morning I breakfasted there ; he kept his papers in his desk in pigeon holes tied up ; I have seen his books also in his desk and on his person at different times ; I saw this desk in his room during his last illness ; I was present when they searched for his books and papers after his death ; on the Monday following Richard Bent's death, Mrs. Bent, Richard M. Bent and myself, went around to his rooms in Jersey street to get his effects ; there were no papers nor books to be found there ; I suppose my mother-in-law had the keys when I went around there.

10 Q. How did Smith always speak of this place at Tillietudlum ?

(Objected to).

A. He always spoke of it as the old man's place, meaning Mr. Bent ; before his death and after his death I didn't see much of him ; I lived at Westchester County and he was on the place ; it was in February, 1851, and after Mr. Bent's death that we went to see Mr. Crosby.

SPENCER H. BROWN.

Taken, sworn to and subscribed }  
 this 12th day of May, A. D., }  
 1869, at Jersey City, before }  
 me,

ISAAC ROMAINE,

*Master in Chancery.*

30 The following is a list of witnesses examined in the above entitled cause, together with the number of the page on which the testimony of each one begins :

Richard M. Bent	-	-	-	page 1
Spencer H. Brown	-	-	-	" 8

## IN CHANCERY OF NEW JERSEY.

DAVID REID, a witness produced on the part of defendant, being duly sworn, according to law, on oath, deposes and says;

I was a son-in-law of James <sup>me</sup> Bent previous to the separation from my wife; I knew her husband, and his name was Richard Bent; I married a daughter of Richard Bent in 1842; my wife's name was Jane; I was separated from my wife in 1854.

In 1842 I boarded at Mrs. Bent's; in 1843 we lived 10  
in Broome street, New York; from that time my residence to 1854 was in New York city; when I first knew Richard Bent, my father-in-law, he was a clerk in Robert Ray's store, Centre street, New York; after that he went into the tea and coffee business, peddling tea and coffee; he continued this to the time of his death, occasionally in addition selling dry goods; I was present when he died in January, 1851.

John Calvin Smith resided at the time of Mr. Bent's death at 22 Bleecker street, New York; he was confined to his house at that time with rheumatism. 20

At Mr. Bent's death his son Richard, here present, Mrs. Bent, Mrs. Reid, Mrs. Brown, Mr. Brown, and I think Mrs. Smith and myself were present.

Q. Do you know who took possession of any books or papers of Richard Bent after his death?

A. Mrs. Bent went to the place when he died in the basement of that house, and took his furniture and all his effects that were left there.

Q. Do you know whether Mrs. Bent ever had any 30  
books or memoranda of Mr. Bent, deceased, after his death, and if so, what use was made of them?

A. I have seen at least one book which I am pretty certain was his from the fact of her going and trying to collect debts with that book.

Q. Do you know the fact that Mr. Richard Bent had a lease for property at Tillietudlum?

A. Yes; I have seen the papers previous to being signed; I have seen them both before and after they were signed.

Q. Did Richard Bent reside on the Tillietudlum property, and if so, how long?

A. Mrs. Bent did from 1848 to the fall of 1850; Mr. Bent was occasionally up there, but the most of the time in the city attending to his business; the first winter Mrs. Bent lived there; but in the winter of 1849 and 1850 she lived in the city.

Q. Do you know anything of the assignment of the lease of the property at Tillietudlum, and if so, to whom was it made, and what was the occasion of the making of it?

A. I believe the principal occasion, as far as I know, they found difficulty in paying the rent and getting along. I am aware of an assignment being made to J. Calvin Smith.

Q. Were you aware of this assignment to J. Calvin Smith before or after the death of Richard Bent?

A. I was aware of it previous to the death of Richard Bent; I heard it talked over.

Q. By whom?

(Objected to.)

A. By the inmates of the house; by Mrs. Reid, Mrs. Smith, Mrs. Bent, and I may include myself.

Q. Did you hear Richard Bent, the deceased, speak of the assignment?

A. I have more than once.

Q. Did he, Richard Bent, say to whom the assignment of the lease of the Tillietudlum property was made?

A. To J. Calvin Smith.

Q. Did he say that it, the said assignment, was made to J. Calvin Smith in trust for anybody, or anything to that effect?

A. I never heard of anything about any such thing.

Q. Can you state at what time J. Calvin Smith moved to the Tillietudlum property?

A. On or about the first day of May, 1851.

Q. Was it known to Mrs. Bent, the widow, and other members of the family, that such removal to the Tillietudlum property, by J. Calvin Smith, was about to take place before it did take place?

A. Perfectly well known to her and every one in the family.

Q. State as near as you can how long before such removal it was so known.

A. I knew it for some weeks previous to the removal; the others of the family, had, I suppose, the same chance of knowing that I had, and I have no doubt every one did know. 10

Q. Did Mrs. Bent, the widow, go to live with J. Calvin Smith, at Tillietudlum, after such removal?

A. I believe she did a short time.

Q. Do you know whether J. Calvin Smith paid Mrs. Bent, the widow, any money after the death of her husband, and if so, how much and for what?

A. I understood Mr. Smith paid \$700 to Mrs. Bent for improvements made on the house at Tillietudlum. 20

Q. How and from whom did you so understand?

A. I heard it from Mrs. Bent herself.

Q. Did you ever hear from Richard Bent, deceased, that he had proposed to assign the lease for the Tillietudlum property to his son Richard?

A. I never heard such a thing mentioned.

Q. Was Richard Bent, deceased, in his lifetime, solvent or insolvent?

A. While I knew him he was a man struggling to get along in the world, and I can hardly say whether he was solvent or insolvent. I have no certainty in the matter. 30

Q. Did you know whether J. Calvin Smith was indebted to Richard Bent, deceased?

A. I cannot tell.

Q. From 1842 to 1854, did you have much intercourse with Mrs. Bent and her children?

A. Yes; intercourse every day almost; we were on

friendly terms visiting one another during all that time.

Q. During the period from 1848 to 1854 was it ever claimed by any of the members of the family, children of Richard Bent, deceased, or his widow, that the assignment of the lease of the Tillietudlum property was made by Richard Bent to J. Calvin Smith, in trust for the benefit of the widow or any of the said children?

10 A. I don't recollect hearing anything of the matter at all—hearing anything about that at all.

Q. When J. Calvin Smith moved to Tillietudlum, was it openly and publicly, or secretly and clandestinely?

A. Openly and publicly.

Q. How was Mrs. Bent engaged while she lived at Tillietudlum before the removal of J. Calvin Smith there?

A. Keeping boarders in the summer season.

20 Q. Did Richard Bent in his lifetime purchase goods from you, and if so, what kind, and for what purpose?

A. He was in the habit of purchasing goods from me, sheeting and shirting, for the purpose of retailing, peddling around.

Q. When he died, was he indebted to you for said goods?

A. He was indebted for some balance; I can't say how much?

30 Q. Subsequent to the time of the assignment of the lease by Richard Bent to J. Calvin Smith, and prior to the time J. Calvin Smith took possession of the property at Tillietudlum, did J. Calvin Smith do anything on the property, and if so, what?

A. He planted some peach and plum trees, and grafted other trees, apples and pears.

*Being cross-examined:*

I have no stationary home at present; I slept last night at Mr. Smith's; I have been there occasionally for the last couple of weeks, and in the city during



that time two weeks; I slept at Mr. Smith's every night.

I was twice down to New York part of the day and up to Fort Lee and around; I came from New York city when I came to Mr. Smith's; I lodged at Mr. Kelley's near Spring-street Market occasionally, sometimes at Fort Washington.

Mr. Kelley's is a boarding house; I cannot give the number of it; they keep a bar there; I have been living that way about five or six weeks since I came from Connecticut; I had been living there about three months; I was living with my brother after being discharged from the service; I went on a visit; I had been in the army three years as a private in Third Maryland Volunteer Infantry; I enlisted in New York city, in August, 1861; when I came from Connecticut I tried to enlist again, but they would not take me; I was too old; I went to Mr. Smith's to see the family; I once knew them, and we were old friends; I did not see Smith previous to my going there; I didn't get a letter from him, and no one else saw him for me; I did not know of the existence of this suit at the time I went there; since I have been there I have seen the charge and the papers and read them over; they were handed to me to read, and I read them; they were handed to me by Mr. Smith; there was no conversation with Smith about the suit before he handed me the papers; Mr. Smith requested me to come here and be a witness; I had no conversation with Mr. Smith, except reading over the papers and talking over the points connected with it; a year previous to enlisting in the army I worked for James Gordon Bennett at Fort Washington, as a gardener; I commenced to work for him in the spring of 1861, and I enlisted the following August.

The summer previous to that I was a gardener for Mr. Knauft, 152d street; I was working there part of two summers and one winter; I first went there in 1859, I think; prior to that I was gardening around at

Morrissiana, Westchester county ; I followed gardening eight or ten years in all ; I learned it in my youth). In 1842 I was in a situation with Mr. Ray, a brother-in-law, both before and after his marriage into the family ; I was in that situation till about 1844, if I recollect right ; after that I went into business in Greenwich street, New York, under the firm of Simmons & Reed—dry goods business ; I continued in Greenwich street one year and moved to 637 Broadway ; we remained there about three years ; I then failed in business and made an assignment to Robert Ray, my brother-in-law.

10 From 1848 to 1853, I was part of the time in a situation in New York as clerk at Lord & Taylor's, James Beck & Co., Birdsall's, in Broadway ; I was married in 1842 ; from 1848 to 1853, I was living, part of the time, with Mrs. Smith, one year at 20 Bleecker street, afterwards moved to Wooster street, at which time I was in the employ of Sherman & Smith ; we were

20 living with Mrs. Smith in 1848, to the best of my recollection ; also in 1850, to the best of my recollection ; I boarded at Mr. Smith's to May, 1851 ; from May, 1851 to May, 1852, we lived at 20 Bleecker street ; kept house there ; in May, 1852, we moved to Wooster street ; kept house to the time of my separation from my wife, in 1854 ; at the time we boarded at Mr. Smith's ; Mrs. Reid generally paid the board for her and myself ; Mrs. Reid was a dressmaker ; when I was earning money I paid her the money and she paid the board ; I can't

30 tell how much money I paid her while we boarded at Smith's ; I paid her \$100 and a good deal more ; from 1848 to the time of our separation, my wife did not support us both ; my wife filed the bill for separation from me ; there were numerous causes ; we did not get along very well ; one of which was intermeddling of Richard Bent and Mrs. Bent with everything ; and also another cause, I used to go on a spree.

Q. How long did this interference of Richard Bent and Mrs. Bent continue ?

(Objected to as irrelevant.)

I may say it occurred more particularly the last few months before leaving the house; it came to a climax previous to my leaving the house, which was in 1854.

Q. When did this interference on their part first commence?

(Objected to as irrelevant.)

A. About the time I suspended payment in Broadway—in 1848.

10

Q. Prior to 1848, were you on terms of intimacy with all the family?

(Objected to.)

A. Yes; afterwards, with an occasional squall.

Q. Were you on the same terms of intimacy from 1849 to 1853 with Mrs. Bent and Mr. Bent, while living?

A. About the same, only an occasional squall when Mrs. Bent was around; she used to kick up a rumpus.

Q. From 1849 to 1853, were you on terms of intimacy with Mr. Smith?

20

A. Yes.

Q. After 1853, and to the present time, have you been on terms of intimacy with Mr. Smith?

A. I have not since 1854, as I have seen him but once, six or seven years ago.

Q. What broke that intimacy?

A. The separation of me and my wife broke up the intimacy.

Q. From 1849 to 1854, how often have you seen J. Calvin Smith?

30

A. I must have seen him very often, because in 1853 I worked in his office, assisting him getting up the "Gazeteer."

Q. Since 1854 to the present time, how often have you seen Mr. Smith?

A. For a short time in 1854, that I worked for Mr. Smith, to the present time, I have not seen him except

once on Spring-street dock, till I saw him at his own house some two weeks ago.

Q. After 1853, were you in the habit of visiting Mr. Smith at Tillietudlum?

A. Only when business called me there. I worked on the "Gazeteer" at his own house at nights.

Q. From 1851 to 1853, were you in the habit of visiting at Tillietudlum?

A. I was.

10 Q. Was not the reason of your wife's application for a separation that you did not support her, and that you were an habitual drunkard?

(Objected to as irrelevant and improper.)

A. I believe she so stated.

Q. From 1849 to 1853, was Mrs. Bent or any member of the family in the habit of consulting you upon their private affairs?

A. No.

Q. Where did Mr. Bent die?

20 A. In Jersey-street, New York City.

Q. Where did you then live?

A. In Bleecker-street.

Q. Who with?

A. Mr. Smith. My wife was living with me.

30 Q. In your direct examination you say you suppose that Mrs. Bent took possession of the books and memoranda of Mr. Bent, deceased, from the fact that you saw in her possession a book with which she was going around to collect debts. What kind of a book was it, when and where did you see it, and if you had possession of it, what did it contain?

A. It was perhaps 10 inches by 6 inches. I think it had a leather cover. I saw it in Mrs. Reid's (my wife's) room a few days after Mr. Bent's death. I had no possession of it.

Q. Do you know what that book contains?

A. No, sir.

Q. Is that the only book or paper that you have

seen in the possession of the Bent family that belonged to Mr. Bent, deceased?

A. The only one that I recollect of.

Q. Did Mr. Bent in his lifetime, or Mrs. Bent, or your wife, consult with you in reference to the Tillietudlum property, and as to the manner of disposing of it?

A. Mr. Bent has frequently talked the thing over.

Q. State, as near as you can, what conversation you have had with Mr. Bent in reference to the Tillietudlum property. 10

A. Mr. Bent found the property was not exactly what he thought it was, and he found difficulty in getting along, and thought of disposing of it to Mr. Smith as one of the family.

Q. Was any of this conversation had after you failed?

A. Yes.

Q. How long after?

A. It must have been about the year 1848, according to the best of my knowledge. 20

Q. Was there more than one conversation?

A. We talked over it frequently.

Q. Have you stated the substance of all the conversations you had with Mr. Bent before he died in reference to the Tillietudlum property?

A. I don't recollect, at this length of time, any more I have got to say on the subject at all.

Q. Were you consulted by any other members of the family in reference to the Tillietudlum property? 30

A. No, sir.

Q. How much money did Richard Bent, deceased, ever owe you at one time, and for what?

A. I should think he has owed \$400 or \$500 at some time, for dry-goods; the exact sum I can't tell.

Q. How much did he owe you at the time of his death?

A. I don't know.

Q. About how much?

A. I can't tell you; it might be \$50, it might be \$100, it might be \$10. I really can't tell.

Q. How much has Mr. Smith given you, if anything, to come here as a witness?

A. I don't sell myself as a witness; I come here of my own accord.

Question repeated.

A. Nothing.

10 Q. How much has he promised to give you, or what has he promised to do for you, if you would come here as a witness, if anything?

A. Nothing whatever.

Q. Have you any employment?

A. I am doing nothing at present, but am going to as soon as I can have an employment to go to.

Q. Has Mr. Smith promised you employment?

A. No, sir.

*Re-direct Examination:*

20 Q. Where is it your intention to go to, and what employment to obtain?

A. My intention is to go to Alexandria, Va., and I expect to get into the Quartermaster Department.

Q. You have stated that you were discharged from the United States' service; was such discharge obtained after serving out your term of enlistment?

A. Yes; the discharge says, Discharged by expiration of term of service.

30 Q. Do we understand you to say that the separation between yourself and your wife caused a separation between you and Mr. Smith, and that you and Mr. Smith were not, for that cause, on speaking terms?

A. There was no cause why me and Mr. Smith should have any ill-feeling; the ill-feeling arose from my being turned out of the family.

Q. Was that an ill-feeling between you and Mr. Smith, or between you and some other members of the family?

A. No ill-feeling, that I am aware of, existed at all

between Mr. Smith and I, only I was estranged from the family and had no opportunity of seeing him.

Q. From 1849 to 1853, was Mrs. Bent in the habit of speaking to you and to other members of the family in your presence about her affairs?

A. Publicly talked of among the whole family, and of frequent occurrence at that.

DAVID REID.

Sworn and subscribed, February 16th, 1855, before me,

JNO. P. VROOM,  
*Master in Chancery.*

10

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IN CHANCERY OF NEW JERSEY.

Between	}	20
RICHARD M. BENT and <i>als.</i> ,		
<i>Complainants,</i>		
and		
JOHN CALVIN SMITH and <i>als.</i> ,		
<i>Defendants.</i>		

Examinations, etc., taken on part of defendants in above cause, on December 11th, 1865, at 10 A. M., at the office of W. B. Williams, Examiner of said court, in Jersey City, in presence of Isaac W. Scudder, Esq., solicitor for defendants, and of R. Gilchrist, Jr., Esq., solicitor for complainants, notice being admitted.

JOHN CALVIN SMITH being offered as a witness, complainant's counsel objects to his being sworn or examined, on the ground that he is a party defendant, and that there being married women parties complainant who are incompetent, the said J. Calvin Smith is also incompetent.

30

The said J. Calvin Smith being sworn on oath saith: I am a defendant in this cause.

(Being shown an agreement between Peter Westervelt and Richard Bent and an assignment of the same, marked Exhibits Nos. 1 and 2 for defendants.)

10 *Know all men by these presents, That I, RICHARD BENT, of the City of New York, merchant, for and in consideration of five dollars, lawful money of the United States of America, to me in hand paid by John Calvin Smith, of said City, map publisher, the receipt whereof I do hereby acknowledge, have bargained, sold, assigned, conveyed, transferred and set over, and by these presents do bargain, sell, assign, convey, transfer and set over unto the said John Calvin Smith, his heirs, executors, administrators and assigns, as well the within written articles of agreement hereunto annexed, as also all the terms and interest in all and singular the lands, tenements, hereditaments and premises yet remaining under and by virtue of the said articles of agreement; and likewise all my estate, right, title, interest, claim, property and demand, of*

20 *and in and to the same land, tenements, hereditaments and premises which I now have either by means of the within articles of agreement or otherwise howsoever, subject nevertheless to the rents and covenants in the said articles of agreement contained.*

In witness whereof I have hereunto set my hand and seal, the eighteenth day of August, one thousand eight hundred and forty-nine.

RICHARD BENT. [L. s.]

30 Signed, sealed and delivered }  
in the presence of (the }  
words "with mentioned" }  
erased,)

JOHN H. SOUTHARD.

STATE OF NEW YORK, }  
*City and County of New York,* } ss.

On the 21st day of August, A. D., 1849, before me,  
Richard Goodman, Commissioner, to take the ac-



knowledge of deeds, &c., for New Jersey, personally appeared Richard Bent, who I am satisfied is the grantor mentioned in and described in the within deed of assignment to whom I first made known the contents thereof, and he thereupon acknowledged to me that he signed, sealed and delivered the same as his voluntary act and deed.

RICHARD GOODMAN,  
*Commissioner for New Jersey.*

Articles of agreement made this twenty-third day of February, eighteen hundred and forty-eight, between Peter Westervelt, jr., of the township of Hackensack, County of Bergen and State of New Jersey, of the one part, and Richard Bent, of the City of New York, merchant, of the other part:—1st. The said Peter Westervelt, jr., agrees to sell and convey to the said Richard Bent, or to his heirs, executors, administrators or assigns, the lot and messuage of the said Peter, situated at Tillietudlum on the Hudson River, below Fort Lee, in the township aforesaid, now in occupation of John Buckley, for the sum of four thousand dollars, to be paid as hereinafter set forth. 2d. The deed for the said property to be delivered to the said Richard Bent or to his heirs, executors, administrators or assigns, at any time within seven years, upon his paying to the said Peter the sum of one thousand dollars in cash, and securing the residue of the consideration money to be paid in annual instalments as shall be agreed upon at the time of the delivery of said deed by bond and mortgage upon the premises, together with 6 per cent. interest to be paid semi-annually. 3d. The said Peter hereby agrees to let to the said Bent the said premises for the term of seven years from the date hereof, or until said deed shall be given (subject to the lease of the said John Buckley, until the first of April next,) for which said Richard Bent is to pay him the rent of one hundred and six-

teen dollars and fifty cents, every six months in advance from the date hereof, or until said deed is delivered. 4th. The said Richard Bent agrees to purchase said premises of said Peter on said terms, and to pay him therefor as above set forth, said sum of four thousand dollars; and also that he will hire said premises for said term of seven years, or until he shall elect to purchase the same as aforesaid upon the terms and payable as aforesaid, and to keep said property in good repair, and insured in the name of the said Peter Westervelt, jr., for the sum of seven hundred dollars, and at the expense of the said Bent. 5th. And it is agreed between said parties, that if the said Richard Bent shall fail in any of the payments for the space of ten days after any payment shall be due, or shall fail to keep said property insured as aforesaid, then the said covenants and agreements herein above set forth shall be entirely null and void. 6th. And it is further agreed between the parties hereto, that in case the said Bent shall elect to purchase the said property at any time during said lease, he shall have the privilege of paying for the same by instalments as herein before set forth, although the time for paying the same shall extend beyond the time of said lease. A full description of the above property will be found in a deed of David Demarest, Sheriff, &c., to Peter Westervelt, jr., dated July 20th, 1843, recorded Lib., fol. 4 of deeds, pp. 226, 227, 228, 229, 230, 231, in the Clerk's office of the County of Bergen and State of New Jersey.

In witness whereof the parties above named, have hereunto set their hands and seals the day and year first above written.

PETER WESTERVELT, JR. [L. s.]

RICHARD BENT. [L. s.]

*Witnesses present:*

Abbt. G. Doremus.

Richard Van Winkle.

Received in the office and recorded the 28th day of May, 1850. GANET G. ACKERSON, *Clerk.*

Q. Are you the party named in that assignment?

A. Yes.

Q. Were you present when the assignment was executed?

A. Yes.

(Being shown a paper, purporting to be a lease or tenant's agreement for hiring, is asked)

Q. Were you present when the paper was executed?

A. Yes.

(Paper marked Exhibit 3.)

10

TENANT'S AGREEMENT.

THIS IS TO CERTIFY, That I have hired and taken from John Calvin Smith, all the dwelling-house and premises now occupied by me, situate at Tillietudlum, in the State of New Jersey, for the term of one year, to commence the twentieth day of August, 1849, at the yearly rent of two hundred and forty dollars, payable half-yearly:

And I do hereby promise to make punctual payment of the rent, in manner aforesaid, and quit and surrender the premises, at the expiration of the term, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

20

Given under my hand and seal the eighteenth day of August, 1849.

RICHARD BENT.

Witness,

J. M. SOUTHARD.

Q. Who drew the assignment of the agreement, which assignment is marked Exhibit 2?

30

A. John H. Southard.

Q. Did you see Southard sign his name thereto as a witness?

A. Yes.

Q. Did you see Southard sign his name to the tenant's agreement, Exhibit 3, as a witness?

A. Yes.

(Being shown paper purporting to be a deed from Peter Westervelt, Jr., and Lavinia, his wife, to John Calvin Smith, is asked)

(Deed, marked Exhibit 4, for defendant.)

THIS INDENTURE, Made this first day of April, in the year of our Lord, one thousand eight hundred and fifty-two, between Peter Westervelt, Jun., and Lavinia, his wife, of the township of Hackensack, in the County of Bergen, and State of New Jersey, of the First Part, and John Calvin Smith, of the township of Hackensack, in the County of Bergen, and State of New Jersey, of the Second Part, witnesseth, that the said parties of the first part, for and in consideration of the sum of four thousand dollars, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at and before the ensealing and delivery of these Presents, the receipt whereof is hereby acknowledged— and the said parties of the first part therewith fully satisfied, content, and paid—have given, granted, bargained, sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents do give, bargain, sell, alien, enfeoff, convey, and confirm to the said party of the second part, and to his heirs and assigns forever, all that lot, tract, or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the township of Hackensack, in the County of Bergen, and State of New Jersey, beginning at the west side of Hudson River, at the north-easterly corner of lands late of Leonard De Kleyn, deceased, from thence running 1, north forty-eight degrees, west fourteen chains and sixty-two links, to a stone set in the ground; thence 2, northerly, and at right angles, along lands of John H. Cornell, five chains and fifty links, to a stone set in the ground, striking in the last course a large rock, marked J.

P. H. ; thence 3, south forty-seven degrees, east fourteen chains and sixty-two links, to the west bank of the Hudson River aforesaid ; thence four, 4, southerly, along the same, including the dock, to the place of beginning, being in breadth, at right angles along said river, five chains and fifty links ; bounded southerly by lands late of Leonard De Kleyn, deceased, westerly by land of John H. Cornell, northerly by land of Mrs. Dempsey, and easterly by the said Hudson River ; containing eight acres and four-hundredths of an acre. 10

Together with all and singular, the profits, privileges, and advantages, with the appurtenances to the same belonging, or in any wise appertaining. Also, all the estate, right, title, interest, property, claim, and demand, whatsoever, of the said parties of the first part, of, in, and to the same, and of, in, and to every part and parcel thereof. To have and to hold, all and singular, the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, for ever. And the said Peter Westervelt, Jun., doth for himself, his heirs, executors, and administrators, covenant and grant, to and with the said party of the second part, his heirs and assigns, that he, the said Peter Westervelt, Jun., now is the true, lawful, and right owner of, all and singular, the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging ; and that the said land and premises, or any part thereof, at the time of sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made, or intended to be made, for the above described land and premises, can or may be changed, charged, altered, or defeated in any way whatever. 20 30

And also, that the said parties of the first part, now

have good right, full power, and lawful authority, to grant, bargain, sell, and convey the said land and premises, in manner aforesaid. Also, that he will warrant, secure, and forever defend the said land and premises unto the said John Calvin Smith, his heirs and assigns, forever, against the lawful claims and demands of all and every person and persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

- 10 In witness whereof, the said Peter Westervelt, Jun., and Lavinia, his wife, have hereunto set their hands and seals the day and year first above written.

PETER WESTERVELT, Jr. [L. s.]

LAVINIA WESTERVELT. [L. s.]

Signed, sealed, and delivered in the presence of }

SIMEON ZABRISKIE.

- 20 STATE OF NEW JERSEY, } *To wit:*  
BERGEN COUNTY,

Be it remembered, that on this second day of April, A. D., 1852, before me, William S. Banta, a Master in Chancery, of New Jersey, personally appeared Peter Westervelt, Jr., and Lavinia, his wife, who are, I am satisfied, the grantors mentioned in the within deed, the contents of which I made known unto them; whereupon they did acknowledge that they signed, sealed, and delivered the same, as their voluntary act and deed.

- 30 And the said Lavinia, on a private examination before me, separate and apart from her husband, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion from her said husband.

W. S. BANTA, *M. Ch'y.*

Q. Did you receive that deed from Peter Westervelt, Jr.?

A. Yes.

Q. When the assignment—Exhibit 2—was delivered to you, did you then, or at any time, execute a declaration of trust for the property mentioned in Exhibit 1, the agreement made between Peter Westervelt and Richard Bent?

A. No.

Q. Did you, at any time, agree so to do?

A. No.

Q. When the deed—Exhibit 4—was made, to whom, by whom, and how was the consideration paid? 10

A. There was a thousand dollars in cash paid to Peter Westervelt, and a mortgage for \$3,000, given by myself; the money was paid by myself.

Q. Was the mortgage ever paid?

A. One thousand dollars was paid on it by myself.

Q. From the time of the execution of the assignment—Exhibit 2—to the delivery of the deed by Westervelt to you, who paid the rent to Westervelt?

A. I paid it.

Q. Did you take possession of the property in question at Tillietudlum; if so, when, and under what circumstances? 20

A. I did, about the middle of April, 1851; the key was given me, and I went up there and took possession.

Q. Was Mrs. Bent aware of the fact of your taking possession, or any others of the family of Richard Bent, deceased?

A. She was, and I believe all the rest knew it.

Q. State the manner in which you took possession? 30

A. I went up with a hired man, named Kelly, and opened the premises and took possession.

Q. Did Mrs. Bent, after you took possession, go up there and live with you?

A. She went up the same day that I took possession of the property, and stayed there for a time.

(Being shown a paper purporting to be a receipt by Robert Rae, for \$700. Exhibit 5, of defendant.)

RECEIVED, New York, May 15th, 1853, from Mr. J. C. Smith, seven hundred dollars in trust for Mrs. Jane Bent.

\$700.00.

ROBERT RAE.

Q. Did you pay the money in that receipt mentioned?

A. Yes; I paid it to Robert Rae.

10 Q. What gave rise to the payment of that money?

A. It was paid for buildings put by Mr. Bent on the premises—Richard Bent, deceased.

Q. When had the building been put on, and what kind?

A. In 1848; it was a lean-to, attached to the main building.

Q. Did Richard Bent, deceased, when you took the assignment—Exhibit 2—express any intention of assigning the lease from Westervelt to said Bent's son?

20 A. No.

Q. Where did Mr. Bent, deceased, reside at the time of his death, or where was he staying?

A. In Jersey-street, New York.

Q. About the time of the death of Richard Bent, deceased, did you go to Jersey-street, or in any way take any possession of the papers of Bent?

A. No, sir; I never was in the place but once, and that was about six weeks previous to his death.

30 Q. What was the state of your health at the time of his death?

A. I had been confined to my house with rheumatism for about ten days or two weeks previous, and about the same time afterwards; I was not out of my house for that space of time, from 3 to 4 weeks.

Q. Did Richard Bent, deceased, in any way pay or satisfy to you, in whole or in part, the rent mentioned in Exhibit 3, the tenant's agreement?



A. It was partly paid in money, and partly paid in board of my children.

Q. When you paid the \$700 to Robert Rae, did you admit any title in the property in question, in Mrs. Bent or any others of the family?

A. No.

Q. Did any one of the parties to this suit ever take a mortgage from you on the property in question, and if so, who and for what amount?

(Objected to, that the paper must be produced.)

10

A. Mrs. Jane Reid took a mortgage for \$700 on the property in question, from me.

Q. What has become of that mortgage?

A. When the mortgage was paid, with accumulated interest, in 1860, it was destroyed.

Q. At the time you took the deed from Westervelt, what was the value of the property?

A. It couldn't have been over from \$3,500 to \$4,000; Mr. Westervelt had repeatedly offered to sell it for that amount, about the time he gave the lease to Bent for \$3,500.

20

Q. When you took the deed from Westervelt, was any objection made to your taking the same by any parties to this suit?

A. No.

Q. Did a man by the name of Bronson ever present to you a paper, purporting to be a declaration of trust, for your signature?

A. No.

Q. Were you ever made aware that it was claimed that such a paper was in existence before the bill was filed in this cause?

30

A. No.

Q. Who was present when paper, Exhibit 2, for defendants, was executed?

A. John H. Southard, Richard Bent, deceased, and myself.

Q. Where was it executed?

A. At an office in Nassau street, N. Y.; I don't recollect the number.

*Cross-examination:*

x Q. Exhibit 1, for defendant, is the lease from Westervelt to Richard Bent, deceased, is it not?

A. Yes.

x Q. Of how many pieces of paper does it consist, and how are they fastened together?

A. Of two pieces of paper, and they seem to be fastened together by a wafer.

10 x Q. Is not one of the pieces of paper—Exhibit 1, for defendant—the whole of a half of a sheet, or a leaf, and is not this leaf the first part of the lease from Westervelt?

A. Yes.

x Q. Does not the latter part of the lease, Exhibit 2, being that on which the signatures of Westervelt and Bent are written, consist of a quarter of a sheet, or the half of a leaf?

A. It shows to be a quarter of a sheet of paper.

20 x Q. Repeat what is written on the back of that quarter of a sheet of paper?

A. PETER WESTERVELT, Jr.,

To

*Richard Bent,*

Lease and Contract.

(The part erased I read: “and assignment of same.”)

Received in the Clerk's Office of the  
County of Bergen, this 28th day  
of May, A. D., 1850, and record-  
ed in Liber. N. 4, of Deeds, pages  
538, 539, 540, and 541.

30

GARRET G. ACKERSON, *Clerk.*

x Q. Who made the erasure?

A. I don't know; by-the by, it is not erased—it is crossed off.

x Q. Was that crossing off there when you first got possession of that paper?

A. I presume it was ; I am not certain ; my attention had never been called particularly to it until this suit.

x Q. Are not the words which are crossed off, in the handwriting of Charles S. Bronson ?

A. As far as I have seen Bronson's writing, I don't think it is ; it looks more like Richard Bent's, deceased.

x Q. Since the signature, "Garret G. Ackerson, Clerk," was written there, does it not appear from the letter "k" in the word "Clerk," that the absent quarter of the sheet was torn off or cut off ? 10

A. I don't see that it does follow at all ; it might have been torn off or cut off before it was on there ; I don't know that it ever was on there.

x Q. Does not it appear plain to you that the absent quarter of the sheet has been torn off, instead of being cut off ?

A. It so appears.

x Q. I observe that Exhibit 3 has pin-holes in it, as if it had been pinned to something, and wish to know to what it has been pinned ? 20

A. I presume it has, but I don't know what.

x Q. How long has Peter Westervelt, Jr., been dead ?

A. I can't say exactly, but think about ten years.

x Q. How long has Charles S. Bronson been dead ?

A. I don't know that he is dead ; it is news to me.

x Q. Have you not heard that he is dead ?

A. No.

*Re-examined in chief :*

Q. In whose handwriting is the receipt and signature, Exhibit 5 ? 30

A. Robert Rae's.

Q. Did you see Richard Bent sign Exhibit 3 ?

A. Yes.

Q. Did you see Richard Bent sign Exhibit 2 ?

A. Yes.

Q. Do you know whether anything was written on the part of the sheet which contains Exhibit 1, and which has been separated therefrom ?

A. I do not.

Q. Exhibit 3 appears to be a tenant's agreement; was any paper contemporaneous with that, called a landlord's agreement, given by you to Mr. Bent, deceased?

A. There was.

Q. When paper, Exhibit 2, was executed, was it immediately delivered to you, or delivered to you after its execution?

10 A. No, it was not delivered to me until some time after it was acknowledged.

JOHN CALVIN SMITH.

Subscribed and sworn to before  
me, at Jersey City, December }  
11th, 1865.

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

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IN CHANCERY OF NEW JERSEY.

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	Between	}
20	RICHARD M. BENT <i>and als.</i> , <i>Complainants,</i>	
	and	}
	JOHN CALVIN SMITH, <i>and als.</i> , <i>Defendants.</i>	

30 Examinations, &c., on part of defendant in above cause taken before Washington B. Williams, an Examiner of this Court, at his office in Jersey City, on October 27th, 1866, at 10 A. M., on due notice, in presence of Isaac W. Scudder, Esq., for defendant, and J. Dixon, Jr., for complainants.

JOHN H. SOUTHARD, being duly sworn, deposes as follows :

Reside in Peekskill, State of New York: am an attorney at law; resided in the city of New York in 1849.

Q. Being shown "Ex. 2, on part of defendants, W. B. Williams, Master," is asked in whose handwriting is the assignment of the lease and agreement executed by Richard Bent?

A. It is in my handwriting.

Who is the attesting witness thereto?

A. Myself. 10

Q. Did you see Richard Bent execute that paper?

A. I have no doubt but that I saw him execute it.

Q. Being shown Exhibit 3, for defendants, W. B. Williams, Master, purporting to be a printed lease filled up, is asked in whose handwriting is the filling up of that paper?

A. In my handwriting.

Q. Who is the attesting witness to the last-named paper, Ex. 3, on the part of defendants?

A. I was. 20

Q. Did you see Richard Bent execute that paper, Ex. 3?

A. I have no doubt that I did.

Q. Who were present when the last two named papers, assignment and lease, were executed?

A. Richard Bent and John Calvin Smith, and parties to the papers.

Q. Was any declaration of trust or paper showing any trust touching the property mentioned and referred to in the said assignment and lease executed by John Calvin Smith? 30

A. Not to my knowledge or belief.

*Cross-examined:*

x Q. Where were these papers executed?

A. At No. 79 Nassau street, New York.

x Q. Have you any distinct recollection of the transaction?

A. Not except from inspection of the papers; but I

distinctly recollect seeing Mr. Bent and Smith at the office.

x Q. Was any money paid?

A. I do not recollect.

x Q. Was any other paper except these signed?

A. The counterpart to Ex. No. 3 was executed by John Calvin Smith.

x Q. How long had you been practicing in New York at that time?

10 A. About twelve years; it might have been less.

x Q. When did you leave New York city?

A. About one year ago.

*Re-direct examination:*

Q. Was the counterpart of the lease executed by John Calvin Smith, the filling up of a printed paper?

A. It was in my handwriting, the landlord's agreement; the two agreements were on one sheet and were torn in two.

(This question and answer objected to as improper.)

JOHN H. SOUTHARD.

20 Subscribed and sworn to before }  
me, at Jersey City, October }  
27, 1866.

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

Defendant offers certified copy of record of lease and agreement from office of Clerk of County of Bergen, by C. L. Blauvelt, Clerk, which is marked Exhibit 6 for defendants. (Same as Exhibits 1 and 2 for defendants, with clerk's certificate added.)

30 JANE VIRGINIA SMITH, being duly sworn, on oath, saith:

I reside at what was called Tillietdum; I have resided there since 1851; I live with my father, John Calvin Smith.

I recollect when my father and family moved from New York to Tillietdum; I recollect going up there

before the rest of the family to stay ; I went in April ; my sisters and brothers came up next ; a few days before the first of May ; my grandmother, Mrs. Bent, was there keeping house for us when I went up ; father was up and down during April ; my mother came up on the 1st of May ; when I went up there the carpenters were there ; they were altering the dining-room windows and doors—two men or three.

My grandmother was there when we went there and stayed keeping house for us till the first of May ; then she went to New York and came back on the 1st of May with my mother ; and after that she was only a visitor ; I don't recollect how long she stayed after that : she may have stayed a week or may have stayed a month ; Mrs. Reid is my aunt. 10

Q. Do you know whether Mrs. Reid held a mortgage given by your father to her on the Tillietudlum property ?

(Objected to as incompetent.)

A. I know that she held it. 20

Q. State how you know it, and what you know of it ?

(Objected to.)

A. I knew of it at the time it was made, and afterwards heard her speak of it, and carried a message from her to my father, requesting to have it paid off ; in April, 1862, she sent the message.

Q. Where did Mrs. Reid reside at that time when the mortgage was paid ?

A. At 311 4th street, New York. 30

Q. Do you know the handwriting of Mrs. Reid ?

A. Yes.

Q. Being shown paper Ex. 7, on the part of defendants, purporting to be a cheque drawn by L. S. Lawrence & Co. to the order of J. Calvin Smith, and purporting to be endorsed by John Calvin Smith, Jane Reid and Elias J. Beach, is asked in whose handwriting is the signature Jane ?

No. 4629.

New York, May 21st, 1861.

NASSAU BANK.

Pay to the order of J. Calvin Smith,  
 Nine Hundred and Eleven Dollars.  
 \$911.

L. S. LAWRENCE &amp; Co.

A. Mrs. Reid's signature; my aunt's, Mrs. Jane Reid.

Q. In whose handwriting is the signature John Calvin Smith?

10 A. My father's.

Q. Have you any knowledge whether that cheque was the one by which the mortgage given by your father to Mrs. Reid was paid off, and if so, state what you know relative thereto?

(Objected to.)

A. I saw the cheque in my mother's possession; she had it for the express purpose of paying it off.

Q. State the names of your uncles and aunts?

20 A. Robert Rae, Richard M. Bent, Jane Reid, Ellen A. Brown.

Q. Since your father moved up to Tillietudlum, have you visited them, and had social intercourse with them?

A. I visited them all except Richard M. Bent. I lived in Mrs. Reid's house several months with him—Richard M. Bent.

Q. When was it that you lived in the house with Richard M. Bent?

A. I think it was the winter of 1861-2.

30 Q. Before this suit was commenced, did you ever hear your uncle or aunts, or either of them, claim any title to the Tillietudlum property?

A. I never did.

Q. Did you ever hear your aunt, Mrs. Reid, or your grandmother, Mrs. Bent, speak of your father's selling the Tillietudlum property, and if so, how, and in what manner?

(Objected to.)

A. I have heard them both speak of it; Mrs. Bent



asked me why father didn't sell the property if we didn't like living there; Mrs. Reid often urged father to sell it—was very anxious he should make an arrangement with a gentleman who came there while she was visiting us—Mr. Cockroft; he came up to see if he could make an exchange for the property.

Q. Why did Mrs. Reid want your father to sell the property?

(Objected to).

A. Because she thought it would be more comfortable for us to live in the city—thought it would be to our advantage to sell it and buy property in the city. 10

*Cross-examined:*

x Q. How old were you in 1851?

A. I was eleven years of age.

x Q. Prior to what time had not Tillietudlum been Mrs. Bent, your grandmother's, permanent residence?

A. She had lived there three years—no, not permanently; she had lived there one winter and three summers. 20

x Q. Spending the other two winters where?

A. One winter at my mother's house; all, or nearly all of it, and a portion of the second; for a short time previous to Richard Bent—her husband's—death she was living with him.

JEANNIE V. SMITH.

Subscribed and sworn to be-  
fore me, at Jersey City, Oc-  
tober 27th, 1866. }

W. B. WILLIAMS, 30  
*Master in Chancery.*

This witness, after the close of the next following deposition, requested to make this correction: "When I spoke of carrying a message from Mrs. Reid to my father, requesting to have the mortgage paid off, I should have said it was in April, 1861, and not 1862;

it was a mistake which I noticed myself without being told of it, immediately after I had signed the testimony.

JEANNIE V. SMITH.

Sworn and subscribed as above.

M. B. WILLIAMS,

*Master in Chancery.*

EMILY C. SMITH, being duly sworn, saith: I am a daughter of John Calvin Smith; am 28 years of age; 10 recollect the family moving up to Tillietudlum.

Q. State who moved up, at what time of the year, who went first?

A. My sister and father went up first; I didn't go up till two or three days before the first of May, with the small children.

Q. Where was your grandmother?

A. She was at the place.

Q. Was she there before or after your father's family moved up?

20 A. Both before and after.

Q. How long before?

A. Three or four weeks.

Q. Do you recollect how long after?

A. I could not recollect how long after.

Q. Do you recollect the year you moved up there?]

A. April, 1851.

Q. Do you recollect whether anything was done to the house, and if so, what, and at what time?

(Objected to.)

30 A. Father had carpenters there altering the dining-room windows and doors.

Q. At this time, in April, 1851, when the carpenters were at work there, where was your grandmother, Mrs. Bent?

A. She was up there.

Q. Do you recollect any circumstance connected with your father's moving there relative to a horse to move furniture, and if so, state what it was?

A. He bought a horse in April to move the furniture, and my eldest brother helped to move the furniture up from the dock.

Q. Do you know anything about a mortgage given by your father on the Tillietudlum property to your aunt, Mrs. Reid, and the payment of it, and if so, state what you know?

A. He gave her a mortgage on the place in 1857, I think. It was paid back in 1861.

Q. State how you know these facts. 10

A. She gave me a message to take to father to have it paid off. I was living with her at the time.

Q. Where was she living at that time?

A. At No. 311 Fourth street, New York.

Q. Do you know who paid the money to Mrs. Reid for that mortgage, and if so, state the circumstances?

A. Mother paid it at Mrs. Reid's house. They went up to the third story back room, so as not to be disturbed. 20

Q. At or before the time the money was paid for the mortgage, did you see the cheque by which it was paid?

A. I did not.

Q. How, then, did you know that your mother and Mrs. Reid went up to the back room, as you stated, to pay the mortgage?

A. Because mother told me she came on that business (objected to), and Mrs. Reid requested me not to let them be disturbed. 30

Q. When your mother so told you, where was Mrs. Reid?

A. She was present.

Q. Have you been in social intercourse with your uncles, aunts, and grandmother since April, 1851?

A. I have.

Q. Before this suit was commenced, had you ever heard either of your uncles, aunts, or your grandmother

make any claim of title to this property at Tillietudlum?

A. I never did.

Q. Did you ever hear any of them, and if so, who, speak of selling this property, and under what circumstances?

A. Mrs. Reid did several times. She was visiting at our house, and Mr. Cockroft came there in reference to exchanging places with father. She strongly  
10 advised him to sell, and wished it.

A. Why did she advise him to sell?

(Objected to.)

A. Because she thought it would be more convenient for us to live in the city. I never heard any of the rest speak of my father's selling the property.

Being cross-examined, she says:—

Q. Were you present at the payments you speak of by your mother to Mrs. Reid?

A. I was not in the room when she paid it.

20 Q. What was the message Mrs. Reid sent by you to your father? Give her language.

A. Well, as near as I can recollect, she wished me to ask father to have the money paid to her, as she wished to use it.

Q. How did she designate what money she referred to?

A. She spoke of it as the mortgage on our place.

Q. Please give her words?

A. I don't know that I could exactly give her words,  
30 it is so long ago.

Q. When was it?

A. In the summer of 1861.

Q. What do you know as to who employed the carpenters at Tillietudlum in April, 1851?

A. Well, I always heard it spoken of as father employing them.

Q. Whom did you hear so speak of it?

A. Mother and father.

Q. What do you know as to the length of time your grandmother was at Tillietudlum before you went there in April, 1851?

A. She lived there three summers and one winter before.

MISS EMILY C. SMITH.

Subscribed and sworn to be-  
fore me at Jersey City, }  
October 27th, 1866.

W. B. WILLIAMS,

*Master in Chancery.*

10

GEORGE RAE SMITH, being duly sworn on oath, saith:—

I am son of John Calvin Smith; am 31 years of age, and reside at No. 157 Pearl street, Brooklyn. I recollect my father's family moving to Tillietudlum in the spring of 1851. I went up shortly after my father did, I think the next night, and I assisted in carrying the things from the dock to the house. I also saw to getting the provisions from New York up by the boat. There was a hired man there, employed by my father as gardener, also two carpenters, one named Hamilton and one Wilson; they were making improvements in the house. Wilson had been regularly employed by my father for some time previous to his moving up there. I think it was on or about May 1st when my mother and the children came up. I had been up there some two weeks.

20

When I first went up there Mrs. Bent, my grandmother, was there. I think she left after May 1st. She must have gone, I think, to Bleecker street, New York, to Mrs. Reid's; I am not positive as to that.

30

I heard a conversation [conversation objected to] between my father and Mrs. Bent in the kitchen attached to the house concerning the money to be paid for certain improvements that had been made on the place. There was some difference in regard to the amount. Father, I believe, only wanted to pay some \$500; grandmother insisted on having at least \$700,

and finally settled by getting that amount—\$700. By these improvements they were talking about I mean principally an extension containing four sleeping-rooms added to the house in the rear. The \$700 was paid for this improvement and for some farming utensils on the place. This talk took place the first season we lived there. I couldn't say whether it was June or July; it might have been the latter part of May. I only remember the date by a painter being employed on the front of the house at the time, and he was employed about two months painting.

I know Mrs. Reid took a mortgage; I saw the mortgage. [Objected to.] I got the money from her some time before the papers were drawn up. It was a mortgage on the Tillietudlum property. The mortgage was made by my father.

My father got the money from me to pay this mortgage off with. I gave him a cheque on L. S. Lawrence & Co. That was in 1861. I recognize this cheque as the one I gave him. (Cheque marked Exhibit 8 for defendants):

No. 152.

New York, May 21st, 1861.

L. S. LAWRENCE & Co., BANKERS.

Pay to J. Calvin Smith, or bearer,  
Nine Hundred and Eleven Dollars.

\$911.

RAE SMITH.

All I can say about Exhibit 7 for defendants is that I recognize my father's signature, also Mrs. Reid's signature and handwriting.

I remember the death of my step-grandfather, Richard Bent. My father was at that time laid up at his house, No. 24 Bleecker street, with rheumatism, and had been so for at least two or three weeks previous to Richard Bent's death, and remained so, unable to leave his room, for two or three weeks after. I attended Mr. Richard Bent's funeral. It was from our house. At the time of his, Richard Bent's, death he

lived in Jersey street, New York, and died there, a small street near St. Patrick's Cathedral.

Being cross-examined, he says :

I know from my own knowledge, I know from conversation with Mrs. Reid, that she got the money through this cheque (Exhibit 8). The two cheques are of same date and amount. She referred to it in this way, that she was glad to get the money, as she needed it. She did not refer directly to a cheque. She knew where the money came from.

10

*Re-cross-examined in Chief :*

I had not heard my grandmother, uncles, or aunts claim any title to this property before this suit was brought. I do not know whether this mortgage given by my father to Mrs. Reid was ever recorded. I think it was not ; that is my impression. I don't know what became of it, except that I heard it was destroyed.

This addition to the house at Tillietudlum had been put up by Richard Bent, my step-grandfather.

GEORGE RAE SMITH.

20

Subscribed and sworn to be-  
fore me at Jersey City, }  
October 27th, 1866.

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

George Rae Smith being re-called immediately after signing the above, on oath saith :

The three letters now shown me, which are marked Exhibits 9, 10, and 11 for defendants, are in the handwriting of Richard M. Bent, a party to this suit. I have frequently seen him write.

GEORGE RAE SMITH.

30

Subscribed and sworn to be-  
fore me at Jersey City, }  
October 27th, 1866.

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

## EXHIBIT No. 9.

LOUISVILLE, KY., Dec. 1st, '55.

TO MY DEAR SISTER AND HER FAMILY:—This comes greeting.

I received yours of the 5th Nov., after my return from the Mammoth Cave, and have not had an opportunity to answer until now. You inform me that you are going to remain in Tillie this winter. I regret, as well as yourself, that circumstances require it, but I  
 10 am satisfied that it is all for the best. It will be lonesome for you, that we all know; but the hope that the sacrifice of society for this season may add to your pleasures and comforts in the future, will be a source of consolation in your exile. Like Mark Tapley, you must be jolly under difficulties. Bear this in mind, also, that, unlike that individual, you are surrounded by near and dear relatives, who will lighten the task very much; and further, that this (cove) is likely to be  
 20 home in January, if not sooner, and will make it a point to spend a week or so with you, and while away the tedious hours relating his (strange, eventful) history in the West. As you have not heard much of it, maybe a little at present would amuse you, so here goes:

After I had settled here permanently (as I thought), in as good a place as I could find, I was, together with the other boarders, very summarily turned in the street, upon three hours notice, in consequence of a  
 30 difficulty between my landlord and his. I took my trunk to a hotel for a day, to enable me to look up suitable quarters. I at last found a boarding-house which promised to be all I desired. I removed to it forthwith, and, after staying there three days, I christened it Sausage Hotel, from the fact that the inmates were fed wholly upon the above article, and very common bread, at the rate of \$4 per week. Not liking the idea of returning home upon all fours, for by this



time I began (not to bark or mew, but) to grunt and squeak, and having a decided inclination to assume the above mentioned position, I changed, at the expiration of three days, to a private boarding-house (so the bill said); but this was jumping out of the frying-pan into the fire, for the boarders here (and they were numerous for a private house) were fed on the internals to such an extent that I thought the most appropriate name for it would be the Liver House. I accordingly christened it, and left, having staid there one week, for which (luxury) I paid \$5. After leaving the Liver House, I obtained board in a private family, and my failing in the pie line was discovered by a little boy; the particulars I will give when I return home, for without some acting it's uninteresting. I changed to where I am at present, and expect to pass the remainder of my time in Louisville in my present quarters (if I am lucky). Of the city I have little to say. The population is nearly as great as that of Philadelphia, to-wit: people 60 thousand, hogs double that number, and mules thrible the number of hogs, making in all 540 thousand specimens of animated nature. I shall now change the subject:

19

20

I don't exactly understand the Melville case. It rather puzzles and surprises me. From what you say, I have concluded that the Maine law has been violated by the ex-captain. It may be that his amorous propensities have got him into an unpleasant position, but I rather think that it's the former, for I had suspected him of tippling (and that deeply) before I left New York, but I will wait for a more explicit account from you before I form an opinion upon the subject.

30

You speak of a Cathedral in Tillie. I have no doubt you will furnish the (*Belles*) for the same. Maybe you can induce some nice young men to become ringers; if so, please inform me in your next.

You say you don't want a six-footer for a sister-in-law. You needn't be the least alarmed, for there are not any signs of such an occurrence taking place, for

I am as yet fancy free, but not have the objection to take a partner in my voyage on the ocean of life, if I I was sure that it would be (*Pacific*). I have just returned from the cave, by the way of Nashville and the Ohio River, an account of which, together with my journey there and back, I will give you when I return; and in the event of my prolonging my stay in the West, I will give it you by letter. It is doubtful if I start for home till '56, for my time don't expire  
 10 until the 8th January. It is time I come to a conclusion, for it is nearly dark, and I can hardly see to write; so please give my love to all the family, not forgetting the youngest; kiss all the children, from the oldest to the baby, for me, and accept my warmest wishes for your and their future prosperity and happiness.  
 Your affectionate bro.,

RICHARD BENT.

P. S. The weather is delightful; in fact, it has been so for more than two months. I feel like a brick.

20

EXHIBIT No. 10.

CHARLESTON, Feb. 15th, '59.

DEAR SISTER:—It appears that you will not write until I send you a line, and as I feel desirous of hearing from you personally, I take pen in hand, hoping to learn of your health and good fortune in your answer.

I left Kentucky on the 14th December, and experienced a series of trials, detentions, and annoyances before reaching South Carolina, on the 7th January. Since then I have been busy and prosperous, with  
 30 nothing to interrupt the "even tenor of my way" worthy of note.

In my letter to Jane, I have sent my love to you and all the family.

This city is not as gay as last winter, owing to the

dread visitation last summer. Most all the families lost a relative or friend, hence there is a great many in mourning, and a damper put on the usual routine of gaieties which prevail during this season.

I am boarding with the same people as formerly, and occupy the same room; consequently, feel quite "at home."

To-night the Italian Opera Troupe give a concert. Piccolomini and Formes are the principal attractions. When here formerly they appeared in opera. I mean 10  
by this, that Italian singers generally, not the present \*  
troupe. Amusements are dull, and with the occasional announcement of a "Star," we cannot boast of vieing with Gotham.

I received a letter from Robert while at Columbus, Ga., about New Year. From it I judge he is not as well pleased as I would wish. When did you hear from him?

I hope you will overlook my not writing before. I have so many, between business, home, and friendship, to write to, so little matter to compose from, and 20  
so little time to devote to it, that I feel you will not judge harshly after my making this statement. Hoping the same kindly feeling that has ever existed, will not be marred from this or any other cause, I close by sending my love to all.

Your affectionate bro.,

RICHARD.

Write soon.

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EXHIBIT No. 11.

30

CHARLESTON, March 13th, 1860.

DEAR SISTER:—I have not written you this season, but I assure you, it was not from indifference I have neglected so to do. My disappointments have been many this winter, as the sectional feeling was intense and bitter here. It naturally caused a suspicion of all

Northerners, and a feeling of non-intercourse prevailed.

It has in a measure subsided, and I intend to stick it out, at least, to next summer, when I will probably return for good, unless more fortunate than I anticipate. I will not tire you with details of events which you have doubtless read during the winter in your papers; but from the agitation and disappointments in making business arrangements, I found I had to leave or make  
 10 a bold movement. The latter I done, without a second  
 \* thought, and now have a fine store, 40 feet by 26, a stock of six pianos, a good place partitioned off for repairing. I am not sanguine of success, and made my calculations and mind up for the worst results; so you see I intend to take it like a *fool*-osopher, and, like McCawber, wait for something to turn up.

The Convention (Democratic) meets here next month, and I expect to make a spec by hiring my store to a party for sleeping purposes, should I find it necessary  
 20 to so do to make up present losses. The crowd will be very great on that occasion. Heard from Jane and mother lately. Jane has to move, and mother is well and contented.

Dear sister, as the 17th will be a year from your silver wedding, and I, through my ignorance of such matters, did not on that occasion contribute my mite to swell your presents or increase your happiness, please accept, with my love, the enclosed X, and invest it in a suitable article to commemorate the event,  
 30 and consider it as presented at the occasion. I know well the amount will not purchase an article to hold a very enviable position among the many beautiful gifts you received, but hope the feeling which has prompted me will be fully appreciated. Under different circumstances, nothing would have given me more pleasure than to have multiplied the amount by five.

My love to all, and excuse this abrupt termination, as I have a d——ish bad pen. Write soon.

Affectionately yours,

RICHARD.

JOHN P. WAKE, being duly sworn on oath, says :

I reside at Fort Lee, N. J. I am in my fifty-fourth year, and am a pianoforte manufacturer. I know the property at Tillietudlum occupied by John Calvin Smith. I have known it 23 or 24 years. I know Mr. Peter Westervelt, the former owner of that property. He offered it to me for sale 19 or 20 years ago at \$3,500. At that time I did not consider the property worth the \$3,500. I could get other places for that which I thought were worth more. 10

Mr. Westervelt afterwards spoke of selling to Mr. Bent; seemed satisfied he had made a good sale. He, after that — after Mr. Bent's death — said that Mr. Smith had taken the place, in Mr. Bent's place. I understood from him that Mr. Bent had paid nothing on the principal. Mr. Westervelt is dead.

JOHN P. WAKE.

Subscribed and sworn to be-  
fore me at Jersey City, }  
October 29th, 1866.

20

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

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IN CHANCERY.

OCTOBER TERM, 1869.

BENT AND *als.* }  
*vs.* }  
SMITH AND REID. }

The hearing of this cause was upon bill, answer and proofs :

Mr. GILCHRIST *for Complainants.*

30

Mr. I. W. SCUDDER *for Defendants.*

*The Chancellor :*

The object of the suit is to have the defendant Smith declared a trustee for the complainants of certain

property at Fort Lee, in Bergen County, and to compel him to convey to them. The complainants are the heirs at law of Richard Bent, deceased. P. Westervelt in 1848, agreed in writing with Richard Bent, to convey the property to him for \$3,500, at or before the end of seven years, and that Bent in the mean time should occupy it for the annual rent of \$232.80, payable half yearly. This contract and all his interest in the land, Bent, in August, 1849, assigned to the defendant Smith, who was the son-in-law of Mrs. Bent, the consideration of the assignment was \$5; at the same time Smith leased the property to Bent for one year at the rent of \$240. Bent had in the mean time erected an addition to the house at a cost of about \$700.

The complainants allege that at the time of the execution of this assignment, Smith executed and delivered to Bent a writing which is now lost, declaring that the assignment was given in trust for Bent and his family, and agreeing to reassign to him his heirs or representatives upon request. Bent died in January, 1851. Smith paid Westervelt the \$3,500, and received a conveyance for the property in 1852. Smith in his answer denies that the assignment to him was in trust in any way whatever, and denies that he ever executed any writing declaring such trust; and denies that the contract at that time was of any value, or that the property was worth more than the price to be paid for it and the rent stipulated.

The whole question between the parties is as to the fact of the trust, or rather the existence of the writing by which it was declared. For by the statute of frauds no trust can arise unless it be declared by writing, signed by the party. The execution or existence of such writing is fully and directly denied by Smith in his answer responsive to the bill, which charges it, and founds the title to relief upon it.

The complainants produce but one witness, who

testifies as to the execution or existence of that paper; he deposes that he drew it, saw it executed and signed it as a subscribing witness, and that he made the copy which he produces, from the original shortly after it was made. The loss of the original, if it ever existed, is sufficiently shown. But no other evidence is given to show that such paper was ever executed, or in any way to support the testimony of this witness. All the complainants claim from the other evidence offered is, that it makes it probable there was some understanding 10 that this assignment was in trust, none to show that there was a written declaration of that trust. The rule in this Court is too clear to admit of a question or doubt. The direct responsive answer of a defendant as to a fact within his own knowledge must prevail, unless overcome by more evidence than the oath of one witness.

The complainants' bill must be dismissed.

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IN CHANCERY OF NEW JERSEY.

20

Between RICHARD M. BENT and <i>als.</i> , <i>Complainants,</i> and JOHN CALVIN SMITH and <i>als.</i> , <i>Defendants.</i>	}	<i>Final Decree.</i>
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This cause coming on to be heard before the Chancellor upon bill, answer, and proofs, in the presence of R. Gilchrist, Esq., of counsel with the complainants, and of I. W. Seudder, Esq., of counsel with the defendants, and the pleadings and proofs having been 30 read, and the arguments of counsel heard and considered, and the Chancellor being of the opinion that the

said complainants are not entitled to the relief prayed in their said bill of complaint.

It is, on this seventeenth day of November, A. D., eighteen hundred and sixty-nine, ordered, adjudged, and decreed, that the said bill of complaint be, and the same is, hereby dismissed out of this Court, with costs to the said defendants, to be taxed. And it is further ordered, adjudged, and decreed, that the said complainants do, within ten days after service upon their solicitor of a copy of this decree, and of the bill of said defendants' taxed costs, pay to the said defendants, or to their solicitor, the said costs of the said defendants, in this cause to be taxed.

A. O. ZABRISKIE, *Chancellor.*

IN CHANCERY OF NEW JERSEY.

	Between	
	RICHARD M. BENT, <i>et al.</i> ,	
	<i>Complainants,</i>	
	and	
20	JOHN CALVIN SMITH and <i>al.</i> ,	} <i>On Bill, &amp;c.</i>
	<i>Defendants.</i>	

The complainants hereby appeal from so much of the final decree, made in this Court in the above stated cause, as orders, adjudges, and decrees that the complainants' bill be dismissed out of this Court, and that complainants do, within ten days after service upon their solicitor of a copy of the said decree, and of the bill of defendants' taxed costs, pay to the defendants, or to their solicitor, the said costs, to the Court of

30 Errors and Appeals of New Jersey.

ROBERT GILCHRIST,

*Solicitor, and of Counsel with Complainants.*

Dated November 24, A. D., 1869.



I conceive there is good cause for appeal in the above stated cause.

ROBERT GILCHRIST,  
*Of Counsel with Complainants.*

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

<p>Between RICHARD M. BENT, <i>et al.</i>, <i>Appellants</i>, and JOHN CALVIN SMITH, <i>et al.</i>, <i>Appellees</i>,</p>
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*On Bill, &c.*  
*Petition of Appeal.*

10

*To the Honorable, the Court of Errors and Appeals:*

The humble petition of Richard M. Bent and others, appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Abraham O. Zabriskie, Chancellor of New Jersey, bearing date the seventeenth day of November, A. D., eighteen hundred and sixty nine, wherein the said Richard M. Bent and others were complainants, and the said John Calvin Smith and others were defendants, in this respect, to-wit: that the said decree orders, adjudges, and decrees that the complainants' bill be dismissed out of said Court of Chancery, and that complainants do, within ten days after service upon their solicitor of a copy of the said decree, and of the bill of defendants' taxed costs, pay to the defendants, or to their solicitor, the said costs; and your petitioners humbly appeal from the parts of the said decree of the Chancellor, which decree as aforesaid,

20

upon the ground that the same is erroneous, for that the complainants' bill should not be dismissed out of said Court, and complainants should not pay costs, as it is therein decreed they shall pay them.

Your petitioners therefore pray that the said decree of the said Chancellor may, in the particulars aforesaid, be reversed, set aside, and for nothing holden; and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

10

ROBERT GILCHRIST,

*Solicitor, and of Counsel with Appellants.*

Dated March 8, 1870.

NICHOLSON, Printer, Trenton, N. J.

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## N. J. Court of Errors and Appeals.

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Between

RICHARD M. BENT, et al.,

Appellants,

and

JOHN CALVIN SMITH,

Appellee.

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Exhibit A on part of Appellant.

[Filed March 14, 1871.]

COURT OF CHANCERY OF NEW JERSEY.

CLERK'S OFFICE.

Trenton, January 24th, 1870.

HON. R. GILCHRIST,

*Dear Sir*:—I do not find any of the exhibits in Bent and al. v. Smith and al., in this office.

Yours Truly,

B. GUMMERE, *Clerk.*

10

A

Exhibit D 1, on part of Appellee.

[Filed March 14, 1871.]

JERSEY CITY, November 19th, 1870.

JOHN CALVIN SMITH, ESQ.,

*Dear Sir*:—After you left, I received a notice, a copy of which I enclose.

What does this mean?

Yours Truly,

I. W. SCUDDER.

10 *Dear Sir*:—I do not know anything about the paper named; I recollect of seeing it at the time of the examination of Bronson, January, 1864; never had in my possession or seen it since.

JN. CALVIN SMITH.

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Exhibit B on Part of Appellant.

[Filed March 14, 1871.]

ALEXANDER T. MCGILL, ESQ.

*Dear Sir*:—On the 21st day of January, 1870, you took *Exhibit 6* in the Bent case, being certified copy of  
20 lease and agreements, certified by clerk of Bergen county.

Will you return the same to me by the bearer?

Yours Truly,

I. W. SCUDDER.

JERSEY CITY, JUNE 20th, 1870.

[Sent *Exhibit 6* to Mr. Scudder by bearer of this note,  
(his office boy,) June 20th, 1870.]

## Depositions.

[Filed March 8, 1871.]

Examination of witnesses, &c., taken in the above stated cause, before Caleb S. Green, one of the masters of the Court of Chancery, on the eighth day of March, A. D. eighteen hundred and seventy-one, pursuant to an order made in said cause by the Court of Errors and Appeals.

*Barker Gummere, esq.*, of the city of Trenton, alleging himself to be conscientiously scrupulous of taking an oath, and being solemnly affirmed, on his affirmation saith—I 10  
 am clerk in chancery, and have been for about ten years last past; I have made two or three searches for the exhibits in the above stated cause of *Bent v. Smith*, in the office of the clerk of the Court of Chancery, and have been unable to find them; I made the last search this morning, and am satisfied there are no such exhibits in the office; I made a search about the twenty-fourth day of January, A. D. eighteen hundred and seventy; there were then no such exhibits in the office; they had all been handed out according to the best of my recollection 20  
 to Mr. Scudder; I am quite confident there were some exhibits in this cause in the office at sometime; I have no recollection whether the exhibits were in one or two packages; I should think they were most likely in one package; after a cause has been argued, the Chancellor usually, but not always, returns the exhibits with the papers in the cause to the office, tied up in a bundle together; they generally come in several bundles together; I do not preserve the letters sent to the office by solicitors respecting papers in any cause; after the papers come in 30  
 we separate the exhibits from the other papers in the cause, and tie them up in bundles, put them in a closet in the vault, where they remain until they are called for by the counsel in the cause, or the solicitors; if they are put up in separate envelopes endorsed complainant's and defendant's exhibits, as they are sometimes, we give to the respective solicitors the several packages; if they are all

put up together in one package, we hand the package to the counsel on either side who first calls for them, without separating them, and request him to take his own and hand the others to the opposite counsel.

And being cross-examined by Isaac W. Scudder, esq., on behalf of the appellee, the witness saith—

I do not know when or where the exhibits in this cause were delivered; if they were delivered by me, they were delivered here in the office; I have no distinct recollection  
 10 when or where the exhibits were delivered to Mr. Scudder; it is only an impression on my mind; there were no circumstances connected with the exhibits to make a strong impression on my memory.

BARKER GUMMERE.

Sworn and subscribed, at Trenton, the eighth day of March, A. D. eighteen hundred and seventy-one, before me.

CALEB S. GREEN.

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[Filed March 14, 1871].

20 Examination of witness, &c., in the above entitled cause on the part of the appellee, taken before me, Isaac Romaine, a master and examiner of the Court of Chancery of said state, on Saturday, March eleventh, eighteen hundred and seventy-one, at three o'clock in the afternoon, at my office, No. 31 Montgomery street, in the presence of Isaac W. Scudder, solicitor for the appellee, and Robert Gilchrist, solicitor of the appellants, in pursuance of an order of the said court entered for that purpose.

30 *Isaac W. Scudder*, a witness produced on the part of the appellee, being duly sworn, on his oath saith—  
 I was the solicitor and am still the solicitor in this

cause for John Calvin Smith; the cause was argued before the Chancellor on the eleventh day of June, eighteen hundred and sixty-nine, and the final decree of the Chancellor was made on the seventeenth day of November, eighteen hundred and sixty-nine; after the cause had been decided by the Chancellor, and as near as I could say within a fortnight thereafter, I addressed a letter to the clerk in chancery, requesting the clerk to forward to me the exhibits on the part of John Calvin Smith; they were forwarded to me by mail or by express; after receiving them, I looked them over to see whether I had the exhibits on the part of John Calvin Smith; as I believe, *Exhibit C 1* on the part of the complainants was not in the bundle, and as I believe, no exhibits on the part of the complainants so forwarded to me; after that time John Calvin Smith being in my office, and before I was aware of the purpose on the part of the complainants in the Court of Chancery and appellants in the Court of Appeals to appeal, I delivered the exhibits to John Calvin Smith in my office, stating to him they were of no further use to me; a long time thereafter, but how long I can't say, Mr. McGill called on me to get papers to print; Mr. McGill also called on me to know if I had *Exhibit C 1*; I made diligent search for it and could not find it, and have repeatedly searched since and could not find it, and also sent word to Mr. Smith enclosing him a notice of taking depositions before the Court of Appeals in November, eighteen hundred and seventy, and understood from Mr. Smith after seeing him, and also by note, that no such paper was in his possession; I have made search for letters to see whether Mr. Gummere wrote me a letter when he sent me the exhibits, and I find no such letter, and have no recollection that he forwarded me any letter, except the package and the address on it; as I believe, the *Exhibit C 1* was never in my hands or possession in any way after the cause was argued before the Chancellor; the letter which I addressed to Mr. Smith I now produce. [Said letter is offered in evidence and marked *Exhibit D 1* on part of appellee].

And being cross-examined, he says—

I am sure that I put in Mr. Smith's possession the original papers, for the reason that I locked them up in the safe and took them out on the day or on the occasion when I delivered them to him, which papers I had been accustomed to keep in the safe; my belief is I did not send a notice to Mr. Smith that any exhibit was lost until I received a notice on the nineteenth day of November, eighteen hundred and seventy, and at once sent a  
10 note to Mr. Smith; I do not think I alluded to the loss of the exhibit to Mr. Smith before that time.

I. W. SCUDDER.

Taken, sworn to, and subscribed this eleventh day of March, A. D. eighteen hundred and seventy-one, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

*John Calvin Smith*, a witness produced on the part of the appellee, being duly sworn, on his oath saith—

I am the defendant in this cause in the Court of  
20 Chancery and the appellee in this court; I think Mr. Scudder sent me word that the case had been argued and concluded, and the second or third time I called, I am not sure which, my object in calling was to get an original survey of the property as it was before it was divided; Mr. Scudder took the package from his safe and examined them thoroughly in order to find this survey, but failed to do so; then he stated as "I am through with these papers you better take them," and I took them accordingly; I took the papers home and laid them away in the bureau,  
30 and I have no knowledge that there was any paper taken out, except the original deed, which was taken out by me to be examined when asked for them; I returned them to him in the state in which he gave them to me, with the single exception of examining the deed; *Exhibit C 1* was not among the papers that I know of; I have no knowledge of its being there; *Exhibit C 1* is not in my possession; I do not know where it is; I last saw *Exhibit C 1*



on the examination of Bronson; I remember of looking at it particularly at that time, but have no recollection of seeing it since; I think I was informed by Mr. Scudder of its loss before I received the notice of taking testimony; I was informed of it the beginning of eighteen hundred and seventy or the end of eighteen hundred and sixty-nine; the map has never been found.

JNO. CALVIN SMITH.

Taken, sworn to, and subscribed, this eleventh day of March, A. D. eighteen hundred and seventy-one, at Jersey 10 City, before me.

ISAAC ROMAINE, *M. C.*

[Filed March 14, 1870.]

Examination of witnesses, &c., in the above entitled cause, on the part of the appellants, taken before me, Isaac Romaine, a master and examiner of the Court of Chancery of said state, on Friday, March tenth, eighteen hundred and seventy-one, at four o'clock in the afternoon, at my office, No. 31 Montgomery street, Jersey City, in the presence of Robert Gilchrist, counsel for 20 appellant, and James B. Vredenburg, for Isaac W. Scudder, counsel for the appellee, John Calvin Smith, the appellee, being also present. The above examination was taken pursuant to an order of the said court, entered for that purpose.

*Abraham O. Zabriskie*, a witness produced on the part of the appellant, being duly sworn, on his oath saith—

I was the Chancellor of the state of New Jersey at the time of the hearing of this cause; exhibits in the cause on both sides were laid before me. 30

After the argument of the cause I have no recollection of what was done with the exhibits in the cause; my practice was to hand them back to counsel after preparing my opinion, and if counsel did not call in a reason-

able time I would send them to the clerk in chancery, and I suppose I did one or the other in this case.

I do not recollect that I made a search for these papers once when Mr. Gilchrist called, and once when Mr. McGill called for them.

I have now made a search in the only place among my papers where a stray exhibit of this kind would be placed, and I find no exhibit there; I am satisfied it is not in my possession.

10 I recollect that there was an exhibit on the part of the complainant offered, which purported to be a declaration of trust by the defendant, but I do not remember its contents—either generally or specifically.

I do not recollect whether this exhibit was written on a paper on which was some other writing, but I do recollect there was some paper on which I thought I recognized the handwriting.

A. O. ZABRISKIE.

Taken, sworn to, and subscribed, this tenth day of  
20 March, A. D. eighteen hundred and seventy, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

*Alexander T. McGill*, a witness produced on the part of the appellant, being duly sworn, on his oath saith—

I recollect *Exhibit C 1* on the part of the complainant, Richard M. Bent, from having superintended the printing of it, but I do not remember the original; I got the copy to print from, either from the bill filed in the cause, or Mr. Bent gave me a copy for it; I knew but little of the  
30 case until I commenced to prepare it for the printer; I was present and conducted the examination of two of the witnesses, on the twelfth of June, eighteen hundred and sixty-nine; I examined them without having made a thorough examination of the case.

About the time of printing the case—when we were preparing the case for printing—we found *Exhibit C 1* missing; I made a thorough search for it in the office, and at, I think, Mr. Gilchrist's request, asked the Chau-

cellor about it; he looked through his papers lying on and around his table, and through the pigeon-holes near his table, and in a closet, and then he said he must have sent it to Trenton with the other exhibits; that he thought he bundled them all together—the complainant's and defendant's exhibits—and sent them to the clerk in chancery, which he said was his practice when counsel did not take them. [Objected to.]

The decree was dated the seventeenth of November, eighteen hundred and sixty-nine; the appeal on the twenty-fourth, and I called upon the Chancellor for the paper about the middle of January. 10

I then wrote to Barker Gummere, clerk in chancery, asking him to send the exhibit, writing in Mr. Gilchrist's name, to which I received an answer that the bundle of exhibits, as returned to him by the Chancellor, was sent to Mr. Scudder; this letter I cannot find; upon receiving this letter I called upon Mr. Scudder—about January twenty-first, eighteen hundred and seventy—and asked him for the exhibit; he looked for it in a bundle of 20 papers, without allowing me to take the bundle in my own hands, to examine if the exhibit was there; he told me that he could not find it among the papers he had there; he said either that Mr. John Calvin Smith had taken, or that he had given him the original papers—exhibits in the case—and that he would write to him for them, possibly he might have this exhibit; I then wrote to Gummere again, and asked him to make thorough search and see if this exhibit was not in his office, and received this note in reply. [Which note is offered in 30 evidence, and marked *Exhibit A* on part of appellant.]

On the twenty-first of January, eighteen hundred and seventy, at the time I called upon Mr. Scudder for this *Exhibit C 1*, I borrowed some other papers in the case—parts of the testimony and some exhibits which we did not have copies of, in order to make up the case complete for the printer; I fix this date on the twenty-first of January, eighteen hundred and seventy, by this letter received June twentieth, eighteen hundred and seventy, from Mr. Scudder.

[Said letter is offered in evidence and is marked *Exhibit B* on part of appellant].

So that it must have been on or about the twenty-first of January, eighteen hundred and seventy, that I had this conversation with him.

ALEX. T. MCGILL.

Taken, sworn to, and subscribed, this tenth day of March, A. D. eighteen hundred and seventy-one, at Jersey City, before me.

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ISAAC ROMAINE, *M. C.*

*Robert Gilchrist*, a witness produced on the part of the appellants, being duly sworn, on his oath saith—

I was the solicitor and counsel of the complainants below and am above.

I recollect *Exhibit C 1* very well; it was of the tenor of the paper set out in the bill on page 7 of the printed case; it was written on the fly leaf, or on the same leaf with the draft of a lease, evidently the original of the paper set out on pages 113 and 114 of the printed case; the draft of  
20 the lease was mainly in one handwriting, which the Chancellor at the hearing of the case thought he recognized as the handwriting of a man in Bergen county; the interlineations in the draft lease, of which there were several in number, seemed to be in the same handwriting as the declaration of trust, and in the same handwriting as the words "assignment of the same," referred to on page 122 of printed case.

After Mr. McGill had seen the Chancellor, and written to the clerk and seen Mr. Scudder, and written to the  
30 clerk again and received his answer, I called on Mr. Scudder to ask him to make search for the missing exhibit, and he in my presence carefully looked over the bundle of papers that he had in the case, and it could not be found there; I think he told me as he told Mr. McGill that the exhibits he had received from the clerk had come into the possession of the defendant, and he had taken such as were his; my impression is he had not yet heard from Mr. Smith in answer to the letter he told Mr. McGill he

would write; I have looked for the paper carefully and cannot find it; I have not seen it since the hearing before the Chancellor; I gave it to him and left it with him then.

ROBT. GILCHRIST.

Taken, sworn to, and subscribed this tenth day of March, A. D. eighteen hundred and seventy-one, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

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